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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2024–0013]

RIN 1557–AF28

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1841]

RIN 7100 AG 82

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

Appraisals for Higher-Priced Mortgage Loans Exemption Threshold

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Consumer Financial Protection Bureau (CFPB).

ACTION: Final rules and official interpretations.

SUMMARY: The OCC, the Board, and the CFPB are finalizing amendments to the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for ''higher-risk mortgages,'' termed ''higher-priced mortgage loans'' or ''HPMLs'' in the agencies' regulations. A December 2013 rulemaking exempted transactions of $25,000 or less and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the CPI–W in effect as of June 1, 2024, the exemption threshold will increase from $32,400 to $33,500, effective January 1, 2025.

DATES: This final rule is effective January 1, 2025.

FOR FURTHER INFORMATION CONTACT: *OCC:* MaryAnn Nash, Counsel, Chief Counsel's Office, at (202) 649–6287. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

CFPB: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: *https://reginquiries.consumerfinance.gov/*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended TILA to add special appraisal requirements for ''higher-risk mortgages.'' [1] In January 2013, the OCC, the Board, the CFPB, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA) (collectively, Agencies) jointly issued a final rule implementing these requirements and adopted the term ''higher-priced mortgage loan'' (HPML) instead of ''higher-risk mortgage'' (January 2013 Final Rule).[2] In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule.[3] In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (December 2013 Supplemental Final Rule).[4] Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of $25,000 or less, to be adjusted annually for inflation.

The OCC's, Board's, and CFPB's versions of the January 2013 Final Rule and December 2013 Supplemental Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the CFPB's version of the regulations under the January 2013 Final Rule and December 2013 Supplemental Final Rule.[5]

The OCC's, Board's, and CFPB's regulations,[6] and their accompanying official interpretations,[7] provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the CFPB will not adjust the threshold amounts from the prior year.[8]

On November 30, 2016, the OCC, the Board, and the CFPB published a final rule in the **Federal Register** to memorialize the calculation method used by the OCC, the Board, and the CFPB each year to adjust the exemption threshold to ensure that the values for the exemption threshold keep pace with the CPI–W (HPML Small Dollar Adjustment Calculation Rule).[9] The HPML Small Dollar Adjustment Calculation Rule memorialized the policy that, if there is no annual

[1] Public Law 111–203, sec. 1471, 124 Stat. 1376, 2185–87 (2010), codified at TILA sec. 129H, 15 U.S.C. 1639h.

[2] 78 FR 10368 (Feb. 13, 2013).

[3] 78 FR 48548 (Aug. 8, 2013).

[4] 78 FR 78520 (Dec. 26, 2013).

[5] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. Although the FDIC adopted the CFPB's version of the regulation, the FDIC did not issue its own regulation containing a cross-reference to the CFPB's version. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[6] 12 CFR 34.203(b)(2) (OCC); 12 CFR 226.43(b)(2) (Board); and 12 CFR 1026.35(c)(2)(ii) (CFPB).

[7] 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 (OCC); 12 CFR part 226, supplement I, comment 43(b)(2)–1 (Board); and 12 CFR part 1026, supplement I, comment 35(c)(2)(ii)–1 (CFPB).

[8] *See* 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 and –2 (OCC); 12 CFR part 226, supplement I, comment 43(b)(2)–1 and –2 (Board); and 12 CFR part 1026, supplement I, comment 35(c)(2)(ii)–1 and –2 (CFPB).

[9] *See* 81 FR 86250 (Nov. 30, 2016).

percentage increase in the CPI–W, the OCC, Board, and CFPB will not adjust the exemption threshold from the prior year. The HPML Small Dollar Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly. If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2025 Adjustment and Official Interpretations Revision

Effective January 1, 2025, the exemption threshold amount is increased from $32,400 to $33,500. This amount is based on the CPI–W in effect on June 1, 2024, which was reported on May 15, 2024 (based on April 2024 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 30 percent of the U.S. population. The CPI–W reported on May 15, 2024, reflects a 3.4 percent increase in the CPI–W from April 2023 to April 2024. Accordingly, the 3.4 percent increase in the CPI–W from April 2023 to April 2024 results in an exemption threshold amount of $33,500, after rounding. The OCC, the Board, and the CFPB are revising the official interpretations to their respective regulations to add new comments as follows:

- Comment 203(b)(2)–3.xii to 12 CFR part 34, appendix C to subpart G (OCC);
- Comment 43(b)(2)–3.xii to supplement I of 12 CFR part 226 (Board); and
- Comment 35(c)(2)(ii)–3.xii to supplement I of 12 CFR part 1026 (CFPB).

These new comments state that, from January 1, 2025, through December 31, 2025, the threshold amount is $33,500. These revisions are effective January 1, 2025.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously memorialized in the December 2013 Supplemental Final Rule and the HPML Small Dollar Adjustment Calculation Rule. For these reasons, the OCC, the Board, and the CFPB have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] The OCC, the Board, and the CFPB have determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

The OCC, the Board, and the CFPB reviewed this final rule in accordance with the Paperwork Reduction Act of 1995.[13] The OCC, the Board, and the CFPB have determined that this rule does not create any new information collections or substantially revise any existing collections.

Unfunded Mandates Reform Act

The OCC analyzes proposed rules for the factors listed in section 202 of the Unfunded Mandates Reform Act of 1995 before promulgating a final rule for which a general notice of proposed rulemaking was published.[14] As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary.

CFPB Congressional Review Act Statement

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

List of Subjects

12 CFR Part 34

Accounting, Banks, banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Truth-in-lending.

12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

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

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. In appendix C to subpart G, under *Section 34.203—Appraisals for Higher-Priced Mortgage Loans,* paragraph 34.203(b)(2) is revised to read as follows:

Appendix C to Subpart G—OCC Interpretations

* * * * *

Section 34.203—Appraisals for Higher-Priced Mortgage Loans

* * * * *

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2024, were reported on May 15, 2024, and reflect economic conditions in April 2024.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

[14] 2 U.S.C. 1532.

Paragraph 34.203(b)(2)

1. *Threshold amount.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 203(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in the following for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

xi. From January 1, 2024, through December 31, 2024, the threshold amount is $32,400.

xii. From January 1, 2025, through December 31, 2025, the threshold amount is $33,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan unless another exemption from the requirements of § 34.203 applies. *See* § 34.203(b) and (d)(7).

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 4. In supplement I to part 226, under *Section 226.43—Appraisals for Higher-Risk Mortgage Loans,* paragraph 43(b)(2) is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Section 226.43—Appraisals for Higher-Risk Mortgage Loans

* * * * *

Paragraph 43(b)(2)

1. *Threshold amount.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 43(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 43(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in the following for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

xi. From January 1, 2024, through December 31, 2024, the threshold amount is $32,400.

xii. From January 1, 2025, through December 31, 2025, the threshold amount is $33,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 226.43(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan unless another exemption from the requirements of § 226.43 applies. *See* § 226.43(b) and (d)(7).

* * * * *

CONSUMER FINANCIAL PROTECTION BUREAU

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 5. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 6. In supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans,* paragraph 35(c)(2)(ii) is revised to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

Paragraph 35(c)(2)(ii)

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in the following for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

xi. From January 1, 2024, through December 31, 2024, the threshold amount is $32,400.

xii. From January 1, 2025, through December 31, 2025, the threshold amount is $33,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan unless another exemption from the requirements of § 1026.35(c) applies. *See* § 1026.35(c)(2) and (c)(4)(vii).

* * * * *

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Benjamin W. McDonough,

Deputy Secretary of the Board.

Brian Shearer,

Assistant Director, Office of Policy Planning and Strategy, Consumer Financial Protection Bureau.

[FR Doc. 2024–23277 Filed 10–11–24; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–1842]

RIN 7100–AG 83

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1013

Consumer Leasing (Regulation M)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Consumer Financial Protection Bureau (CFPB).

ACTION: Final rules and official interpretations.

SUMMARY: The Board and the CFPB (collectively, Agencies) are finalizing amendments to the official

interpretations for the Agencies' regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by requiring that the dollar threshold for exempt consumer leases be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the annual percentage increase in the CPI–W as of June 1, 2024, the exemption threshold will increase from $69,500 to $71,900 effective January 1, 2025. Because the Dodd-Frank Act also requires similar adjustments in the Truth in Lending Act's threshold for exempt consumer credit transactions, the Agencies are making similar amendments to each of their respective regulations implementing the Truth in Lending Act elsewhere in the Rules section of this issue of the **Federal Register**.

DATES: This final rule is effective January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

CFPB: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act increased the threshold in the CLA for exempt consumer leases, and the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions,[1] from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics.[3] In April 2011, the Board issued a final rule amending Regulation M (which implements the CLA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation Z (which implements TILA) (collectively, Board Final Threshold Rules).[4]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the CFPB, effective July 21, 2011. In connection with this transfer of rulemaking authority, the CFPB issued its own Regulation M implementing the CLA, 12 CFR part 1013, substantially duplicating the Board's Regulation M.[5] Although the CFPB has the authority to issue rules to implement the CLA for most entities, the Board retains authority to issue rules under the CLA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation M continues to apply to those entities.[6]

The Agencies' regulations,[7] and their accompanying official interpretations, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[8] Since 2011, the Agencies have adjusted the Regulation M exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Agencies published a final rule in the **Federal Register** to memorialize the calculation method used by the Agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation M Adjustment Calculation Rule).[9] The Regulation M Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust the exemption threshold from the prior year. The Regulation M Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2025 Adjustment and Official Interpretations Revision

Effective January 1, 2025, the exemption threshold amount is increased from $69,500 to $71,900. This amount is based on the CPI–W in effect on June 1, 2024, which was reported on May 15, 2024 (based on April 2024 data).[10] The CPI–W is a subset of the

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (CFPB).

[2] Public Law 111–203, sec. 1100E, 124 Stat. 1376, 2111 (2010).

[3] *Id.*

[4] 76 FR 18349 (Apr. 4, 2011); 76 FR 18354 (Apr. 4, 2011).

[5] *See* 76 FR 78500 (Dec. 19, 2011); 81 FR 25323 (Apr. 28, 2016).

[6] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that ''[s]ubsection (a) shall not apply to any person, to the extent that such person—(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[7] 12 CFR 213.2(e)(1) (Board) and 12 CFR 1013.2(e)(1) (CFPB).

[8] *See* comments 2(e)–9 in supplement I of 12 CFR parts 213 and 1013.

[9] *See* 81 FR 86256 (Nov. 30, 2016).

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2024, were reported on May 15, 2024, and reflect economic conditions in April 2024.

CPI–U index (based on all urban consumers) and represents approximately 30 percent of the U.S. population. The CPI–W reported on May 15, 2024, reflects a 3.4 percent increase in the CPI–W from April 2023 to April 2024. Accordingly, the 3.4 percent increase in the CPI–W from April 2023 to April 2024 results in an exemption threshold amount of $71,900, after rounding. The Agencies are revising the official interpretations to their respective regulations to add new comment 2(e)–11.xvi to state that, from January 1, 2025, through December 31, 2025, the threshold amount is $71,900. These revisions are effective January 1, 2025.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Agencies find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation M Adjustment Calculation Rule. For these reasons, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

The Agencies reviewed this final rule in accordance with the Paperwork Reduction Act of 1995.[13] The Agencies have determined that this rule does not create any new information collections or substantially revise any existing collections.

CFPB Congressional Review Act Statement

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

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a) and 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

List of Subjects

12 CFR Part 213

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 1013

Administrative practice and procedure, Advertising, Consumer protection, Reporting and recordkeeping requirements, Truth-in-lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 section 1100E, 124 Stat. 1376.

■ 2. In supplement I to part 213, under *Section 213.2—Definitions,* revise *2(e) Consumer Lease,* as follows:

Supplement I to Part 213—Official Staff Interpretations

* * * * *

Section 213.2—Definitions

* * * * *

2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to

monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 213.2(e)(1), the threshold amount in effect during a particular period is the amount stated in the following for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022, through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is $66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is $69,500.

xvi. From January 1, 2025, through December 31, 2025, the threshold amount is $71,900.

* * * * *

CONSUMER FINANCIAL PROTECTION BUREAU

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends Regulation M, 12 CFR part 1013, as set forth below:

PART 1013—CONSUMER LEASING (REGULATION M)

■ 3. The authority citation for part 1013 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 sec. 1100E, 124 Stat. 1376.

■ 4. In supplement I to part 1013, under *Section 1013.2—Definitions,* revise *2(e)—Consumer Lease* to read as follows:

Supplement I to Part 1013—Official Interpretations

* * * * *

Section 1013.2—Definitions

* * * * *

2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 1013.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an

organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 1013.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–1 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 1013.2(e)(1), the threshold amount in effect during a particular period is the amount stated in the following for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022, through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is $66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is $69,500.

xvi. From January 1, 2025, through December 31, 2025, the threshold amount is $71,900.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Benjamin W. McDonough,

Deputy Secretary of the Board.

Brian Shearer,

Assistant Director, Office of Policy Planning and Strategy, Consumer Financial Protection Bureau.

[FR Doc. 2024–23276 Filed 10–11–24; 8:45 am]

BILLING CODE 6210–01–P; 4810–AM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1843]

RIN 7100–AG 84

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

Truth in Lending (Regulation Z)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Consumer Financial Protection Bureau (CFPB).

ACTION: Final rules, official interpretations.

SUMMARY: The Board and the CFPB (collectively, Agencies) are publishing final rules amending the official interpretations for the Agencies' regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the annual percentage increase in the CPI–W as of June 1, 2024, the exemption threshold will increase from $69,500 to $71,900 effective January 1, 2025. Because the Dodd-Frank Act also requires similar adjustments in the Consumer Leasing Act's threshold for exempt consumer leases, the Agencies are making similar amendments to each of their respective regulations implementing the Consumer Leasing Act elsewhere in the Rules section of this issue of the **Federal Register**.

DATES: This final rule is effective January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

CFPB: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act increased the threshold in TILA for exempt consumer credit transactions,[1] and the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases, from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics.[3] In April 2011, the Board issued a final rule amending Regulation Z (which implements TILA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation M (which implements the CLA) (collectively, Board Final Threshold Rules).[4]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the CFPB, effective July 21, 2011. In connection with this transfer of rulemaking authority, the CFPB issued its own Regulation Z implementing TILA, 12 CFR part 1026, substantially duplicating the Board's Regulation Z.[5] Although the CFPB has the authority to issue rules to implement TILA for most entities, the Board retains authority to issue rules under TILA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation Z continues to apply to those entities.[6]

The Agencies' regulations,[7] and their accompanying official interpretations, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[8] Since 2011, the Agencies have adjusted the Regulation Z exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Agencies published a final rule in the **Federal Register** to memorialize the calculation method used by the Agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation Z Adjustment Calculation Rule).[9] The Regulation Z Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust the exemption threshold from the prior year. The Regulation Z Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2025 Adjustment and Official Interpretations Revision

Effective January 1, 2025, the exemption threshold amount is increased from $69,500 to $71,900. This amount is based on the CPI–W in effect on June 1, 2024, which was reported on May 15, 2024 (based on April 2024 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 30 percent of the U.S. population. The CPI–W reported on May 15, 2024, reflects a 3.4 percent increase in the CPI–W from April 2023 to April 2024. Accordingly, the 3.4 percent increase in the CPI–W from April 2023 to April 2024 results in an exemption threshold amount of $71,900, after rounding. The Agencies are revising the official interpretations to their respective regulations to add new comment 3(b)–3.xvi to state that, from January 1, 2025, through December 31, 2025, the threshold amount is $71,900. These revisions are effective January 1, 2025.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Agencies find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation Z Adjustment Calculation Rule. For these reasons, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously,

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (CFPB).

[2] Public Law 111–203, sec. 1100E, 124 Stat. 1376, 2111 (2010).

[3] *Id.*

[4] 76 FR 18354 (Apr. 4, 2011); 76 FR 18349 (Apr. 4, 2011).

[5] *See* 76 FR 79768 (Dec. 22, 2011); 81 FR 25323 (Apr. 28, 2016).

[6] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that ''[s]ubsection (a) shall not apply to any person, to the extent that such person—(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[7] 12 CFR 226.3(b)(1)(ii) (Board) and 12 CFR 1026.3(b)(1)(ii) (CFPB).

[8] *See* comments 3(b)–1 in supplement I of 12 CFR parts 226 and 1026.

[9] *See* 81 FR 86260 (Nov. 30, 2016).

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2024, were reported on May 15, 2024, and reflect economic conditions in April 2024.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

The Agencies reviewed this final rule in accordance with the Paperwork Reduction Act of 1995.[13] The Agencies have determined that this rule does not create any new information collections or substantially revise any existing collections.

CFPB Congressional Review Act Statement

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

List of Subjects

12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth-in-lending.

12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l) and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 2. In supplement I to part 226, under *Section 226.3—Exempt Transactions,* revise *3(b) Credit over applicable threshold amount,* to read as follows:

[13] 44 U.S.C. 3506; 5 CFR part 1320.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over applicable threshold amount.

1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated in the following for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022, through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is $66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is $69,500.

xvi. From January 1, 2025, through December 31, 2025, the threshold amount is $71,900.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt, and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the

account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

(2) Same facts as in paragraph 4.iv.B(1) of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

(3) Same facts as in paragraph 4.iv.B(1) of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met.

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also

give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011, to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011, to an amount in excess of $50,000, the account ceases to be exempt under § 226.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i. of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

CONSUMER FINANCIAL PROTECTION BUREAU

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 4. In supplement I to part 1026, under *Section 1026.3—Exempt Transactions,* revise *3(b)—Credit Over Applicable Threshold Amount* to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated in the following for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is $58,300. xiii. From January 1, 2022, through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is $66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is $69,500.

xvi. From January 1, 2025, through December 31, 2025, the threshold amount is $71,900.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 1026.3(b) (unless secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 1026.6 (account-opening disclosures),

§ 1026.7 (periodic statements), § 1026.52 (limitations on fees), and § 1026.55 (limitations on increasing annual percentage rates, fees, and charges). For example:

1. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

2. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt, and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 1026.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 1026.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 1026.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 1026.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 1026.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 1026.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 1026.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 1026.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 1026.3(b).

2. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 1026.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 1026.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 1026.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 1026.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

2. Same facts as in paragraph 4.iv.B.1 of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 1026.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

3. Same facts as in paragraph 4.iv.B.1 of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 1026.3(b) exemption on April 1 of year two, the account does not qualify for a § 1026.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 1026.3(b) (unless the extension of credit is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 1026.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of

credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 1026.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 1026.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under § 1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 1026.3(b), and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 1026.2(a)(19), the exemption in § 1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011, to an amount in excess of $50,000, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011, to an amount in excess of $50,000, the account ceases to be exempt under § 1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Benjamin W. McDonough,

Deputy Secretary of the Board.

Brian Shearer,

Assistant Director, Office of Policy Planning and Strategy, Consumer Financial Protection Bureau.

[FR Doc. 2024–23275 Filed 10–11–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2513; Airspace Docket No. 23–AGL–26]

RIN 2120–AA66

Amendment of Jet Route J–211 and Revocation of VOR Federal Airway V–41; Youngstown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, delay of effective date.

SUMMARY: This action delays the effective date of a final rule published in the **Federal Register** on August 19, 2024, corrected September 30, 2024, amending Jet Route J–211 and revoking Very High Frequency Omnidirectional Range (VOR) Federal Airway V–41. The FAA is delaying the effective date to allow sufficient time for completing the update of all the Instrument Approach Procedures (IAP) into Pittsburgh International Airport that are affected by the revocation of V–41.

DATES: The effective date of the final rule published on August 19, 2024 (89 FR 66987) and corrected on September 30, 2024 (89 FR 79429) is delayed from October 31, 2024, to December 26, 2024. The Director of the Federal Register approved this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The FAA published a final rule in the **Federal Register** for Docket No. FAA–2023–2513 (89 FR 66987, August 19, 2024, and correction (89 FR 79429; September 30, 2024), amending Jet Route J–211 and revoking VOR Federal Airway V–41 due to the planned decommissioning of the VOR portion of the Youngstown, OH, VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The effective date for that final rule is October 31, 2024. After the final rule was published, the FAA determined that the required update actions to all the IAPs into Pittsburgh International Airport would not be completed in time to meet the original planned decommissioning date. Therefore, the current IAPs need to remain in place, to include VOR Federal Airway V–41 which is a transition on the JESEY Four Arrival into Pittsburgh International Airport, until the next chart date.

The FAA expects the required updates for all the IAPs into Pittsburgh International Airport to be completed by December 26, 2024; therefore, the rule amending Jet Route J–211 and revoking VOR Federal Airway V–41 is delayed to coincide with that date.

Jet Routes are published in paragraph 2004 and VOR Federal Airways are published in paragraph 6010(a) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO

7400.11J is publicly available online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

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

Good Cause for No Notice and Comment

Section 553(b)(3)(B) of Title 5, United States Code, (the Administrative Procedure Act) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The FAA finds that prior notice and public comment to this final rule is unnecessary due to the brief length of the extension of the effective date and the fact that there is no substantive change to the rule.

Delay of Effective Date

■ Accordingly, pursuant to the authority delegated to me, the effective date of the final rule for Airspace Docket 23–AGL–26, as published in the **Federal Register** on August 19, 2024 (89 FR 66987), FR Doc. 2024–18431, and corrected on September 30, 2024 (89 FR 79429), FR Doc. 2024–22253, is hereby delayed until December 26, 2024.

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

Issued in Washington, DC, on October 8, 2024.

Brian Eric Konie,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2024–23612 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 820

[Docket No. FDA–2021–N–0507]

RIN 0910–AH99

Medical Devices; Quality System Regulation Amendments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA or Agency) is correcting a final rule that appeared in the **Federal Register** on February 2, 2024. In that final rule, FDA amended the device current good manufacturing practice (CGMP) requirements of the Quality System (QS) regulation to harmonize and modernize the device CGMP. FDA is correcting an editorial error that inadvertently omitted a definition in the codified of the final rule. This action is editorial in nature and is intended to ensure the accuracy and clarity of the Agency's regulations.

DATES: Effective February 2, 2026.

FOR FURTHER INFORMATION CONTACT: Laurie Sternberg, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5517, Silver Spring, MD 20993–0002, 240–402–0425.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 2, 2024 (89 FR 7496), FDA published a final rule that amended the device CGMPs requirements in 21 CFR part 820. The preamble indicated that the definition for ''batch'' or ''lot'' was set forth at § 820.3 (21 CFR 820.3) but the definition for ''batch'' or ''lot'' was inadvertently omitted from the codified portion of § 820.3 in the final rule. FDA is, therefore, correcting the codified for § 820.3 to include the definition of ''batch'' or ''lot'' as was intended and to be consistent with the preamble of the final rule.

In FR Doc. 2024–01709 appearing on page 7524 in the **Federal Register** of Friday, February 2, 2024 (89 FR 7496), the following correction is made:

§ 820.3 [Corrected]

■ 1. On page 7524, in amendment number 4, in the first column, in paragraph (a) of § 820.3, the definition for ''Batch or lot'' is added in alphabetical order to read as follows:

''*Batch* or *lot* means one or more components or finished devices that consist of a single type, model, class, size, composition, or software version that are manufactured under essentially the same conditions and that are intended to have uniform characteristics and quality within specified limits.''

Dated: October 7, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–23701 Filed 10–11–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2024–0845]

RIN 1625–AA09

Drawbridge Operation Regulation; Wappinger Creek, New Hamburg, New York

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the Metro-North Commuter Railroad Bridge, mile 0.0 across the Wappinger Creek at New Hamburg, New York. In 1991, the Metro-North Railroad Bridge was allowed to no longer be maintained as a movable structure and in 2004, the bridge was converted to a fixed bridge. The operating regulation is no longer applicable or necessary.

DATES: This rule is effective October 15, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number (USCG–2024–0845) in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone 212–514–4336, email *Judy.K.Leung-Yee@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations [Delete/Add Any Abbreviations Not Used/Used in This Document]

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are

''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), 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 unnecessary. The Metro-North Railroad Bridge at mile 0.0 across the Wappinger Creek was converted to a fixed bridge in 2004. Therefore, the regulation in § 117.823 is no longer applicable and will be removed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge has been a fixed bridge for 20 years and this rule merely removes a regulatory requirement that is no longer applicable or necessary. The modification of the bridge has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in Public Law 102–241 and 33 U.S.C. 499.

Section 36 of the Coast Guard Authorization Act of 1991 (Pub. L. 102–241) determined that the Metro-North Railroad Bridge at mile 0.0 across the Wappinger Creek provided for the reasonable needs of navigation in the closed to navigation position. As such, Public Law 102–241 declared that the bridge need not be maintained as a movable structure and in 2004 was converted to a fixed bridge The governing regulation for this drawbridge was never removed subsequent to the completion of the fixed bridge that replaced it. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation in § 117.813 that pertains to the former drawbridge.

IV. Discussion of Final Rule

The Coast Guard is removing and reserving the regulation in § 117.813 related to the draw operations for this bridge because it is no longer a drawbridge. The Metro-North Railroad Bridge has been replaced with a fixed bridge. This change does not affect waterway or land traffic.

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.

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, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that under Public Law 102–241 SEC 36 the vertical clearance of the bridge in the closed to navigation position was sufficient for waterway traffic. Since the bridge no longer needed to open, it does not be maintained as a movable structure. The bridge owner converted the bridge to a fixed bridge and no longer operates as a drawbridge. The removal of the operating schedule from 33 CFR part 117, subpart B will have no effect on the movement of waterway or land traffic.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 bridge may be small entities, for the reasons stated in section V.A above this final rule would not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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 Management Directive 023–01, Rev.1, associated implementing instructions,

and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has 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 promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

_____Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1. Revision No. 01.3

§ 117.813 [Removed and Reserved]

■ 2. Remove and reserve § 117.813.

M.E. Platt,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2024–23769 Filed 10–11–24; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 89, No. 199
Tuesday, October 15, 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.

POSTAL SERVICE

39 CFR Part 111

Dual Shipping Labels Discontinued

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to discontinue the use of dual shipping labels.

DATES: Submit comments on or before November 14, 2024.

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

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

FOR FURTHER INFORMATION CONTACT: Catherine Knox at (202) 268–5636 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Background

On January 21, 2018, the Postal Service revised the DMM to provide information regarding the use of dual shipping labels based on feedback that some of our industry shipping partners had adopted the practice of using shipping labels which included both the USPS® and their own address formats to address their items.

Proposal

The Postal Service has reviewed the practice of using dual shipping labels and has found that this practice no longer serves the interests of the Postal Service. As a result, the Postal Service is proposing to discontinue the use of dual shipping labels. Items bearing dual shipping labels should not be accepted and may be returned to the sender.

The Postal Service is proposing to implement this change effective January 1, 2025.

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

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service proposes the following changes to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations (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)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

602 Addressing

* * * * *

10.0 Dual Shipping Labels

[Revise the text of 10.0 to read as follows:]

Mailers must not use dual shipping labels. Items bearing dual shipping labels should not be accepted and may be returned to the sender.

* * * * *

Christopher Doyle,
Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–23823 Filed 10–11–24; 8:45 am]
BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2023–0587; FRL–11571–01–R8]

Revisions to the Federal Implementation Plan for the Billings/Laurel, Montana, Sulfur Dioxide Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise a Federal Implementation Plan (FIP) applicable to sulfur dioxide (SO_2) emissions from several sources located in Billings and Laurel, Montana. Specifically, the EPA is proposing to revise a portion of the FIP promulgated by the EPA in 2008 (2008 Billings/Laurel SO_2 FIP) by removing a provision which contained an affirmative defense for exceedances of flare emission limits during malfunctions, startups, and shutdowns. The EPA is proposing this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 16, 2024. *Public hearing:* If anyone contacts us requesting a public hearing on or before October 30, 2024, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document. Contact Adam Clark at *clark.adam@epa.gov,* to request a hearing or to determine if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2023–0587, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://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.* 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: Adam Clark, Air and Radiation Division, EPA, Region 8, Mail code 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–7104, email address: *clark.adam@epa.gov.*

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

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I. What action is the EPA proposing?

The EPA is proposing to revise the portion of the 2008 Billings/Laurel SO_2 FIP found at 40 CFR 52.1392(i), titled ''Affirmative defense provisions for exceedances of flare emission limits during malfunctions, startups, and shutdowns.'' This includes proposed withdrawal of all of the subsections under 40 CFR 52.1392(i), including § 52.1392(i)(1) and subsections therein, and § 52.1392(i)(2) and (3). The rationale for this proposed action is described in the following sections.

II. Background

A. Billings/Laurel SO_2 Area History

On March 3, 1978 (43 FR 8962), the Laurel, Montana area was designated as nonattainment for the 1971 primary SO_2 national ambient air quality standards (NAAQS). *See* 40 CFR 81.327. The nonattainment area consists of an area with a two-kilometer radius around the CHS Laurel Refinery. This designation was based on monitored and modeled violations of the NAAQS. The EPA reaffirmed this nonattainment designation on September 11, 1978 (43 FR 40412). The 1990 CAA Amendments, enacted November 15, 1990, again reaffirmed the nonattainment designation of Laurel with respect to the 1971 primary SO_2 NAAQS. Since the Laurel nonattainment area had a fully approved CAA title I part D plan, the State was not required to submit a revised plan for the area under the 1990 Amendments (*see* sections 191 and 192 of the CAA).

On March 3, 1978 (43 FR 8962), those areas in the State that were meeting the 1971 SO_2 NAAQS were designated as ''Better Than National Standards.'' The Billings area was in the portion of the State that was designated as ''Better Than National Standards.''

The CAA requires States to submit to the EPA a plan, termed a State Implementation Plan (SIP), to assure that the NAAQS are attained and maintained. Air quality modeling completed in 1991 and 1993 for the Billings/Laurel area predicted that the SO_2 NAAQS were not being attained, including outside of the existing nonattainment area and in Billings.[1] As a result, the EPA (pursuant to sections 110(a)(2)(H) and 110(k)(5) of the CAA) sent a letter to the Governor of Montana, dated March 4, 1993,[2] finding the SIP was substantially inadequate to attain or maintain the NAAQS (known as a ''SIP Call'') and requested the State of Montana revise its previously approved SIP for the Billings/Laurel area. In the request letter, we declared that the SIP Call would become final agency action when we made a final determination regarding the State of Montana's response to the SIP Call. In response, the State submitted revisions to the SIP on September 6, 1995, August 27, 1996, April 2, 1997, July 29, 1998, and May 4, 2000. We made a final determination regarding the SIP Call when we partially and limitedly approved and partially and limitedly disapproved the Billings/Laurel SO_2 SIP revisions submitted by the State in response to the request letter (67 FR 22168, 22173, May 2, 2002). On May 22, 2003 (68 FR 27908),[3] we partially approved and partially disapproved provisions of the Billings/Laurel SO_2 SIP. Montana Sulfur and Chemical Company filed a petition for review challenging the EPA's 2002 partial SIP disapproval. That petition was held in abeyance pending the EPA's promulgation of a FIP to remedy the disapproved portions of the Billings/Laurel SO_2 SIP.

B. Billings/Laurel SO_2 FIP

On April 21, 2008, the EPA promulgated a FIP applicable to several sources located in Billings and Laurel, Montana, hereon referred to as the ''2008 Billings/Laurel SO_2 FIP'' (73 FR 21418). The EPA promulgated the 2008 Billings/Laurel SO_2 FIP because of our previous partial and limited disapprovals of the Billings/Laurel SO_2 SIP. The intended effect of this action was to assure attainment of the 1971 SO_2 NAAQS in the Billings/Laurel, Montana area. The 2008 Billings/Laurel SO_2 FIP did not replace the SIP entirely, but instead replaced elements of, or filled gaps in, the disapproved portion of the SIP. Montana Sulfur and Chemical Company filed a petition for review challenging the EPA's 2008 FIP, at which point the previous litigation challenging the 2002 SIP disapproval was reactivated. The court ultimately issued a single ruling affirming the

[1] As stated in the proposed FIP, ''Laurel is located within the Yellowstone Valley approximately 15 miles southwest of Billings. . . . Although Laurel and Billings are 15 miles apart, the industries in Billings have some impact on the air quality in Laurel and the industry in Laurel has some impact on the air quality in Billings.'' 79 FR 39260–39261, July 12, 2006.

[2] EPA published this letter in the **Federal Register** on August 4, 1993 (58 FR 41430).

[3] *See* also June 2, 2003, correction document (68 FR 32799).

EPA's action on the SIP Call, 2002 SIP disapproval, and FIP.[4]

The 2008 Billings/Laurel SO_2 FIP, which remains in place today, contains emission limits and compliance determining methods for four sources located in Billings and Laurel, Montana. Three of the sources are petroleum refineries: CHS Inc. Laurel Refinery, Phillips 66 Billings Refinery (including the Jupiter Sulfur facility), and ExxonMobil Billings Refinery (now the Par Montana Refinery). The fourth source is Montana Sulphur and Chemical Company, which provides sulfur recovery for the Par Montana Refinery. Among the major components of the 2008 Billings/Laurel SO_2 FIP was the establishment of flare emission limits at all four sources (150 lbs SO_2/3-hour period at all but the Jupiter Sulfur flare, 75 lbs SO_2/3-hour period shared limit for the Jupiter Sulfur flare and the Jupiter Sulfur SRU/ATS stack)[5] and monitoring methods to determine compliance with those limits. To determine flare emissions, the 2008 Billings/Laurel SO_2 FIP required concentration monitoring (which can consist of continuous monitoring, grab sampling, or integrated sampling) and continuous flow monitoring. The 2008 Billings/Laurel SO_2 FIP also included an affirmative defense to civil penalties for violations of the flare limits that occur during startup, shutdown, and malfunction (SSM) periods.

These affirmative defense provisions for the flare limits, which the EPA finalized into the 2008 Billings/Laurel SO_2 FIP at 40 CFR 52.1392(i), are the portions of the 2008 Billings/Laurel SO_2 FIP we are proposing to remove from the 2008 Billings/Laurel SO_2 FIP with this action. Below, we provide further detail on the history of affirmative defense provisions and the rationale for our removal of these provisions in this proposed action.

C. Affirmative Defense Provision Policy History

On June 12, 2015, the EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' hereafter referred to as the ''2015 SSM SIP Action'' (80 FR 33839). Prior to the 2015 SSM SIP Action, which is discussed later in this section, the Agency had a longstanding interpretation of the CAA with respect to the treatment of excess emissions during periods of SSM in SIPs. This statutory interpretation had been expressed, reiterated, and elaborated upon in a series of guidance documents issued in 1982, 1983, and 1999.

In the 1982 SSM Guidance, the EPA recommended the exercise of enforcement discretion to address periods of excess emissions occurring during SSM events.[6] Subsequently, in the 1983 SSM Guidance, the EPA expanded on this approach by recommending that a State could elect to adopt SIP provisions providing parameters for the exercise of enforcement discretion by the State's personnel.[7] In our 1999 SSM Guidance, the EPA interpreted that States could elect to create ''affirmative defense'' provisions applicable to SSM events in their SIPs.[8] Also in the 1999 Guidance, the EPA established parameters that should be included as part of such an affirmative defense in order to ensure that it would be available only in certain narrow circumstances.[9] In the 2008 Billings/Laurel SO_2 FIP, the EPA explained that we were following our national policy with respect to SSM periods as expressed in the 1999 SSM Guidance by including an affirmative defense in our 2008 Billings/Laurel SO_2 FIP. 73 FR 21434, April 21, 2008. Specifically, we stated, ''[t]o provide relief to the sources for truly unavoidable violations, while still maintaining appropriate incentives for compliance, we are providing an affirmative defense to penalties for violations of flare limits during malfunctions, startups, and shutdowns. The elements of the defense, which a source would have to prove in court or before an administrative judge, are enumerated in our 2008 final rule and are consistent with the elements described in our 1999 excess emissions memorandum.'' *Id.* at 73 FR 21432.

On February 22, 2013, the EPA proposed to take action on a petition for rulemaking that the Sierra Club filed with the EPA Administrator on June 30, 2011 (78 FR 12460). In that action, the EPA proposed to grant the Petitioner's claim with respect to affirmative defenses applicable to planned events such as startup and shutdown. This was a change from the EPA's interpretation of the CAA in the 1999 SSM Guidance, in which the EPA had interpreted that States could elect to create such affirmative defense provisions for startup and shutdown events, so long as the provisions were narrowly drawn and consistent with the established criteria to assure that they meet CAA requirements. The EPA's evaluation of the petition and the statutory basis for affirmative defense provisions initiated a review of the appropriateness of affirmative defense provisions applicable during startup and shutdown, which are ordinary modes of operation that are generally predictable and within the control of the source. As explained in more detail in the February 22, 2013 proposal document, the EPA's evaluation of the Sierra Club Petition in light of then-recent case law[10] caused the EPA to alter its view on the appropriateness of affirmative defenses applicable to planned events such as startup and shutdown. Specifically, the EPA stated that ''because these events are modes of normal operation, the EPA believes that sources should be expected to comply with applicable emission limitations during such events.'' (*Id.* at 12480)

The EPA distinguished between affirmative defense provisions for startup and shutdown and those for malfunctions, stating ''the distinction that makes affirmative defenses appropriate for malfunctions is that by definition those events are unforeseen and could not have been avoided by the owner or operator of the source, and the owner or operator of the source will have taken steps to prevent the violation and to minimize the effects of the violation after it occurs.'' *Id.*

Subsequent to the EPA's issuance of the February 22, 2013 proposal, on April 18, 2014, the U.S. Court of Appeals for the District of Columbia Circuit ruled that CAA sections 113 and 304 preclude the EPA the authority to create affirmative defense provisions in

[4] *See Montana Sulphur and Chemical Co.* v. *U.S. EPA,* 666 F.3d 1174, (9th Cir. 2012).

[5] SRU stands for sulfur recovery unit, and ATS stands for Ammonium Thiosulfate.

[6] Memorandum to Regional Administrators, Region I–X; From: Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation; Subject: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions. September 28, 1982.

[7] Memorandum to Regional Administrators, Regions I–X; From: Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation; Subject: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions. February 15, 1983.

[8] Memorandum to Regional Administrators, Regions I–X; From: Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Bob Perciasepe, Assistant Administrator for Air and Radiation; Subject: Policy on Excess Emissions During Malfunctions, Startup, and Shutdown. September 20, 1999.

[9] Id.

[10] Court decisions confirmed that this requirement for continuous compliance prohibits exemptions for excess emissions during SSM events. *See, e.g., Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (D.C. Cir. 2008); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1170 (10th Cir. 2012).

the Agency's own regulations imposing emission limits on sources, because such provisions purport to alter the jurisdiction of federal courts to assess liability and impose penalties for violations of those limits in private civil enforcement cases.[11] In light of this decision, on September 17, 2014, the EPA issued a supplemental proposed rulemaking which outlined our updated policy that affirmative defense SIP provisions, even if they are narrowly tailored and applicable only to malfunctions, are not consistent with CAA requirements. Accordingly, the EPA proposed to grant the portion of Sierra Club's petition with regard to affirmative defenses in the case of malfunctions that it had previously proposed to deny.[12] In that supplemental proposal, the EPA stated that the reasoning of the court in the NRDC decision indicates that the States, like the EPA, have no authority in SIP provisions to alter the statutory jurisdiction of federal courts under CAA section 113 and 304 to assess penalties for violations of CAA requirements through affirmative defense provisions. We additionally noted that if States lack authority under the CAA to alter the jurisdiction of the federal courts through affirmative defense provisions in SIPs, then the EPA also lacks authority to approve any such provision in a SIP.[13]

On June 12, 2015, pursuant to CAA section 110(k)(5), the EPA finalized the 2015 SSM SIP Action. The 2015 SSM SIP Action clarified, restated, and updated the EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 States were substantially inadequate to meet CAA requirements and issued a SIP call to those States to submit SIP revisions to address the inadequacies.[14]

The EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs, including affirmative defense provisions, could be viewed as consistent with CAA requirements.[15] However, on September 30, 2021, the EPA's Deputy Administrator withdrew the 2020 Memorandum and announced the EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[16] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission.

On March 1, 2024, the D.C. Circuit Court of Appeals issued a decision in *Environ. Comm. Fl. Elec. Power* v. *EPA,* No. 15–1239. The case is a consolidated set of petitions for review of the 2015 SSM SIP Action. The Court granted the petitions in part, vacating the SIP call with respect to SIP provisions that the EPA identified as automatic exemptions, director's discretion provisions, and affirmative defenses that are functionally exemptions; and denied the petitions in part as to other provisions that the EPA identified as ambiguous provisions, overbroad enforcement discretion provisions, or affirmative defense provisions that would preclude or limit a court from imposing relief in the case of violations, which the Court also refers to as ''specific relief.'' This is juxtaposed against the Court's granting of the petition as to affirmative defenses that are functionally exemptions because they ''create an exemption from the normal emission rule.'' [17] The EPA finds that the affirmative defense provision in the 2008 Billings/Laurel SO_2 FIP to be ''specific relief'' as interpreted by the Court, as the provision specifically states that an owner or operator ''may assert an affirmative defense to a claim for civil penalties for exceedances of such limits during periods of malfunction, startup, or shutdown,'' and ''to establish the affirmative defense and to be relieved of a civil penalty in any action to enforce such a limit, the owner or operator of the facility must meet the notification requirements of paragraph (i)(2) of this section in a timely manner and prove by a preponderance of evidence . . .'' [18] The EPA has assessed the impact of the decision with respect to the removal of the specific affirmative defense provisions at issue in the Billings/Laurel SO_2 FIP. We have concluded that the previously stated reasons for the proposed removal of these provisions, as articulated in the 2015 SSM SIP Action and 2021 Memorandum, are consistent with the recent D.C. Circuit decision. The Court upheld the EPA's 2015 SSM SIP Action with regard to affirmative defenses against specific relief, finding that because CAA 304(a) and 113(b) authorize citizens and the EPA to seek injunctive relief and monetary penalties against sources that violate a SIP's emission rules, such an affirmative defense would ''block that aspect of the Act's enforcement regime.'' [19]

To maintain consistency with our SSM policy regarding affirmative defenses against specific relief, and with the CAA's prohibition against such affirmative defenses, we are proposing to find that the affirmative defense provisions currently promulgated in the 2008 Billings/Laurel SO_2 FIP at 40 CFR 52.1392(i) are substantially inadequate to meet CAA requirements. Therefore, we are proposing to revise the 2008 Billings/Laurel SO_2 FIP by removing these provisions.

III. The EPA's Proposed Action

The EPA is proposing to revise the 2008 Billings/Laurel SO_2 FIP by removing § 52.1392(i) and all of the provisions therein, including paragraphs § 52.1392 (i)(1)–(3). The EPA is proposing this action in line with our policy regarding affirmative defense provisions against specific relief, as described in our 2015 SSM SIP Action and affirmed by the D.C. Circuit.

IV. Environmental Justice Considerations

The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' [20] The EPA further defines the term ''fair treatment'' to mean that ''no group of people should bear a disproportionate burden of

[11] *See NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014).

[12] *See* ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Supplemental Proposal To Address Affirmative Defense Provisions in States Included in the Petition for Rulemaking and in Additional States.'' 79 FR 55920, September 17, 2014.

[13] Id. at 79 FR 55929.

[14] The EPA established an 18-month deadline by which the affected States had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP call by November 22, 2016.

[15] October 9, 2020 memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator. The 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued in 2015.

[16] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[17] *See Environ. Comm. Fl. Elec. Power* v. *EPA,* 94 F.4th 77, 115 (D.C. Cir. 2024).

[18] *See* 40 CFR 52.1392(i)(1).

[19] *See Environ. Comm. Fl. Elec. Power* v. *EPA,* 94 F.4th 77, 114–115 (D.C. Cir. 2024).

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

environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [21] Recognizing the importance of these considerations to local communities, the EPA conducted an environmental justice screening analysis around the location of the facilities associated with this action to evaluate environmental and demographic indicators for the areas impacted by this proposed action. However, the EPA is providing the information associated with this analysis for informational purposes only. The information provided herein is not a basis of this proposed action.

The EPA conducted the screening analyses using EJScreen, an EJ mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[22] The EJScreen tool presents these indicators at a census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[23] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJScreen is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[24] For informational purposes, we have summarized EJScreen data within larger ''buffer'' areas covering multiple block groups and representing the average resident within the buffer areas surrounding the facilities. EJScreen environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[25] EJScreen also provides information on demographic indicators, including percent of low-income, communities of color, linguistic isolation, and less than high school education.

The EPA prepared EJScreen reports covering buffer areas of approximately five kilometers around the four facilities subject to the 2008 Billings/Laurel SO_2 FIP. From those reports, no facilities showed EJ indices greater than the 80th national percentiles.[26] The full, detailed EJScreen reports are provided in the docket for this rulemaking.

V. Statutory and Executive Order Reviews

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

This action is exempt from review under Executive Order 12866, as amended by Executive Order 14094, as it is not a rule of general applicability. This action specifically applies to 4 facilities in the State of Montana.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA), because it revises the reporting requirements for 4 facilities in the State of Montana.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities as no small entities are subject to the requirements of this rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have Tribal implications, as specified in Executive Order 13175, because this proposed rule would not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that the Tribe has jurisdiction, and it will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely removes a provision from the 2008 Billings/Laurel SO_2 FIP that is inconsistent with the requirements of the CAA.

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

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

[21] Id.

[22] The EJSCREEN tool is available at *https://www.epa.gov/ejscreen.*

[23] *See https://www.census.gov/programs-surveys/geography/about/glossary.html.*

[24] In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. For more information, *see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.*

[25] For additional information on environmental indicators and proximity scores in EJSCREEN, *see* ''EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,'' chapter 3 and appendix C (September 2019) at *https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.*

[26] For a place at the 80th percentile nationwide, that means 20 percent of the U.S. population has a higher value. The EPA identified the 80th percentile filter as an initial starting point for interpreting EJScreen results. The use of an initial filter promotes consistency for the EPA's programs and regions when interpreting screening results.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns. While the EPA has identified the sources that would be impacted by the finalization of this proposed action, the EPA cannot quantify the baseline conditions and impacts the affirmative defense provisions have had on these sources, nor can we project potential emissions impacts from these sources as a result of this action. However, the EPA finds that this proposed action is expected to have a neutral to positive impact on the air quality of the affected area.

The EPA performed a screening analysis using the EJScreen tool [27] to evaluate environmental and demographic indicators for the areas impacted by this proposed action. The results of this assessment are in the docket for this action. The EPA is providing this information for public information purposes, and not as a basis of our proposed action.

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.*

Michael S. Regan,

Administrator.

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

[27] EJSCREEN is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators; available at *https://www.epa.gov/ejscreen/what-ejscreen.*

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 BB—Montana

§ 52.1392 [Amended]

■ 2. In § 52.1392, remove and reserve paragraph (i).

[FR Doc. 2024–23568 Filed 10–11–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2023–0473; FRL–12257–01–R8]

Air Plan Approval; Montana; Missoula, Montana Oxygenated Fuels Program Removal, Carbon Monoxide, Limited Maintenance Plan

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 Montana Department of Environmental Quality (MDEQ or ''the State''), on January 30, 2024, requesting to change the status of gasoline requirements (the ''oxygenated fuels'' or ''oxyfuels'' program'') in the Missoula, Montana, Carbon Monoxide (CO) limited maintenance plan (LMP) area from an active control measure to a contingency measure. The SIP revision contains a non-interference demonstration under the Clean Air Act (CAA), which concludes that converting the oxygenated gasoline program from a control measure to a contingency measure in the Missoula CO LMP would not interfere with attainment or maintenance of the CO National Ambient Air Quality Standards (NAAQS). The EPA is proposing to approve Montana's SIP submittal pursuant to CAA.

DATES: Written comments must be received on or before November 14, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2023–0473, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://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.* 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

The EPA is proposing to approve a SIP revision submitted by Montana on January 30, 2024, requesting to change the status of the oxyfuels program in the Missoula CO LMP from an active control measure to a contingency measure. To support the request, Montana's January 30, 2024 SIP revision contains technical support materials to demonstrate that the removal of the rules as a control measure will not interfere with attainment or maintenance of the CO NAAQS or with

any other applicable requirement of the CAA. In addition to the technical support materials provided by Montana, the EPA has provided supplemental technical support documentation to further demonstrate non-interference.[1] Specifically, these SIP revisions address State regulations amended in the Missoula City-County Air Pollution Control (MCCAPC) program rules, Chapter 10: *Fuels,* Subchapter 1: *Oxygenated Fuels Program,* rules 10.102(1), 10.105(1), 10.109(1), 10.110, 10.111, 10.111(2).

The EPA's analysis of Montana's January 30, 2024 SIP revision that is the subject of this proposed rule is organized into two parts under section II. of this document. Part A provides the background, analysis, and discussion of the non-interference demonstration for the change in status of Montana's oxyfuels program from a control measure to a contingency measure in the federally approved Montana SIP; Part B contains information regarding rules submitted for revision in MCCAPC Chapter 10: *Fuels,* Subchapter 1: *Oxygenated Fuels Program.* The EPA is proposing to act on the revisions listed in this action and will act on the additional rule revisions listed in the January 30, 2024 SIP revision submission in a separate action.

II. The EPA's Evaluation

A. Removal of the Oxygenated Gasoline Program as a Control Measure

1. Missoula, Montana Oxygenated Gasoline Program and CO NAAQS Maintenance

The EPA designated Missoula, Montana, as nonattainment for CO under the provisions of the 1977 CAA Amendments on March 3, 1978 (43 FR 8962). Under the CAA Amendments of 1990, the Missoula area was designated as nonattainment and classified as a ''Moderate'' CO area, with a design value of less than or equal to 12.7 parts per million (ppm) and was required to attain the CO NAAQS by December 31, 1995 (56 FR 56694, November 6, 1991).[2] Under section 211(m) of the CAA, states with areas designated nonattainment for CO with certain design values were required to submit revisions to their SIPs and implement oxygenated gasoline programs by no later than November 1, 1992. As a result, the State submitted such a revision, and the EPA approved an oxygenated gasoline program for the Missoula area on November 8, 1994 (59 FR 55585). The oxygenated gasoline program applies during the high CO season, which is generally during the colder winter months when cars tend to have higher tailpipe CO emissions. The oxygenated gasoline program also requires that gasoline contain at least 2.7% oxygen by weight during the high CO season. This requirement is intended to ensure complete gasoline combustion and thus achieve a reduction in tailpipe CO emissions. The high CO season for the Missoula CO area was established as November 1 through the last day of February of each year.

The CAA established an attainment date of December 31, 1995, for all Moderate CO areas, including the Missoula, Montana, area, triggering CAA section 211(m) requirements. CAA section 107(d)(3)(E) sets out the requirements that an area must meet to be redesignated from nonattainment to attainment, including that the area must have a fully approved maintenance plan pursuant to section 175A of the CAA. A maintenance plan, as defined in section 175A(a) of the CAA, is a revision to the SIP to provide for the maintenance of the NAAQS for the air pollutant in question in the area concerned for at least 10 years after the redesignation. CAA section 175A(d) requires that such plans include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of an area; this includes implementation of all control measures that were contained in the SIP prior to redesignation. While CAA section 175A sets forth the criteria for adequate maintenance plans,[3] the EPA has also published longstanding guidance providing clarification for states on developing maintenance plans by performing air quality modeling to demonstrate that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emission reductions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was in attainment of the NAAQS.[4]

On May 27, 2005, the Governor of Montana submitted to the EPA a request to redesignate the Missoula CO nonattainment area to attainment for the 8-hour CO NAAQS. Along with this request, the Governor submitted a CAA section 175A(a) maintenance plan which established an attainment year of 2000, and demonstrated that the area would maintain the 8-hour CO NAAQS through 2020. The EPA approved the State's redesignation request, CAA section 175A(a) maintenance plan, and base year emissions inventory on August 17, 2007 (72 FR 46158).

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the state to submit a subsequent maintenance plan to the EPA, covering a second 10-year period. This second 10-year maintenance plan must demonstrate continued maintenance of the applicable NAAQS during this second 10-year period. The EPA explained in the October 6, 1995 Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas guidance memo that nonattainment and maintenance areas could meet CAA section 175A requirements to demonstrate continued maintenance by showing that an area has a design value of less than 85 percent of the 8-hour CO standard (7.65 ppm) based on the two most recent years of data for all CO monitors in the maintenance area.[5] This streamlined demonstration of maintenance is known as a limited maintenance plan. To fulfill this CAA requirement, the Governor of Montana submitted the second 10-year CO maintenance plan to the EPA on September 19, 2016. In this submission, the State utilized the EPA's option of using an LMP to demonstrate continued attainment and maintenance of the NAAQS, which was available because the area could demonstrate design values at or below 7.65 ppm (85% of exceedance levels of the 8-hour CO NAAQS) for eight consecutive quarters.[6] The EPA approved the second 10-year Montana CO LMP on February 1, 2018 (83 FR 4597).[7] The second 10-year CO LMP included the continued use of the oxygenated gasoline program for the Missoula area as a control measure.

2. CAA Requirements for the Removal of the Oxygenated Gasoline Program as a Control Measure in Missoula, Montana

As noted above, the oxyfuels program is included as a control measure in the State's second 10-year CO LMP for the Missoula area pursuant to the requirements of CAA section 175A(d). Montana's January 30, 2024, SIP

[1] *See MEMO_Missoula MOVES TSD_CO OxyFuels 110(l).docx* in docket.

[2] Further information regarding this classification and the accompanying requirements are described in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.'' See 57 FR 13498, April 16, 1992.

[3] *See* 42 U.S.C. 7505A(a).

[4] *See* Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, ''Procedures for Processing requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni Memo).

[5] Memorandum from Joseph Paisie, Group Leader, EPA Integrated Policy and Strategies Group, to Air Branch Chiefs, October 6, 1995.

[6] *Id.*

[7] *See* September 14, 2017 direct final rule (DFR) and proposal (82 FR 43180, 82 FR 43208) for additional detail on the second, 10-year CO LMP for Missoula, Montana, area.

revision seeks to change the status of Missoula's oxygenated gasoline program from a control measure to a contingency measure in the Montana SIP.

Under CAA section 211(m)(6) once a nonattainment area subsequently attains the CO NAAQS, oxygenated gasoline requirements may be removed as a control measure, as long as it is: (1) demonstrated that it is not needed for maintaining the health-based CO NAAQS in that area and (2) it is retained as a contingency measure. As relevant here, CAA section 211(m)(6) provides: ''Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide.'' Thus, the Agency determines that a CO nonattainment area is attaining the CO NAAQS, the State would be allowed to submit a SIP revision to remove the oxygenated gasoline program as a control measure so long as the area continues to maintain the CO NAAQS. However, the control measure must be retained as a contingency measure because it is contained in the SIP for the area before redesignation of the area as an attainment area.[8]

CAA section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and Reasonable Further Progress (RFP) (as defined in CAA section 171), or any other applicable requirement of the Act. The EPA's criterion for determining the approvability of Montana's January 30, 2024, SIP revision is whether the non-interference demonstration associated with the removal of the oxyfuels program for the Missoula area satisfies CAA section 110(l).

The EPA evaluates each CAA section 110(l) non-interference demonstration on a case-by-case basis considering the circumstances of each SIP revision. The degree of analysis focused on any NAAQS in a non-interference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision. Regarding the SIP revision at issue, the primary focus of the 110(l) demonstration is the potential increase in CO emissions that could result from the change in status of the oxyfuels program in the Missoula CO LMP area from control measure to contingency measure. The oxyfuels program only applied in the area during its high CO season, November 1 through the last day of February of each year. Effects on vehicle emissions of other criteria pollutants or their precursors caused by implementation of an oxyfuels program are considerably less significant and thus the EPA's approval of the SIP revision would not be expected to result in interference for the purposes of a 110(l) demonstration. The EPA's analysis of Montana's January 30, 2024 SIP revision pursuant to CAA section 110(l) is provided below.

3. EPA's Analysis of Missoula, Montana's, Noninterference Demonstration

The EPA analyzed emissions information to determine whether changing the oxyfuels program in the Missoula CO LMP area from a control measure to a contingency measure would interfere with the attainment of the NAAQS. An emissions-based analysis is appropriate in these circumstances because the proposed revision, the removal of the Missoula oxyfuels program, effects only carbon monoxide emissions and leaves other air quality variables unchanged.[9] As a result, the EPA is able to conduct a focused assessment of the specific relationship between the limited revision to the SIP and NAAQS attainment.

To determine whether removal of the Missoula oxyfuels program would interfere with Missoula's maintenance of the CO NAAQS, the EPA reviewed whether removal of the oxyfuels program would lead to significant increases in onroad vehicle CO emissions over the 2010 vehicle emissions associated with the lowest CO ambient air design value documented in the approved Missoula LMP. Missoula ceased ambient CO monitoring in the maintenance area on March 31, 2011, due to low concentrations of CO (82 FR 43180). The latest complete design value for CO in Missoula between 2003–2011 was 2.2 ppm, significantly below the NAAQS of 9 ppm. The 2.2 ppm design value is also significantly below the 7.65 ppm threshold for eligibility for a CO limited maintenance plan.

The EPA evaluated CO emissions estimates from onroad mobile sources, the primary source of CO in the Missoula area, using estimates drawn from two different models. The estimated 2010 winter weekday onroad mobile source CO emissions using the MOVES3 model is 23.55 tons per day and the estimated 2010 winter weekday onroad mobile source CO emissions using the older MOVES2014 model is 30.21 tons per day. The emission estimates provided by the State of Montana in its 2016 LMP request, as approved by the EPA, and as found in Missoula's supporting documentation for the 110(l) demonstration are included in the docket for this proposed action. Emission estimates created by the EPA with the newer MOVES3 model, using data provided by Missoula and the State of Montana, are also provided in the docket for this action.

The difference in modeled emissions between the MOVES2014 and MOVES3 analyses of the 2010 emissions inventory input data is notable for reasons described in our Technical Support Document (TSD) for this action. The lower MOVES3 estimate of 2010 mobile source CO emissions is believed to be attributable to improvements in the accuracy of the model's vehicle activity assumptions and emission rates with each subsequent model release version. Since SIP revisions are required to be based on the latest modeling assumptions available at the time of the revision, we will hereinafter only rely on the MOVES3 estimates of 2010 onroad mobile source CO emissions in our analysis of Missoula's non-interference demonstration. MOVES3 was the latest model version available at the time Missoula was drafting the final 110(l) demonstration associated with this proposed action.

Missoula also provided winter weekday onroad mobile source MOVES3 CO emissions estimates for the years 2019, 2030 and 2040. Emission estimates for these years, with and without the oxyfuels program in place, are provided in the TSD for this action, with the 2010 emissions estimate provided for reference and comparison.

The monitored ambient level of CO in the attainment area in 2010 (the last time period with ambient air monitoring data available) was well below the CO NAAQS and modeled CO emissions are projected to be trending downward during the 2019 to 2040 time period even without an active oxyfuels program. The EPA finds that the removal of the program will cause only a transitory, insignificant increase in CO emissions and that removal of the program will not impact the area's ability to maintain the NAAQS.

Additionally, it does not appear likely that the ambient air concentration of CO in the Missoula LMP could exceed the 85% of the NAAQS qualification threshold for an LMP area. The 2010 emissions inventory available in the second ten-year LMP identified on-road mobile source CO emissions as 71% of all designated area emissions of CO. The EPA's revision of estimated 2010 emissions using MOVES3 lowers the mobile source contribution to total CO emissions to around 65%. In both cases, onroad mobile sources can be

[8] See CAA section 175A(d).

[9] *See Ctr. for Biological Diversity* v. *United States EPA,* 75 F.4th 174, 180–181 (3rd Cir. 2024).

considered the major driver of ambient air CO concentrations observed in 2010. However, even in a conservative, hypothetical case where onroad mobile sources generate 100% of the CO emissions and all contributions to the last observed CO concentration value, the small increase in CO emissions resulting from the removal of the oxyfuels program is not projected to endanger maintenance of the NAAQS. The EPA review of the most recently certified 2021–2022 CO design values throughout the 50 states shows a maximum valid design value of 4.2 ppm.[10] This is reflective of a significant downward trend in CO values throughout the country in recent decades as more stringent vehicle standards and new emission control technologies have greatly decreased the levels of CO.[11] Highway vehicle emissions of CO have decreased by over 40% nationwide over the last decade while there has been a national increase in vehicle miles travelled of nearly 8% over the same period.[12] [13]

Based on this information and analysis, the EPA concludes that removal of the oxygenated fuels program from a control measure to a contingency measure in the Missoula, MT, CO LMP will not interfere with the NAAQS. Thus, the EPA proposes to approve the conversion of the oxygenated gasoline program from a control measure to a contingency measure in the Missoula, MT, CO LMP.

B. Rules Submitted for Revision

Montana's January 30, 2024, SIP submission includes proposed rule revisions in the MCCAPC program, in Chapter 10: *Fuels,* Subchapter 1: *Oxygenated Fuels Program,* specifically:

Rule 10.102(1): Revised to correct a clerical error.

Rule 10.105(1): Revised to correct a spelling error.

Rule 10.109(1): Revised to remove the requirement to annually sample 20% of all regulated gasoline storage tanks and gasoline blending facilities for the oxyfuel program.

Rule 10.110: Added to specify that the oxygenated fuels program ceases when authorization to end the program is received by the county.

Rule 10.111: Revision to renumber the rule.

Rule 10.111(2): Added to update the federally required contingency measures.

The EPA is proposing to act on the revisions listed in this action and will act on the additional rule revisions listed in the January 30, 2024, SIP revision submission in a separate action.

III. Environmental Justice Considerations

This is a proposed action to change the status of the oxyfuels requirement in the Missoula CO LMP from an active control measure to a contingency measure. Information on CO and its relationship to negative health impacts can be found at 36 FR 8186, April 30, 1971. We expect that this action will have neutral environmental and health impacts on all populations in Missoula, Montana, including people of color and low-income populations. At a minimum, this action would not worsen existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain NAAQS. 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. Proposed Action

For the reasons explained above, the EPA is proposing to approve Montana's January 30, 2024 SIP revisions seeking to revise various air quality rules and to remove the oxygenated gasoline program from Montana's SIP. The EPA has the authority to approve removal of a state's oxygenated gasoline program as specified in CAA section 211(m)(6) and has determined that the criteria of CAA section 211(m)(6) have been satisfied. The EPA is proposing to agree with Montana's technical demonstration that removal of the program from the SIP will not interfere with continued attainment or maintenance of any applicable NAAQS or with any other applicable requirement of the CAA, and that the requirements of CAA section 110(l) have been satisfied. Specifically, the EPA is proposing to revise the MCCAPC oxyfuels program rules, Chapter 10: *Fuels,* Subchapter 1: *Oxygenated Fuels Program,* rules 10.102(1), 10.105(1), 10.109(1), 10.110, 10.111, 10.111(2) as submitted in the Montana January 30, 2024, submission.

V. 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 oxyfuels program rules, Chapter 10: *Fuels,* Subchapter 1: *Oxygenated Fuels Program,* rules 10.102(1), 10.105(1), 10.109(1), 10.110, 10.111, 10.111(2) described in sections II. and IV. 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).

VI. 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 that 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);

[10] *See https://www.epa.gov/air-trends/air-quality-design-values.*

[11] See *https://www.epa.gov/air-trends/carbon-monoxide-trends.*

[12] U.S. Environmental Protection Agency, Air Emissions Inventories, *Air Pollutant Emissions Trends Data,* National Tier 1 CAPS Trends, available at *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data* as of Sept. 20, 2023.

[13] U.S. Department of Transportation, Federal Highway Administration, *Highway Statistics* (Washington, DC: Annual Issues), table VM–202, available at *https://www.fhwa.dot.gov/policy information/statistics.cfm* as of Aug. 4, 2023.

• 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 (MDEQ) did not evaluate EJ 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 neutral impacts 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 EJ 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 19, 2024.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2024–23589 Filed 10–11–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 199

[Docket DOT–OST–2022–0027]

RIN 2105–AF01

Electronic Signatures, Forms and Storage for Drug and Alcohol Testing Records

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation (DOT or Department) proposes to amend its regulations for conducting workplace drug and alcohol testing for the federally regulated transportation industry to allow, but not require, electronic signatures on documents required to be created and utilized under the regulations, the use of electronic versions of forms, and the electronic storage of forms and data. The regulatory changes would apply to DOT-regulated employers and their contractors (''service agents'') who administer their DOT-regulated drug and alcohol testing programs. Currently, employers and their service agents must use, sign and store paper documents exclusively, unless the employer is utilizing a laboratory's electronic Federal Drug Testing Custody and Control Form (electronic CCF) system that has been approved by the Department of Health and Human Services (HHS). DOT is required by statute to amend its regulations to authorize, to the extent practicable, the use of electronic signatures or digital signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms. This rulemaking also responds to an April 2, 2020, petition for rulemaking from DISA Global Solutions, Inc. (DISA), requesting that DOT regulations be amended to allow the use of an electronic version of the alcohol testing form (ATF) for DOT-authorized alcohol testing. The proposed regulatory amendments are expected to provide additional flexibility and reduced costs for the industry while maintaining the integrity and confidentiality requirements of the drug and alcohol testing regulations. In addition, DOT proposes to amend the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulation for conformity and to make other miscellaneous technical changes and corrections.

DATES: Comments on this NPRM must be received on or before December 16, 2024.

ADDRESSES: You may submit comments identified by Docket Number DOT–OST–2022–0027 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/DOT-OST-2022-0027/document.* 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:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

• *Fax:* 202–493–2251.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Mike Huntley, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number 202–366–3784; *ODAPCwebmail@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: This NPRM is organized as follows:

I. Executive Summary
II. Public Participation and Request for Comments

A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
III. Legal Basis for the Rulemaking
IV. Background
V. Advance Notice of Proposed Rulemaking (ANPRM) Overview
VI. Federal Motor Carrier Safety Administration (FMCSA) Rulemaking on Electronic Documents and Signatures
VII. Amending Part 40 To Permit Electronic Documents and Signatures
VIII. Electronic ATF
IX. Section-by-Section Analysis
X. Regulatory Analyses and Notices

I. Executive Summary

Purpose and Summary of the Major Provisions

This proposed rule would establish parity between paper and electronic documents and signatures and expand businesses' and individuals' ability to use electronic methods to comply with the Department's drug and alcohol testing regulation, 49 CFR part 40, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs'' (part 40). Businesses and individuals subject to part 40 would continue to have the choice to use paper documents and traditional ''wet'' signatures. This proposed rule would also modify references to recordkeeping and reporting methods throughout part 40 to make them technologically neutral.

This proposed rulemaking responds to a statutory mandate set forth in section 8108 of the Fighting Opioid Abuse in Transportation Act, part of the SUPPORT for Patients and Communities Act, Public Law 115–271 (see 49 U.S.C. 322 note). The proposed rulemaking would take action consistent with the Government Paperwork Elimination Act (GPEA) (division C, title XVII, secs. 1701–1710, Pub. L. 105–277) and the Electronic Signatures in Global and National Commerce Act (E–SIGN) (Pub. L. 106–229) with regard to DOT's part 40 regulations.

II. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. DOT–OST–2022–0027), indicate the specific section of this document to which each 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. The Office of the Secretary (OST) recommends that you include your name and a mailing address, an email address, or a phone number in a cover letter or an email so that OST can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/DOT-OST-2022-0027/document,* click on this NPRM, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

OST will consider all comments and material received during the comment period in determining how to proceed with any final rule.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as available in the docket, go to *https://www.regulations.gov.* Insert the docket number, DOT–OST–2022–0027, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting the Docket Management Facility.

C. 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 *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices* under the heading of ''Department-Wide System of Records Notices''.

III. Legal Basis for the Rulemaking

This rulemaking is promulgated under the authority enacted in the Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, tit. V, 105 Stat. 952) and codified at 49 U.S.C. 45102 (aviation), 49 U.S.C. 20140 (rail), 49 U.S.C. 31306 (motor carrier), and 49 U.S.C. 5331 (public transportation), as well as the Department's authority in 49 U.S.C. 322 and the PHMSA authorities specified in the proposed regulatory text for this action.

According to Public Law 115–271, the Secretary of Transportation is required to ''issue a final rule revising part 40 of title 49, Code of Federal Regulations, to authorize, to the extent practicable, the use of electronic signatures or digital signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms.'' (49 U.S.C. 322 note) The statute set the deadline for this action as not later than 18 months after HHS establishes a deadline for a certified laboratory to request approval for fully electronic CCFs (*Id.*) On April 7, 2022, HHS set that deadline as August 31, 2023 (87 FR 20528). HHS has extended the deadline to August 31, 2026, to enable sufficient time for all HHS-certified laboratories to identify and contract with an electronic CCF supplier or to develop an electronic CCF. The deadline for DOT's regulatory amendments would therefore be February 29, 2028.

There are two additional Federal statutes relevant to the implementation of electronic document and signature requirements.

The Government Paperwork Elimination Act (GPEA), codified at 44 U.S.C. 3504 note,[1] was enacted to improve customer service and governmental efficiency through the use of information technology. The GPEA defines an electronic signature as a method of signing an electronic communication that: (a) identifies and authenticates a particular person as the source of the electronic communication; and (b) indicates such person's approval of the information contained in the electronic communication. *Id.* It also requires OMB to ensure Federal agencies provide for: (a) the option of maintaining, submitting; or disclosing information electronically, when practicable; and (b) the use and acceptance of electronic signatures when practicable. The GPEA states that electronic records submitted pursuant to procedures developed under title XVII for the submission of records to Federal agencies and electronic signatures used in accordance with those procedures shall not be denied legal effect, validity, or enforceability merely because they are in electronic form. *Id.*

[1] Division C, title XVII (sec. 1701–1710) of Public Law 105–277, 112 Stat. 2681–749, enacted on October 21, 1998.

The Electronic Signatures in Global and National Commerce Act (E–SIGN), codified at 15 U.S.C. 7001–7031,[2] was designed to promote the use of electronic contract formation, signatures, and recordkeeping in private commerce by establishing legal equivalence between traditional paper-based methods and electronic methods. The E–SIGN Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing if the consumer has affirmatively consented to such use and has not withdrawn consent. Specifically, the statute establishes the legal equivalence of the following types of documents with respect to any transaction in or affecting interstate or foreign commerce, whether in traditional paper or electronic form: (a) contracts, (b) signatures, and (c) other records (15 U.S.C. 7001(a)(1)).

IV. Background

The Department's drug and alcohol testing regulations were promulgated at a time when the ability to sign and retain official records electronically—now commonplace in many business segments—was not available. Over the course of several years, we have adopted measures that have reduced the paper documentation associated with the drug and alcohol testing program without compromising the integrity and confidentiality requirements of the program. In 2003, we standardized the form for employers to report their Management Information System (MIS) aggregate drug and alcohol testing data, as well as the specific data collected.[3] When creating a ONE–DOT MIS Form, we then authorized employers to submit a single standardized form via a web portal. In 2015, we issued a final rule to allow employers, collectors, laboratories, and medical review officers (MROs) to use the electronic version of the Federal Drug Testing CCF in the DOT-regulated drug testing program.[4] That final rule also incorporated into the regulations the requirement to establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons when using the electronic CCF. We also included language protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form when using the electronic CCF.

Consistent with the statutory mandate in 49 U.S.C. 322 note, we propose amendments to part 40 to permit the use of electronic signatures, forms, and records storage for drug and alcohol testing records throughout the regulation, including the use of an electronic ATF for DOT-authorized alcohol testing. We emphasize that electronic signatures, forms, and records would not be required; we would continue to allow paper, or hard-copy use with traditional ''wet signatures.''

These proposed amendments would establish parity between paper and electronic collection and submission of information required under our regulations (and remain compatible with applicable OMB guidance on implementing electronic signatures [5]) by allowing further use of electronic means and methods to comply with part 40 requirements. Many employers and their service agents have already instituted the use of electronic signatures, forms, and records storage for the non-DOT regulated testing that they conduct. DOT supports this transition to a paperless system and is committed to ensuring that the movement to a partially or fully electronic part 40 is done to maximize program efficiencies and reduce costs, while maintaining the integrity and confidentiality requirements of the program.

Electronic documents would have a high degree of forensic defensibility as long as any changes made to the document are in the document's electronic footprint, which shows when the document or signature, as applicable, was created; when, and if, changes were made; who made the changes; and when, as applicable, a document was transmitted to and received by the receiving entity. The use of electronic forms and signatures in part 40 would help DOT-regulated employers and their service agents improve their workflow efficiency through faster turnaround times for required documents. Cost savings would result through reduced printing and delivery/shipping costs, and expedited transmission of information allowing for more timely decisions. We believe this proposed rule, if adopted, would also mitigate the longstanding problems (*e.g.,* delays in processing times of test results, cancelling of test results, etc.) associated with illegible and lost copies of paper documents.

V. Advance Notice of Proposed Rulemaking (ANPRM) Overview

On August 5, 2022, we published an ANPRM requesting public comment on how part 40 could be amended, as required by the statute, to allow electronic signatures, forms, and recordkeeping (87 FR 47951). We requested information from DOT-regulated employers and their service agents regarding if and how they are already handling electronic signatures, records transmission, and records storage in their non-DOT testing programs. In addition, we requested comments and information on appropriate performance standards, and on whether particular methods or performance standards have been successful or unsuccessful. We also asked a number of general questions on the potential advantages, risks, ramifications, and required safeguards associated with the use of electronic signatures, forms, and records in the DOT drug and alcohol testing program. We asked questions about specific sections of part 40 that we anticipated would be affected by prospective changes to implement electronic signatures, forms, and records. Finally, we asked a number of questions regarding the use of an electronic ATF for DOT-regulated alcohol tests.

We received 72 comments in response to the ANPRM, including comments from individuals, testing laboratories, MROs, and MRO organizations, substance abuse professionals (SAP) and SAP organizations, and various associations representing DOT-regulated transportation workers subject to mandatory drug and alcohol testing under part 40.

A few individuals expressed opposition to the adoption of electronic signatures, forms, and recordkeeping, citing concerns about the need for the rulemaking, risk to personal information from hackers or mismanaged electronic processes and procedures, and misuse of electronic forms and signatures. To meet our statutory mandate and in consideration of concerns about safeguarding personal information and appropriate use of the information in developing the NPRM, DOT proposes to require security measures for electronic forms and signatures used under part 40 that are the same as those currently in place for the electronic CCF specified in 49 CFR 40.40(c)(5).

Most commenters were supportive of changes to amend part 40 that would permit, but not require, the use of electronic signatures, forms, and

[2] Public Law 106–229, 114 Stat. 464, enacted on June 30, 2000.

[3] 68 FR 43946 (July 25, 2003).

[4] 80 FR 19551 (Apr. 13, 2015).

[5] *https://www.whitehouse.gov/wp-content/uploads/2017/11/2000-M-00-15-OMB-Guidance-on-Implementing-the-Electronic-Signatures-in-Global-and-National-Commerce-Act.pdf.*

recordkeeping. Commenters supporting revisions to part 40 noted that electronic signatures, forms, and recordkeeping are used in virtually every industry today—including but not limited to the banking, insurance, medical, and legal industries. Commenters supported the use of performance standards instead of technology-specific standards to ensure that, once established, standards do not become obsolete given the rapidly evolving nature of information technology standards and practices. Commenters stated that allowing electronic signatures, forms, and recordkeeping would make the drug testing process much more efficient and would result in cost savings. Commenters also stated that it would be safer to store records electronically since records could be backed-up, secured, and protected from tampering and unauthorized access and use.

VI. Federal Motor Carrier Safety Administration (FMCSA) Rulemaking on Electronic Documents and Signatures

In developing this NPRM, we looked to a rule promulgated by DOT's FMCSA that permits the use of electronic methods to generate, certify, sign, maintain, or exchange records so long as the documents accurately reflect the required information and can be used for their intended purpose. (83 FR 16210, Apr. 16, 2018) The rule applies to documents that FMCSA requires entities or individuals to retain. FMCSA permits, but does not require, anyone to satisfy FMCSA requirements by using electronic methods to generate, maintain, or exchange documents. The substance of the document must otherwise comply with applicable Federal laws and FMCSA rules. FMCSA also permits, but does not require, anyone required to sign or certify a document to do so using electronic signatures, defined, as in the GPEA, as a method of signing an electronic communication that: (1) identifies and authenticates a particular person as the source of the electronic communication; and (2) indicates such person's approval of the information contained in the electronic communication. FMCSA allows for the use any available technology for electronic signatures, so long as the signature otherwise complies with FMCSA's requirements.

FMCSA adopted broad performance standards for electronic documents and signatures—as specified in GPEA and E–SIGN—rather than detailed, technology specific standards that would likely become obsolete with inevitable changes in information technology standards and practices. FMCSA's April 2018 rule has been in effect for more than five years, and the definitions and requirements established in that rule have stood the test of time despite the many changes that have occurred with respect to electronic documents and signatures. We are unaware of any FMCSA-regulated entities that have reported issues to FMCSA regarding the use of electronic documents or signatures to meet the requirements of the FMCSRs since the rule became effective in 2018.

VII. Amending Part 40 To Permit Electronic Documents and Signatures

In this NPRM, we propose to permit but not require electronic documents, signatures, and recordkeeping in part 40. Additionally, we propose a performance standard approach as opposed to establishing technology-specific standards. Where it is possible to do so, establishing the same or substantively similar regulatory requirements for common issues across DOT modal agencies—such as the use of electronic documents and signatures—helps the Department maintain a consistent regulatory approach for those common issues.

There are currently more than 60 references to the term ''written'' in part 40, and more than 20 additional references to the term ''in writing.'' We propose to add a definition of ''written or in writing'' in part 40, to eliminate any distinction between paper and electronic documentation and establish technological neutrality throughout the entirety of part 40.

FMCSA's rule does not apply to documents that individuals or entities are required to file directly with FMCSA. In its April 2018 final rule, FMCSA explained that while industry could use electronic signatures and submit information directly to the FMCSA in certain situations,[6] adapting all FMCSA systems to allow for use of electronic signatures and submissions would significantly delay the implementation of the rule for use by third parties as it would require FMCSA to develop and implement technology systems to allow for direct submission to FMCSA from regulated parties. FMCSA noted that development of such systems could take several years, and therefore saw no reason to make private parties' use of electronic signatures and records retention contingent upon FMCSA's ability to receive submissions electronically because doing so would delay potential benefits to be gained by third parties.

In contrast to FMCSA's regulations, part 40 does not require entities or individuals to submit documents directly to the Department except for MIS aggregate drug and alcohol testing data that employers subject to DOT or U.S. Coast Guard (USCG) drug and alcohol testing regulations must submit annually. Each of the various documents required and used as part of the DOT drug and alcohol testing program under part 40 (*e.g.,* employee drug and alcohol testing records, MRO reports and records, SAP reports and records) are documents that are created by, exchanged between, and maintained by a person or entity involved in the testing process—but are not required to be submitted directly to DOT.

As noted earlier, and specifically with respect to the required MIS data, we standardized the form for employers to report their aggregate drug and alcohol testing data, as well as the specific data collected, more than 20 years ago. At that time, we authorized employers to submit the ONE–DOT MIS form via a web portal. Today, the Federal Aviation Administration, FMCSA, Federal Railroad Administration, and Federal Transit Administration permit employers to submit that same drug and alcohol testing data via the internet, and PHMSA requires that the data be submitted electronically. If employers submit the data electronically via the internet, they are not required to submit a hard copy. DOT recommends that employers have a copy of their data available (either hard copy or in electronic format) in the event an auditor or inspector requests a copy.

From the above, and because the only documents that part 40 requires to be submitted directly to the Department are already permitted to be, and in some cases required to be, submitted electronically, there is no need for us to limit the applicability of our proposal as FMCSA did in its 2018 final rule.

Several commenters noted that they already use electronic signatures and documents for their non-DOT drug and alcohol testing program, and in some cases, have done so for many years. In doing so, these commenters have had to establish appropriate confidentiality and security measures to ensure that confidential employee records cannot be accessed by unauthorized persons, including protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic

[6] As an example, Certified Medical Examiners may use electronic signatures, if they choose to do so, to sign medical forms, certificates, and a new driver medication report. If FMCSA requests these forms, they are uploaded in portable document format (PDF) to the Medical Examiner's account associated with the National Registry of Certified Medical Examiners for FMCSA to access.

form. The same general requirements were added to the current § 40.40(c)(5) when we approved the use of the electronic CCF for use in DOT drug testing in 2015,[7] and we propose the same requirements in this NPRM for the use of electronic signatures, documents, and recordkeeping throughout the entirety of part 40.

Ensuring that confidential employee records are not available to unauthorized persons is an important element of part 40's protections for employees that are subject to DOT's drug and alcohol testing rules. We believe that the failure of a service agent to provide or maintain a secure/confidential electronic system should constitute the basis for the Department to start a public interest exclusion (PIE) proceeding, and propose to add this to the list of examples provided in § 40.365(b).

Throughout part 40, information and documents are required to be transmitted and/or communicated between service agents (*e.g.,* collectors, screening test technicians (STTs) and breath alcohol technicians (BATs), laboratories, MROs, SAPs, and consortium/third party administrators (C/TPAs)), employers, and employees). Although part 40 does not currently require the party receiving these communications and/or documents to affirmatively confirm receipt of such from the sender, in some instances, regardless of whether the document is electronic or a hard copy, we believe that it may be important for the receiving party to verify that those required communications and/or documents were received.

For example, under § 40.25, an employer intending to use an employee to perform safety-sensitive functions must, after obtaining an employee's written consent, request information about the employee's drug and alcohol testing record from previous DOT-regulated employers. After receiving a copy of the employee's written consent, the previous employer must immediately provide the requested information to the employer making the inquiry. If an employer is subsequently investigated/audited by the appropriate DOT mode, it may be beneficial for both the gaining employer and the previous employer to be able to affirmatively demonstrate that the employee's written consent and previous testing record were sent *and* received as required.

Sections 40.191(d) and 40.261(c)(1) require a collector or MRO (for drug tests) or a BAT, STT, or a physician evaluating a ''shy lung'' situation (for alcohol tests), respectively, to—when an employee refuses to participate in a part of the testing process—terminate the testing process, document the refusal, and immediately and directly notify the employer's designated employer representative (DER) by any means that ensures the refusal notification is immediately received. Because this notification of a refusal to an employer is of an urgent nature, it may be advisable to require the DER to affirmatively confirm receipt of the required notification from the collector, MRO, BAT, STT, or physician. For example, §§ 40.191(d) and 40.261(c)(1) could be amended to read ''. . . immediately notify the DER by any means *and ensure* that the refusal notification is immediately received''.

While we are not proposing new requirements in this NPRM regarding confirmation of receipt in the sections discussed above (or in other part 40 requirements), we seek comment regarding whether it may be beneficial or advisable to do so, and if so, for which specific sections of part 40.

VIII. Electronic ATF

The ATF has been in use in the DOT alcohol testing program since 1994 (see 59 FR 7349, Feb. 15, 1994). The ATF must be used to document every DOT alcohol test. DOT regulations at 49 CFR 40.225 set forth the requirements for use of the form, and 49 CFR part 40, appendix G, contains a facsimile (reference copy) of the form. The ATF is a three-part carbonless manifold form used by DOT-regulated employers to document the testing event when testing employees subject to DOT alcohol testing. When the employee is tested, both the employee and the STT and/or the BAT will complete the ATF in various sections. The STT/BAT documents the result(s) by either writing in the screening result or attaching the screening and/or confirmation result printed by the evidential breath testing devices (EBT) onto the ATF, and then sends Copy 1 to the employer, provides Copy 2 to the employee, and retains Copy 3 for their records.

On April 2, 2020, DISA petitioned the Department to amend part 40 to allow for the use of an electronic version of the ATF for DOT mandated alcohol testing. In support of its petition, DISA stated that ''The requested amendment to 49 CFR part 40 will enable a parallel process for the documentation of DOT-mandated alcohol tests aligned with the similarly situated amendment previously approved for drug testing.'' DISA believes that allowing the use of an electronic ATF will result in several benefits to the industry, including ''increased efficiency, security and accuracy in documentation of DOT alcohol tests; paperwork reduction; improved process for conducting a DOT alcohol test in conjunction with a DOT drug test when an electronic version of the federal CCF is used for the drug test; reduction of errors and omissions in the completion of the ATF; and improved efficiency and efficacy in the transmission and record retention of alcohol test results.''

DISA noted that non-DOT workplace breath alcohol testing has been conducted using electronic versions of an alcohol testing form that mirrors the DOT ATF for more than five years. Based on experience using those electronic forms for non-DOT testing, DISA cites improved efficiency and accuracy of documentation because: (1) employer and employee information is entered via computer and thus not dependent on reading and deciphering hand-written entries, (2) date time stamps of the testing are automated and not subject to fluctuation or error, (3) transmission of documentation on completed tests is more secure using databases accessed only via protected password and personal identification number (PIN) to authorized employers or their designated agents, and (4) transmission of test result information is faster and more secure than existing transmission options of scanning and emailing attachments or facsimile.

DISA also noted that permitting use of an electronic ATF for DOT-regulated alcohol testing ''will substantially reduce cost, by eliminating the requirement for the printing and distribution of carbonless three-ply paper ATFs. The proposed electronic ATF option would still provide for printed paper images to be made available to the employee, the employer, and the alcohol technician, [but] eliminates the requirement for the more expensive carbonless 3 ply paper ATF.''

For the reasons described by DISA in its petition, and recognizing that significant benefits and cost reductions have resulted from use of the electronic CCF for drug testing, we believe that it is likewise appropriate to permit the use of electronic ATFs in part 40 for DOT-regulated testing. Permitting but not requiring the use of an electronic ATF would be consistent with our proposal to permit, but not require, the use of electronic documents and signatures throughout the entirety of part 40 as discussed above. As several commenters

[7] The 2015 revisions amended then § 40.45(c)(5), which was redesignated as § 40.40(c)(5) in the May 2023 final rule to include oral fluid testing in the DOT drug testing program (88 FR 27596, May 2, 2023).

noted, the use of an electronic ATF has been used in non-DOT testing for 5–10 years, and the same developers of the electronic CCFs have developed the electronic ATFs. Any electronic ATF used under part 40 for DOT-regulated employees would have to be identical in form and content to the DOT ATF in appendix I to part 40.[8] Just as we imposed general confidentiality and security requirements when electronic CCFs were permitted to be used under part 40, we believe that it is necessary to include the same general requirements relating to the use of electronic ATFs to ensure that confidential employee records cannot be accessed by unauthorized persons.

Manufacturers of EBTs and alcohol screening devices (ASD) used in DOT alcohol tests must obtain approval from the National Highway Traffic Safety Administration (NHTSA) and then be listed on the Office of Drug and Alcohol Policy and Compliance's (ODAPC) website before those devices may be used in DOT alcohol testing.

IX. PHMSA Proposed Changes

PHMSA is proposing to amend §§ 199.3, 199.117, and 199.227 and to add § 199.4 to conform to the proposed changes in part 40 and to clarify that the proposed changes in part 40 apply to part 199. These changes will help the readers of part 199 find the applicable regulations in part 40 with regards to the definition of terms and record keeping requirements. We also propose to amend §§ 199.119 and 199.229 by changing the reference of ''appendix H'' to ''appendix J'' to conform to the amendment of part 40 published on May 2, 2023.

X. Section-by-Section Analysis

Section 40.3 What do the terms used in this regulation mean?

We propose to add a definition of ''electronic signature.'' The rule would define an electronic signature as a method of signing an electronic communication that identifies and authenticates a particular person as the source of the electronic communication and indicates such person's approval of the information contained in the electronic communication, in accordance with the Government Paperwork Elimination Act (Pub. L. 105–277, title XVII, secs. 1701–1710, 44 U.S.C. 3504 note, 112 Stat. 2681–749). Including the specific cross reference to GPEA would ensure that regulated entities know that we are using GPEA's performance standard for allowing use of electronic signatures.

We propose to add a definition of ''written or in writing.'' The rule would define written or in writing as printed, handwritten, or typewritten either on paper or other tangible medium, or by any method of electronic documentation that meets the requirements of 49 CFR 40.4. This definition would eliminate any distinction between paper and electronic methods of communication/documentation.

Section 40.4 May electronic documents and signatures be used?

We propose to add a new § 40.4 that would prescribe the requirements pertaining to electronic documents and signatures throughout part 40.

Paragraph (a) would specify that § 40.4 would apply to all documents required by part 40, except for the CCF, as an electronic CCF may only be used when approved by HHS and in compliance with § 40.40(c)(5). As background, before an HHS-certified laboratory can use a Federal electronic CCF for regulated specimens, the test facility must submit a detailed plan and proposed standard operating procedures for the electronic CCF system for HHS review and approval through the National Laboratory Certification Program. At the current time, several HHS-certified laboratories have received approval to use a combination electronic/paper CCF, while four laboratories have received approval to use a fully electronic CCF. As noted earlier, and in a separate section of the SUPPORT Act, HHS was required to set a deadline for certified laboratories to request approval for use of fully electronic CCFs. That deadline is now August 31, 2026.

Paragraph (b) would permit, but not require, any person or entity to use electronic methods to comply with any provision in part 40 that requires a document to be signed, certified, generated, maintained, or transmitted between parties. It would apply to all forms of written documentation, including forms, records, notations, and other documents. The substance of the document would otherwise have to comply with part 40 requirements. This would establish parity between paper and electronic documents and signatures, greatly expanding interested parties' ability to use electronic methods to comply with the requirements of part 40.

Paragraph (c) would permit, but not require, any entity required to sign or certify a document to do so using electronic signatures as defined in § 40.3. The rule specifies that a person may use any available technology so long as the signature otherwise complies with the requirements of part 40.

Paragraph (d) would establish the minimum requirements for electronic documents and signatures. Any electronic document or signature would be considered the legal equivalent of a paper document or signature if it is the functional equivalent with respect to integrity, accuracy, and accessibility. In other words, the electronic documents or signatures need to accurately and reliably reflect the information in the record. They must remain accessible in a form that could be accurately viewed or reproduced according to Agency rules. As with any documents, paper or electronic, documents that are not legible—for any reason—do not satisfy the Department's requirements.

Electronic documents are not to be considered the legal equivalent of traditional paper documents if they (1) are not capable of being retained, (2) are not used for the purpose for which they were created, or (3) cannot be accurately reproduced for reference by any entity entitled to access by law, for the period of time required by the Department's recordkeeping requirements.

Paragraph (d) would also require that any electronically signed documents must incorporate or otherwise include evidence that both parties to the document have consented to the use of electronic signatures, as required by the E–SIGN Act (15 U.S.C. 7001(c)).

Paragraph (e) would require that when using electronic documents and signatures, adequate confidentiality and security measures must be established to ensure that confidential employee records cannot be accessed by unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form. The proposed requirements are analogous to those established in the current § 40.40(c)(5) when we approved use of the electronic CCF in part 40.

Section 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

Currently, paragraph (g) makes it clear that the release of information under this section must be in any written form, and the parenthetical clarifies that this can be paper-based (written, fax) or electronic (email). Under the proposed definition of ''written or in writing,'' there is no distinction between paper-based and electronic communications.

[8] The ATF form was redesignated from appendix G to appendix I as part of the rulemaking process culminating in the May 2023 final rule. During that process, the form was reviewed by the public and DOT received no comment on the form.

Because ''written or in writing'' would mean either paper or electronic communications, we propose to remove parenthetical reference to ''fax, email, letter'' to eliminate redundancy and confusion. All parties can conduct their business using either paper or electronic means of documentation and communication.

Section 40.79 How is the collection process completed?

Currently, paragraph (a)(9) of this section requires the collector to ''fax or otherwise transmit'' Copy 2 of the CCF to the MRO and Copy 4 to the DER within 24 hours or during the next business day. We propose to amend this section by removing reference to the methods of transmitting receipts, so parties can choose their own medium of communication.

Section 40.97 What do laboratories report and how do they report it?

For the same reasons explained in the discussion of § 40.79, we propose to remove the references to the methods of transmitting Copy 1 of the CCF from the laboratory to the MRO in paragraphs (c)(1) and (2) of this section.

Section 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

For the same reasons explained in the discussion of § 40.79, we propose to amend paragraph (b) of this section to remove the references to the methods of transmitting the summary or report required by this section. Because the summary or report can be transmitted via hard copy or electronically, there is no need to specify how it must be transmitted. As such, we propose to amend the title of this section accordingly.

Section 40.127 What are the MRO's functions in reviewing negative test results?

For the same reasons explained in the discussion of § 40.25, we propose to delete the parenthetical references to ''fax, photocopy, image'' for Copy 1 of the CCF in paragraph (c)(2) of this section.

Section 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative test results?

For the same reasons explained in the discussion of § 40.25, we propose to delete the parenthetical references to ''fax, photocopy, image'' for Copy 1 of the CCF in paragraph (b)(2) of this section.

Section 40.163 How does the MRO report drug test results?

For the same reasons explained in the discussion of § 40.25, we propose to remove the reference to a ''letter'' in paragraph (c) of this section. In paragraph (e) of this section, we propose to replace the term ''letter'' with ''written report'' for consistency with paragraph (c).

Section 40.167 How are MRO reports of drug results transmitted to the employer?

For the same reasons explained in the discussion of § 40.25, we propose to delete the references to ''fax, courier, mail, or electronically'' in paragraph (c)(1) of this section.

Section 40.185 Through what methods and to whom must a laboratory report split specimen results?

For the same reasons explained in the discussion of § 40.25, we propose to delete the references to ''fax, courier, mail, or electronically'' in paragraph (b) of this section. In addition, because Copy 1 of the CCF can be transmitted in writing or electronically, there is no need to specify the methods through which it must be transmitted. As such, we propose to amend the title of this section accordingly.

Section 40.187 What does the MRO do with split specimen laboratory results?

For the same reasons explained in the discussion of § 40.79, we propose to remove the references to the methods of transmitting Copy 1 of the CCF from the laboratory to the MRO in paragraph (c)(2)(iv)(C) of this section.

Section 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

For the same reasons explained in the discussion of § 40.25, we propose to delete the parenthetical references to ''telephone or secure fax machine'' in paragraph (d) of this section as means of transmitting notification that an employee has refused to participate in part of the testing process from the collector or MRO to the DER.

Section 40.193 What happens when an employee does not provide a sufficient amount of urine for a drug test?

For the same reasons explained in the discussion of § 40.25, we propose to delete the references to ''send or fax'' as the means for the collector to transmit copies of the CCF to the MRO and the DER in paragraph (b)(3) of this section.

Section 40.205 How are drug test problems corrected?

For the same reasons explained in the discussion of § 40.25, we propose to delete the references to ''by fax or courier'' as the means for a collector, laboratory, MRO, employer, or other person to supply signed statements regarding correctable problems in a drug test in paragraphs (b)(1) and (2) of this section.

Section 40.225 What form is used for an alcohol test?

We propose to amend this section to permit, but not require, the use of an electronic version of the DOT ATF that is identical in form and content to the form provided in appendix I to part 40. The electronic ATF must be capable of capturing the electronic signatures of the employee and the BAT and/or STT, and if an EBT provides a separate printout of confirmation test results pursuant to § 40.253(g), the electronic ATF must include that separate printout. This section would also be amended to specify the same general confidentiality and security measures in § 40.45 relating to electronic CCFs to ensure that confidential employee records cannot be accessed by unauthorized persons.

Section 40.255 What happens next after the alcohol confirmation test result?

For the same reasons explained in the discussion of § 40.25, we propose to delete the parenthetical references to ''telephone or secure fax machine'' in paragraph (a)(5)(i) of this section as means of transmitting results of the alcohol confirmation test from the BAT to the DER. Similarly, there is no need to specify that Copy 1 of the ATF may be transmitted ''in person, by telephone, or by electronic means.''

Section 40.261 What is a refusal to take an alcohol test, and what are the consequences?

For the same reasons explained in the discussion of § 40.25, we propose to delete the parenthetical references to ''telephone or secure fax machine'' in paragraph (c) of this section as means of transmitting a refusal notification from a BAT, STT, or referral physician to the DER.

Section 40.271 How are alcohol testing problems corrected?

For the same reasons explained in the discussion of § 40.25, we propose to delete the references to ''by fax or courier'' as the means for a STT, BAT, employer, or other service agent to supply a signed statement regarding

correctable flaws in an alcohol test in paragraph (b)(2) of this section.

Section 40.365 What is the Department's policy concerning starting a PIE proceeding?

We propose to amend this section by adding a new paragraph (b)(15) that would identify the failure of a service agent to provide or maintain a secure/confidential electronic system as appropriate grounds for starting a PIE proceeding.

X. Regulatory Analyses and Notices

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

The Secretary has examined the impact of the proposed part 40 amendments under Executive Order 12866 (''Regulatory Planning and Review''), as supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review'') and amended by Executive Order 14094 (''Modernizing Regulatory Review''), which directs Federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

According to these Executive orders, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $200 million or more, as adjusted every three years by the Office of Information and Regulatory Affairs (OIRA); adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. The proposed amendments, which would allow the use of electronic documents and signatures, do not meet the Executive order's criteria for being a significant rule. Consequently, OMB has determined that the rulemaking action is not significant under the Executive order.

The proposed rule responds to the statutory mandate set forth in Section 8108 of the Fighting Opioid Abuse in Transportation Act, part of the SUPPORT for Patients and Communities Act, Public Law 115–271. The proposed rule would not impose new requirements on the industry; rather, it would simply permit—but not require—regulated entities to use electronic signatures, forms, and recordkeeping, and remove outdated and obsolete references in the regulatory text. The proposed rule would not impose new costs on the industry because regulated entities would be allowed to choose to continue to use paper-based documents as they had before. The benefits of the rule would stem from savings in paper and printing expense and other efficiency gains. Examples of documents affected by this rule include, but are not limited to, records of a prospective employee's drug and alcohol testing history that employers must obtain prior to permitting that employee to perform safety-sensitive duties, MRO records and reports, SAP records and reports, and ATFs. While there is no way to estimate how many entities or individuals would change their practices given the new options, or how many documents would be affected, several commenters to the ANPRM stated that they have been using electronic documents and signatures in their non-DOT drug and alcohol testing programs for many years. While neither the benefits nor the costs of this rule can be reliably estimated, we expect this proposed rule to provide flexibility to the industry. Under this proposed rule, regulated entities would have the flexibility to conduct business using either electronic or traditional paper-based methods. We also expect regulated entities to choose technologies that would maximize benefits in accordance with their individual needs and circumstances.

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

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities and minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000. For this rulemaking, potentially affected small entities include drug testing companies (U.S. Small Business Administration (SBA) North American Industry Classification System (NAICS) Sector 54 (Professional, Scientific and Technical Services), Code 541380 (Testing Laboratories and Services)) as well as DOT-regulated entities (SBA NAICS Sectors 48–49 (Transportation and Warehousing)).

The Department does not expect that the proposed rule would have a significant economic impact on a substantial number of small entities. The proposed rule, if adopted, would increase flexibility for all small-entity transportation employers and their service agents by allowing them to use electronic documents, signatures, and recordkeeping to meet part 40 requirements. Use of electronic documents, electronic signatures, and electronic recordkeeping would be voluntary for affected small entities, which will provide added flexibility to these entities in meeting the part 40 requirements. For these reasons, and as explained in more detail in the preamble to this proposed rule, the Secretary certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Consequently, an initial regulatory flexibility analysis is not required for this proposed rule.

Unfunded Mandates

The Secretary has examined the impact of the final rule under the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). This NPRM does not trigger the requirement for a written statement under sec. 202(a) of the UMRA because this rulemaking does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by either State, local, and tribal governments in the aggregate or by the private sector in any one year. In fact, by providing an alternative to traditional paper-based records, the proposed rule would be expected to reduce costs to regulated parties, including State and local entities (*e.g.,* public transit authorities, and public works departments) whose employees are subject to testing and that choose to use electronic documents as opposed to paper-based documents.

Environmental Impact

The DOT has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts'' (44 FR 56420, October 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). This proposed rule would amend the transportation industry drug testing program procedures regulation to permit the use

of electronic documents, signatures, and recordkeeping. This action is covered by the categorical exclusion listed at 23 CFR 771.118(c)(4), ''[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . .'' The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 13132: Federalism

The Secretary has analyzed the final rule in accordance with Executive Order 13132: Federalism. Executive Order 13132 requires Federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that preempt State law. As defined in the order, ''policies that have federalism implications'' refer to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Most of the regulated parties under the Department's drug testing program are private entities. Some regulated entities are public entities (*e.g.,* transit authorities and public works departments); however, as noted above, this proposal would reduce costs of the Department's drug testing program and provide additional flexibility for regulated parties. Accordingly, the Secretary has determined that the proposed rule, which would allow but not require use of electronic signatures and recordkeeping, does not contain policies that have federalism implications.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires Federal agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' as defined in the Executive order, include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule does not have tribal implications. The proposed rule will also not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule would call for no new collection of information under the PRA. Instead, there would likely be a significant reduction in the burden hours required for information collection 2105–0529, Procedures for Transportation Drug and Alcohol Testing Program, due to the ability to use electronic signatures and forms, and largely due to the ability to use an electronic ATF for DOT-regulated alcohol testing under part 40. We request comments on this issue. Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a currently valid OMB control number.

Privacy Act

Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this proposed rule can be found at the entry for RIN 2105–AF01 in the Department's Portion of the Unified Agenda of Regulatory and Deregulatory Affairs, available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=2105-AF01.*

Pay-As-You-Go Act of 2023

In accordance with Compliance with Pay-As-You-Go Act of 2023 (Fiscal Responsibility Act of 2023, Pub. L. 118–5, div. B, title III) and OMB Memorandum (M–23–21) dated September 1, 2023, the Department has determined that this proposed rule is not subject to the Pay-As-You-Go Act of 2023 because it will not increase direct spending beyond specified thresholds.

List of Subjects

49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons stated in the preamble, the Department proposes to amend 49 CFR parts 40 and 199 as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 2. In § 40.3, add the definitions of ''Electronic signature'' and ''Written or in writing'' in alphabetical order to read as follows:

§ 40.3 What do the terms used in this part mean?

* * * * *

Electronic signature. A method of signing an electronic communication that identifies and authenticates a particular person as the source of the electronic communication and indicates such person's approval of the information contained in the electronic communication, in accordance with the Government Paperwork Elimination Act (Pub. L. 105–277, title XVII, secs. 1701–1710, 112 Stat. 2681–749, 44 U.S.C. 3504 note).

* * * * *

Written or in writing. Printed, handwritten, or typewritten either on paper or other tangible medium, or by any method of electronic documentation that meets the requirements of § 40.4.

■ 3. Add § 40.4 to read as follows:

§ 40.4 May electronic documents and signatures be used?

(a) *Applicability.* This section applies to all documents required by this part, except for the CCF. An electronic CCF may be used only if it has been approved for use by the Department of Health and Human Services and is used in compliance with § 40.40(c)(5).

(b) *Electronic records or documents.* Any person or entity required to

generate, maintain, or exchange and/or transmit documents to satisfy requirements in this part may use electronic methods to satisfy those requirements.

(c) *Electronic signatures.* (1) Any person or entity required to sign or certify a document to satisfy the requirements of this part may use an electronic signature, as defined in § 40.3.

(2) Any available technology may be used that satisfies the requirements of an electronic signature as defined in § 40.3.

(d) *Electronic document requirements.* Any person or entity may use documents signed, certified, generated, maintained, or exchanged using electronic methods, as long as the documents accurately reflect the information otherwise required to be contained in them.

(1) Records, documents, or signatures generated, maintained, or exchanged using electronic methods satisfy the requirements of this section if they are capable of being retained, are used for the purpose for which they were created, and can be accurately reproduced within required timeframes for reference by any party entitled to access.

(2) Records or documents generated electronically satisfy the requirements of this section if they include proof of consent to use electronically generated records or documents, as required by 15 U.S.C. 7001(c).

(e) *Confidentiality and security.* When using electronic documents and signatures, adequate confidentiality and security measures must be established to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form to include protecting against destruction, deterioration, and data corruption.

■ 4. In § 40.25, revise paragraph (g) to read as follows:

§ 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

* * * * *

(g) The release of information under this section must be in any written form that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

* * * * *

■ 5. In § 40.79, revise paragraph (a)(9) to read as follows:

§ 40.79 How is the collection process completed?

(a) * * *

(9) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.

* * * * *

■ 6. In § 40.97, revise paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2) to read as follows:

§ 40. 97 What do laboratories report and how do they report it?

* * * * *

(c) As a laboratory, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or a service agent (*e.g.,* C/TPA).

(1) *Negative results.* You must transmit a legible image or copy of the fully-completed Copy 1 of the CCF which has been signed by the certifying scientist, or you may provide the laboratory results report electronically.

* * * * *

(2) *Non-negative and rejected for testing results.* You must transmit a legible image or copy of the fully-completed Copy 1 of the CCF that has been signed by the certifying scientist. In addition, you may provide the laboratory results report following the format and procedures set forth in paragraphs (c)(1)(i) and (ii) of this section.

* * * * *

■ 7. In § 40.111, revise the section heading and paragraph (b) to read as follows:

§ 40.111 When must a laboratory disclose statistical summaries and other information it maintains?

* * * * *

(b) When the employer requests a summary in response to an inspection, audit, or review by a DOT agency, you must provide it unless the employer had fewer than five aggregate test results. In that case, you must send the employer a report indicating that not enough testing was conducted to warrant a summary.

* * * * *

■ 8. In § 40.127, revise paragraph (c)(2) to read as follows:

§ 40.127 What are the MRO's functions in reviewing negative test results?

* * * * *

(c) * * *

(2) A legible copy of Copy 1 of the CCF or the electronic laboratory results report that conveys the negative laboratory test result.

* * * * *

■ 9. In § 40.129, revise paragraphs (b) introductory text and (b)(2) to read as follows:

§ 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug test results?

* * * * *

(b) Before you report a verified negative, positive, test cancelled, refusal to test because of adulteration or substitution, you must have in your possession the following documents:

* * * * *

(2) A legible copy of Copy 1 of the CCF, containing the certifying scientist's signature.

* * * * *

■ 10. In § 40.163, revise paragraphs (c) introductory text and (e) to read as follows:

§ 40.163 How does the MRO report drug test results?

* * * * *

(c) If you do not report test results using Copy 2 of the CCF for the purposes of this section, you must provide a written report for each test result. This report must, as a minimum, include the following information:

* * * * *

(e) You must retain a signed or stamped and dated copy of Copy 2 of the CCF in your records. If you do not use Copy 2 for reporting results, you must maintain a copy of the signed or stamped and dated written report in addition to the signed or stamped and dated Copy 2. If you use the electronic data file to report negatives, you must maintain a retrievable copy of that report in a format suitable for inspection and auditing by a DOT representative.

* * * * *

■ 11. In § 40.167, revise paragraph (c)(1) to read as follows:

§ 40.167 How are MRO reports of drug test results transmitted to the employer?

* * * * *

(c) * * *

(1) You must transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see § 40.163(b) and (c)).

* * * * *

■ 12. In § 40.185, revise the section heading and paragraph (b) to read as follows:

§ 40.185 What and to whom must a laboratory report split specimen results?

* * * * *

(b) You must transmit a legible image or copy of the fully-completed Copy 1 of the CCF, which has been signed by the certifying scientist.

* * * * *

■ 13. In § 40.187, revise paragraph (c)(2)(iv)(C) to read as follows:

§ 40.187 What does the MRO do with split specimen laboratory results?

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(C) As the laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen and/or to determine that the primary specimen meets appropriate substitution criteria, report your result to the MRO using a copy of Copy 1 of the CCF.

* * * * *

■ 14. In § 40.191, revise paragraph (d) introductory text to read as follows:

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

* * * * *

(d) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means that ensures that the refusal notification is immediately received. As a referral physician (*e.g.,* physician evaluating a ''shy bladder'' condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.

* * * * *

■ 15. In § 40.193, revise paragraph (b)(3) to read as follows:

§ 40.193 What happens when an employee does not provide a sufficient amount of specimen for a drug test?

* * * * *

(b) * * *

(3) As the collector, you must send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must transmit these copies to the MRO and DER within 24 hours or the next business day.

* * * * *

■ 16. In § 40.205, revise paragraphs (b)(1) and (2) to read as follows:

§ 40.205 How are drug test problems corrected?

* * * * *

(b) * * *

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a statement that it is true and accurate. For example, suppose you are a collector, and you forgot to make a notation on the ''Remarks'' line of the CCF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification and that your statement is true and accurate. You must supply this information on the same business day on which you are notified of the problem.

(2) If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (*i.e.,* a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at an HHS-certified laboratory where it was tested consistent with the requirements of this part. You must supply this information on the same business day on which you are notified of the problem.

* * * * *

■ 17. In § 40.225, revise paragraph (a) and add paragraphs (d) and (e) to read as follows:

§ 40.225 What form is used for an alcohol test?

(a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF must be a three-part carbonless manifold form or an electronic ATF that meets the requirements of paragraph (d) of this section. The ATF is found in appendix G to this part. You may view this form on the ODAPC website (*https://www.transportation.gov/odapc*).

* * * * *

(d) As an employer, you may use an electronic ATF that meets the following requirements:

(1) The electronic ATF must be identical in form and content to the ATF found in appendix G to this part.

(2) The electronic ATF must meet the requirements of § 40.4(d).

(3) The electronic ATF must be capable of capturing the electronic signatures of the employee and the BAT and/or STT.

(4) If an EBT provides a separate printout of confirmation test results (see § 40.253(g)), the electronic ATF must include that separate printout.

(e) As an employer, BAT, or STT using an electronic ATF, you must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form.

■ 18. In § 40.255, revise paragraph (a)(5)(i) to read as follows:

§ 40.255 What happens next after the alcohol confirmation test result?

(a) * * *

(5) * * *

(i) You may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents.

* * * * *

■ 19. In § 40.261, revise paragraph (c)(1) to read as follows:

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

* * * * *

(c)(1) As a BAT or an STT, or as the physician evaluating a ''shy lung'' situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to the form), immediately notify the DER by any means that ensures the refusal notification is immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).

* * * * *

■ 20. In § 40.271, revise paragraph (b)(2) to read as follows:

§ 40.271 How are alcohol testing problems corrected?

* * * * *

(b) * * *

(2) If the problem is the use of a non-DOT form, you must, as the person

responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem.

* * * * *

■ 21. In § 40.365, revise paragraphs (b)(13) and (14) and add paragraph (b)(15) to read as follows:

§ 40.365 What is the Department's policy concerning starting a PIE proceeding?

* * * * *

(b) * * *

(13) For any service agent, directing or recommending that an employer fail or refuse to implement any provision of this part;

(14) With respect to noncompliance with a DOT agency regulation, conduct that affects important provisions of Department-wide concern (*e.g.,* failure to properly conduct the selection process for random testing); or

(15) For a service agent, failing to provide or maintain a secure/confidential electronic system.

PART 199—DRUG AND ALCOHOL TESTING

■ 22. The authority citation for part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

■ 23. In § 199.3:

■ a. Designate the introductory text as paragraph (b); and

■ b. Add paragraph (a).

The addition reads as follows:

§ 199.3 Definitions.

(a) Terms used in this part have the same meaning as in 49 CFR 40.3.

* * * * *

■ 24. Add § 199.4 to read as follows:

§ 199.4 Electronic documents, records, and signatures.

Electronic documents, records, and signatures may be used to comply with this part provided they meet the requirements specified in 49 CFR part 40.

■ 25. In § 199.117, revise paragraph (a) introductory text to read as follows:

§ 199.117 Recordkeeping.

(a) Each operator shall keep the records in paragraphs (a)(1) through (5) of this section for the periods specified by this section or for the periods specified by 49 CFR part 40, whichever is greater; and will permit access to the records as provided by § 190.203.

* * * * *

■ 26. In § 199.119, revise paragraph (a) to read as follows:

§ 199.119 Reporting of anti-drug testing results.

(a) Each large operator (having more than 50 covered employees) must submit an annual Management Information System (MIS) report to PHMSA of its anti-drug testing using the MIS form and instructions as required by 49 CFR part 40 (at § 40.26 and appendix J to part 40), not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator may require by notice in the PHMSA Portal (*https://portal.phmsa.dot.gov/phmsaportallanding*) that small operators (50 or fewer covered employees), not otherwise required to submit annual MIS reports, to prepare and submit such reports to PHMSA.

* * * * *

■ 27. In § 199.227, revise paragraph (b) introductory text to read as follows:

§ 199.227 Retention of records.

* * * * *

(b) *Period of retention.* Each operator shall maintain the records in accordance with the following schedule or for the periods specified by 49 CFR part 40, whichever is greater:

* * * * *

■ 28. In § 199.229, revise paragraph (a) to read as follows:

§ 199.229 Reporting of alcohol testing results.

(a) Each large operator (having more than 50 covered employees) must submit an annual MIS report to PHMSA of its alcohol testing results using the MIS form and instructions as required by 49 CFR part 40 (at § 40.26 and appendix J to part 40), not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator may require by notice in the PHMSA Portal (*https://portal.phmsa.dot.gov/phmsaportallanding*) that small operators (50 or fewer covered employees), not otherwise required to submit annual MIS reports, to prepare and submit such reports to PHMSA.

* * * * *

Signed on: Thursday, October 3, 2024.

Pete Buttigieg,

Secretary of Transportation.

[FR Doc. 2024–23427 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–9X–P

Notices

Federal Register

Vol. 89, No. 199

Tuesday, October 15, 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

Food and Nutrition Service

Agency Information Collection Activities: Supplemental Nutrition Assistance Program (SNAP) Benefit Expungement and Off-Line Storage

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection associated with SNAP benefit storage and expungement provisions of the 2008 and 2018 Farm Bills. This collection is an extension, without change, of a currently approved collection. This collection is for providing SNAP households advance or concurrent notice of State agency action to store unused SNAP benefits offline due to three or more months of account inactivity and for those households to seek reinstatement of benefits prior to permanent expungement. This collection is also for providing SNAP households advance or concurrent notice prior to the State agency expunging unused SNAP benefits from the household's Electronic Benefit Transfer (EBT) account due to nine months of account inactivity.

DATES: Written comments must be received on or before December 16, 2024.

ADDRESSES: Comments may be sent to Erica Kain, Chief, Issuance Support Branch, Issuance Policy and Innovation Division, Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), 1320 Braddock Place, 5th Floor, Alexandria, Virginia 22314, or via email to *SM.FN.SNAP.Issuance.Policy@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Erica Kain at *SM.FN.SNAP.Issuance.Policy@usda.gov* or (312)–339–1939.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: SNAP Benefit Storage and Expungement.

Form Number: Not applicable.

OMB Number: 0584–0673.

Expiration Date: 07/31/2025.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: On August 24, 2020, the Department published the final rule, ''Supplemental Nutrition Assistance Program: 2008 Farm Bill Provisions on Clarification of Split Issuance; Accrual of Benefits and Definition Changes'' (85 FR 52025) to implement the mandatory SNAP benefit storage and expungement provisions of the Food, Conservation and Energy Act of 2008, Public Law 110–243 (2008 Farm Bill). In the final rule, the Department also adopted as final the provisions in the Agriculture Improvement Act of 2018, Public Law 115–334 (2018 Farm Bill), that mandated changes to the requirements governing the storage and expungement of unused benefits.

As a result, State agencies are required to provide a 30-day advance notice prior to permanently expunging unused SNAP benefits that remain in household's account nine months after issuance or after nine months of account inactivity. State agencies that opt to take unused benefits off-line after three months of SNAP EBT account inactivity must also provide up to 10 days advance or concurrent notice prior to taking such action and to reinstate benefits store off-line within 48 hours of a household's request if the benefits have not reached the expungement timeframe. Currently, FNS is not aware of any State agency exercising the option to store unused benefits off-line prior to expungement.

1. Expungement Notice

Affected Public: (a) Individuals/Households and (b) State agencies: Respondent groups identified include: (1) 3,505,979 SNAP households (approximately 18 percent of all SNAP households nationwide) who do not access their benefits within nine months and (2) 53 State SNAP agencies.

a. Individuals/Households Annual Burden

Estimated Annual Number of Respondents: 3,505,797.

Estimated Annual Number of Responses per Respondent: 1.17.

Estimated Total Annual Responses: 4,101,782.

Estimated Annual Time per Response: 3 minutes or 0.05 hours.

Estimated Total Annual Burden on Respondents: 205,089 hours.

b. State Agency Annual Burden

Estimated Annual Number of Respondents: 53.

Estimated Annual Number of Responses per Respondent: 77,392.

Estimated Total Annual Responses: 4,101,782.

Estimated Annual Time per Response: 30 seconds or 0.0083 hours.

Estimated Total Annual Burden on Respondents: 34,045 hours.

c. Grand Total Annual Burden

Estimated Annual Number of Respondents: 3,505,850.

Estimated Annual Number of Responses per Respondent: 2.33996434.

Estimated Total Annual Responses: 8,203,564.00.

Estimated Annual Time per Response: 0.02915000.

Estimated Total Annual Burden on Respondents: 239,134.

2. Off-Line Storage Notice

Affected Public: No members of the public are affected as FNS is not aware of any State agency currently exercising the option to store benefits off-line.

3. Off-Line Benefit Reinstatement

Affected Public: No members of the public are affected as FNS is not aware of any State agency exercising the option to move benefits off-line, thereby removing the need for reinstatement.

Respondent	Activity	Estimated annual number respondent	Responses annually per respondent	Total annual responses	Estimated avg. number of hours per response annually	Estimated annual total hours
Individual or Household SNAP Recipients	Expungement Notice	3,505,797	1.17	4,101,782	.05	205,089
	Off-line Storage Notice	0	0	0	0	0
	Off-line Benefit Reinstatement	0	0	0	0	0
Sub-total of Individual/Household SNAP recipients.		3,505,797	1.17	4,101,782	.05	205,089
State Agencies	Expungement Notice	53	77,392	4,101,782	0.0083	34,045
	Off-line Storage Notice	0	0	0	0	0
	Off-line Benefit Reinstatement	0	0	0	0	0
Sub-total of State Agencies		53	77,392	4,101,782	0.0083	34,045
Total Reporting Burden with both Affect Public.		3,505,850	2.33996434	8,203,564	0.02915000	239,134

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024–23727 Filed 10–11–24; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Arkansas Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meetings via Zoom. The purpose of this meeting is for the Committee to discuss post-report activity plans for their recently completed report regarding the *Right to Counsel in Arkansas*. This will be the final meeting of the current appointment term.

DATES: Wedneday, October 23, 2024, from 2 p.m.–3 p.m. Central Time.

ADDRESSES: This meeting will be held via Zoom.

October 23rd Meeting:

- *Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_GScAm45WRAeGdMhDJ03Z6w*
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 161 447 1491#

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or 1–202–618–4158.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the registration link above. Any interested members of the public may attend. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at these meetings. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *csanders@usccr.gov* at least 10 business days prior to each meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–618–4158.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after each meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *csanders@usccr.gov*.

Agenda

I. Welcome and Roll Call
II. Chair's Comments
III. Post-Report Discussion: Right to Counsel
IV. Public Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of the end of the current Committee appointment term.

Dated: October 9, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–23770 Filed 10–11–24; 8:45 am]

BILLING CODE 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, October 18, 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 October 10, 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.

I. Approval of Agenda
II. Business Meeting
  A. Presentation by New Hampshire Advisory Committee Chair on Released Reports and Memorandum on Solitary Confinement
  B. Presentation by South Dakota Advisory Committee Chair on Released Reports and Memorandum on Voting Rights and Access
  C. Presentation by Tennessee Advisory Committee Chair on Released Reports and Memorandum on Civil and Voting Rights
  D. Management and Operations
  • Staff Director's Report
III. Adjourn Meeting

Dated: October 10, 2024.

Zakee Martin,

USCCR Special Assistant to the Staff Director.

[FR Doc. 2024–23843 Filed 10–10–24; 4:15 pm]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2168]

Approval of Expansion of Subzone 75C; Intel Corporation; Phoenix, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the City of Phoenix, grantee of Foreign-Trade Zone 75, has made application to the Board for an expansion of Subzone 75C on behalf of Intel Corporation to include a site located in Phoenix, Arizona (FTZ Docket B–33–2024, docketed June 13, 2024);

Whereas, notice inviting public comment has been given in the **Federal Register** (89 FR 51873, June 20, 2024) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 75C on behalf of Intel Corporation located in Phoenix, Arizona, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: October 9, 2024.

Dawn Shackleford,

Executive Director of Trade Agreements Policy & Negotiations, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2024–23753 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–34–2024]

Foreign-Trade Zone (FTZ) 29; Authorization of Production Activity; Catalent Pharma Solutions, LLC; (Nonsteroidal Antiandrogen Tablets); Winchester, Kentucky

On June 11, 2024, Catalent Pharma Solutions, LLC, submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 29, in Winchester, Kentucky.

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 52022, June 21, 2024). On October 9, 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: October 9, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–23754 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–52–2024]

Foreign-Trade Zone (FTZ) 235, Notification of Proposed Production Activity; Renaissance Lakewood, LLC; (Prescription Nasal Spray Products); Lakewood, New Jersey

The Township of Lakewood, grantee of FTZ 235, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Renaissance Lakewood, LLC (Renaissance) for Renaissance's facilities in Lakewood, New Jersey within FTZ 235. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on September 30, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material/component and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include calcitonin gene-related peptide receptor antagonist (prescription nasal spray-packaged) and calcitonin gene-related peptide receptor antagonist (prescription nasal spray-unpackaged) (duty-free).

The proposed foreign-status material/component includes zavegepant hydrochloride (active pharmaceutical ingredient) (duty rate of 6.5%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 25, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Kolade Osho at *Kolade.Osho@trade.gov.*

Dated: October 8, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–23698 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–104, C–570–105]

Antidumping Duty Order on Alloy and Certain Carbon Steel Threaded Rod and Countervailing Duty Order on Carbon and Alloy Steel Threaded Rod From the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Reviews and Intent To Revoke the Antidumping and Countervailing Duty Orders, in Part, and Preliminary Intent To Rescind Scope Inquiry

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a request from Logistical Resource Development Inc. (LRD), the U.S. Department of Commerce (Commerce) is initiating and issuing preliminary results of changed circumstances reviews (CCRs) of the antidumping duty (AD) order on alloy and certain carbon steel threaded rod and the countervailing duty (CVD) order on carbon and alloy steel threaded rod from the People's Republic of China (China) to revoke the orders, in part, with respect to certain products. We also preliminarily intend to rescind the scope inquiry with respect to the same products. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 15, 2024.

FOR FURTHER INFORMATION CONTACT: Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3004.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2020, the U.S. Department of Commerce (Commerce) published the *Orders.*[1] On August 23, 2024, LRD, an importer of subject merchandise, requested, through CCRs, that Commerce retroactively revoke the *Orders,* in part, pursuant to section 751(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) with respect to certain wheels studs.[2] LRD stated that it qualifies as an importer of wheel studs currently subject to duties and, as such, is an interested party pursuant to section 771(9)(A) of the Act and 19 CFR 351.102(b)(29)(ii).[3] On August 30, 2024, Vulcan Threaded Rod Products Inc. (the petitioner) submitted comments indicating that it does not oppose the partial scope revocation requested in LRD's CCR request.[4]

On September 3, 2024, Commerce requested that LRD provide additional information related to its CCR Request.[5] LRD timely responded to the questionnaire on September 17, 2024.[6] In its CCR Supplement, LRD provided statements from three domestic producers, All Ohio Threaded Rod (All Ohio); Highland Thread, Inc. (Highland Thread); and Bay Standard Manufacturing Inc. (Bay Standard), indicating that they either were not interested in participating in the CCRs or were not contesting LRD's proposal.[7] The petitioner timely responded to the supplemental questionnaire on September 17, 2024, and provided information on the production of domestic like product.[8] On September 24, 2024, Commerce requested that LRD and the petitioner provide further supplemental information relating to production values of domestic producers.[9] On September 24, 2024, the petitioner timely responded and demonstrated that it and All Ohio, Highland Thread, and Bay Standard collectively represent ''substantially all'' of the production of the domestic like product.[10] No interested parties filed comments opposing the CCR Request. Further, LRD requested that Commerce conduct expedited CCRs.[11]

Scope of the Orders

Appendices I and II contain the scope of the *AD Order* and the scope of the *CVD Order,* respectively.

Proposed Partial Revocation of the Orders [12]

The products subject to the proposed partial revocation are certain wheel studs with the following characteristics:

- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 80mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 95mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion

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[1] *See Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Antidumping Duty Order,* 85 FR 19929 (April 9, 2020) (*AD Order*), and *Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Countervailing Duty Orders,* 85 FR 19927 (April 9, 2020) (*CVD Order*) (collectively *Orders*).

[2] *See* LRD's Letter, ''Request for an Expedited Changed Circumstances Review to Amend the Scope of the Order,'' dated August 23, 2024 (CCR Request).

[3] *Id.* at 1.

[4] *See* Petitioner's Letter, ''Petitioner's Comments on CCR Request,'' dated August 30, 2024 (Petitioner's Comments).

[5] Commerce requested LRD to provide a signed attestation from the petitioner and additional domestic producers, as necessary, indicating that these entities account for 85 percent of the industry by production volume. *See* Commerce's Letter, ''Supplemental Questionnaire,'' dated September 3, 2024.

[6] *See* LRD's Letter, ''Reply to Supplemental Questionnaire,'' dated September 17, 2024 (LRD CCR Supplement).

[7] *Id.* at Exhibits 1–3.

[8] *See* Petitioner's Letter, ''Vulcan's Attestation on Domestic Production,'' dated September 17, 2024 (Vulcan CCR Supplemental). Given that the petitioner's production data is business proprietary information, the petitioner responded directly to Commerce.

[9] *See* Commerce's Letters, ''Second Supplemental Questionnaire,'' dated September 24, 2024; and ''Supplemental Questionnaire,'' dated September 24, 2024.

[10] *See* 19 CFR 222(g)(1)(i); *see also* Petitioner's Letter, ''Vulcan's Supplemental Questionnaire Response,'' dated September 27, 2024, at 2.

[11] *See* CCR Request at 1.

[12] *See* Petitioner's Comments at 2–3; CCR Request at 4–5.

that is also M12 diameter and 1.5RH thread spacing.

- a wheel stud that has an M14 diameter and 1.25RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 75mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M14 diameter and 1.25RH thread spacing.
- a wheel stud that has an M14 diameter and 1.25RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 92mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M14 diameter and 1.25RH thread spacing.
- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5RH thread spacing.
- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14x1.25.
- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 44mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5 thread spacing.
- a wheel stud that has an M14 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates a 12.5mm threaded section for insertion that is also M14 diameter and 1.5RH thread spacing.
- a wheel stud that has an M14 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 64mm long, part of the threaded length being divided by a 5mm unthreaded band which creates and 21.5mm threaded section for insertion that is also M14 diameter and 1.5RH thread spacing.
- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 61mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion.
- a wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5 thread spacing.

Initiation of CCRs

Pursuant to section 751(b)(1) of the Act, Commerce will conduct a CCR upon receipt of a request from an interested party that shows changed circumstances sufficient to warrant a review of the order. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that Commerce may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. In its administrative practice, Commerce has interpreted ''substantially all'' to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.[13] Further, 19 CFR 351.222(g)(2) provides that Commerce will conduct a CCR under 19 CFR 351.216, and may revoke an order, in whole or in part, if it determines that revocation is warranted.

In accordance with 19 CFR 351.216(d), Commerce determines that the information submitted by LRD, the petitioner, and other domestic producers, indicates that substantially all the domestic industry no longer has a continued interest in having the scope of the *Orders* cover certain wheel studs described above. Thus, there are changed circumstances sufficient to warrant a review of the *Orders.* Therefore, in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(d), 19 CFR 351.221(c)(3), and 19 CFR 351.222(g), we are initiating these CCRs.

Preliminary Results of the CCRs and Intent To Revoke the Orders, in Part

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.[14] In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.[15]

Pursuant to section 751(d)(1) of the Act and 19 CFR 351.222(g), Commerce preliminarily determines that there is a reasonable basis to believe that changed circumstances exist sufficient to warrant partial revocation of the *Orders.* As explained above, domestic threaded rod producers accounting for greater than 85 percent of the domestic industry, including the original petitioner and other domestic threaded rod producers, have expressed no interest in opposing LRD's CCR Request.[16] Substantially all of the domestic industry appears to have no interest in maintaining the *Orders* with respect to the specific products which are the subject of LRD's request.[17] The domestic industry has not commented on whether the proposed partial scope revocation should be retroactive.

In light of the domestic producers' statements of no interest in opposing the revocation of the *Orders,* in part, with respect to the wheel studs as described by LRD, and in the absence of any other interested party comments addressing the issue of domestic industry support, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which the *Orders* pertain lack interest in the relief provided by the *Orders* with respect to wheel studs that are the subject of LRD's revocation request. Thus, we preliminarily determine that changed circumstances warrant revocation of the *Orders,* in part, with respect to such wheel studs as described above by LRD. Accordingly, we are notifying the public of our intent to revoke the *Orders,* in part, with respect to wheel studs described in the ''Proposed Partial Revocation of the *Orders*'' section above.

[13] *See, e.g., Certain Cased Pencils from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent to Revoke Order in Part,* 77 FR 42276 (July 18, 2012), unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order, in Part,* 77 FR 53176 (August 31, 2012).

[14] *See* 19 CFR 351.221(c)(3)(ii); *see also Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy Preliminary Results*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review,* 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

[15] *See, e.g., Pasta from Italy Preliminary Results,* 80 FR at 33480–41, unchanged in *Pasta from Italy Final Results,* 80 FR at 48807.

[16] *See* LRD CCR Supplement at Exhibits 1–3; and Vulcan Supplemental Response at 2.

[17] *See* LRD CCR Supplement at Exhibits 1–3; and Petitioner's Letter, ''Comments on CCR Request,'' dated August 30, 2024, at 2.

Additionally, LRD requested that Commerce find this scope exclusion applies retroactively to January 1, 2022. If we make a final determination to revoke the *Orders* in part, we intend to apply the partial revocation to unliquidated entries of merchandise subject to the CCRs that were entered or withdrawn from warehouse, for consumption, as of January 1, 2022.

Intent To Rescind Scope Inquiry

On December 22, 2024, Commerce received a request for a scope ruling from LRD on whether the same thirteen wheel studs described above are subject to the *Orders.*[18] Commerce initiated this scope inquiry on January 22, 2024.[19] Because these 13 wheel studs are the subject of this CCR, and we preliminarily intend to revoke the *Orders,* in part, with respect to these 13 wheels studs, we also preliminarily intend to rescind the scope inquiry, in accordance with 19 CFR 351.225(f)(6).

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days after the date of publication of this notice.[20] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the due date for case briefs.[21]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In these CCRs, 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 these CCRs. 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] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice in the **Federal Register**.[24] Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs.[25] 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 the date and the time of the hearing two days before the scheduled date.

Final Results of CCRs

Unless extended, consistent with 19 CFR 351.216(e), Commerce intends to issue the final results of these CCRs no later than 270 days after the date on which these reviews were initiated or 45 days if all parties agree to the preliminary results. If, in the final results of these reviews, we continue to determine that changed circumstances warrant the revocation of the *Orders,* in part, we will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping or countervailing duties, and to refund any estimated antidumping and countervailing duties deposited on all unliquidated entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2022, that are covered by the revocation in part. The current requirement for cash deposits of estimated antidumping or countervailing duties on all entries of subject merchandise will continue unless they are modified pursuant to the final results of these changed CCRs.

Notification to Interested Parties

This notice of initiation and preliminary results is published in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b)), and 19 CFR 351.221(c)(3)(ii).

Dated: October 7, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

The scope of the antidumping duty order covers alloy and certain carbon steel threaded rod. Alloy and certain carbon steel threaded rod are certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Alloy and certain carbon steel threaded rod are normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the alloy and certain carbon steel threaded rod, bar, or studs subject to this order are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Alloy steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications A193 B7/B7m, A193 B16, A320 L7/L7m, A320 L43, A354 BC and BD, and F1554 Grade 105. Other specifications are Society of Automotive Engineers (SAE) specification 1429 grades 5 and 8, International Organization for Standardization (ISO) specification 898 class 8.8 and 10.9, and American Petroleum Institute (API) specification 20E. Certain carbon steel threaded rod is normally produced to ASTM specification A449. All steel threaded rod meeting the physical description set forth above is covered by the scope of this order, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the threaded rod.

Alloy and certain carbon steel threaded rod are also included in the scope of this order whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this order are: (1) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of

[18] *See* LRD's Letters, ''Application for a Scope Ruling for Wheel Studs on Alloy and Certain Threaded Rod from the People's Republic of China,'' dated December 22, 2023.

[19] *See* Memorandum, ''Initiation of Scope Inquiries on Wheel Studs,'' dated January 22, 2024.

[20] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

[21] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[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 APO and Service Final Rule.*

[24] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

[25] *See* 19 CFR 351.310(c).

carbon and 10.5 percent or more of chromium, with or without other elements.

Excluded from the scope of the antidumping order on steel threaded rod from the People's Republic of China is any merchandise covered by the existing antidumping order on certain steel threaded rod from the People's Republic of China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this order is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture.

Alloy and certain carbon steel threaded rod are currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

The scope of the countervailing duty order covers carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to this order are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications ASTM A36, ASTM A193 B7/B7m, ASTM A193 B16, ASTM A307, ASTM A320 L7/L7M, ASTM A320 L43, ASTM A354 BC and BD, ASTM A449, ASTM F1554–36, ASTM F1554–55, ASTM F1554 Grade 105, American Society of Mechanical Engineers (ASME) specification ASME B18.31.3, and American Petroleum Institute (API) specification API 20E. All steel threaded rod meeting the physical description set forth above is covered by the scope of this order, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of this order if performed in the country of manufacture of the threaded rod.

Carbon and alloy steel threaded rod are also included in the scope of this order whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this order are: (1) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Excluded from the scope of the antidumping order on steel threaded rod from the People's Republic of China is any merchandise covered by the existing antidumping order on certain steel threaded rod from the People's Republic of China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this order is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[FR Doc. 2024–23697 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–122]

Certain Corrosion Inhibitors From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that companies in the People's Republic of China (China) made sales of subject merchandise at less than normal value (NV) during the period of review (POR) March 1, 2022, through February 28, 2023.

DATES: Applicable October 15, 2024.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Dusten Hom, AD/CVD Operations, Office I, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477 and (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2024, Commerce published the *Preliminary Results* of this review in the **Federal Register** and invited interested parties to comment on those results.[1] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The products covered by the *Order* are certain corrosion inhibitors from China. A complete description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

China-Wide Entity

As stated in the *Preliminary Results,* because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review and the China-wide entity's rate, *i.e.,* 241.02 percent, is not subject to change.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this administrative review are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on the comments received, we made no changes to the *Preliminary*

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[1] *See Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2022–2023,* 89 FR 20488 (April 3, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Certain Corrosion Inhibitors from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Certain Corrosion Inhibitors from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 86 FR 14869 (March 19, 2021) (*Order*).

[4] *See Preliminary Results,* 89 FR at 22995.

Results.[5] For a more detailed discussion of the issues raised by parties, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Separate Rate Respondents

The statute and our regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, we look 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 not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Accordingly, in the final results of review, we are assigning to the non-selected separate rate respondents an estimated weighted-average dumping margin based on the average of Anhui Trust Chem Co., Ltd.'s, and its affiliates (collectively Anhui), and Nantong Botao Chemical Co., Ltd.'s (Botao) rates weighted by their publicly available ranged U.S. sales values.

Final Results of the Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period March 1, 2022, through February 28, 2023:

Exporter	Weighted-average dumping margin (percent)
Anhui Trust Chem Co., Ltd.; Jiangsu Trust Chem Co., Ltd.; Nanjing Trust Chem Co., Ltd	11.58
Nantong Botao Chemical Co., Ltd	8.27
Review-Specific Average Rate Applicable to the Following Companies	
Gold Chemical Limited	10.49
Jiangyin Delian Chemical Co., Ltd	10.49
Kanghua Chemical Co., Ltd	10.49

Disclosure

Because we have not modified our analysis to the *Preliminary Results,* we are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for the final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), for Anhui and Botao, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties.

For all non-selected separate rate applicants subject to this review, we will instruct CBP to liquidate all entries of subject merchandise that entered the United States during the POR at the average of the rates calculated for Anhui and Botao as listed above. For entries of subject merchandise during the POR produced by Anhui and Botao for which they did not know their merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the China-wide rate if there is no rate for the intermediate company or companies involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of 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) the cash deposit rate for the companies subject to this review will be the rate established in these final results of the review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin for the China-wide entity (*i.e.,* 241.02 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing 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 and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

[5] *See Preliminary Results.*

[6] *See Order,* 86 FR at 14871.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: October 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Change Since the *Preliminary Results*
V. Discussion of the Issues
Comment 1: Whether Commerce Should Revise the *Preliminary Results* To Select Romania as the Primary Surrogate Country
Comment 2: Whether Commerce Should Use the Labor Wages From the Turkish International Labor Organization (ILOSTAT) To Value Labor
Comment 3: Whether Commerce's Application of the Cohen's *d* Test to Botao's U.S. Sales Is Supported by Law
Comment 4: Whether Commerce Should Offset Botao's Calculated AD Margin by the Double Remedy Pass Through Subsidies Calculated in the Companion Countervailing Duty (CVD) Proceeding
VI. Recommendation

[FR Doc. 2024–23694 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–557–831]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Malaysia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from Malaysia. The period of investigation is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2024.

FOR FURTHER INFORMATION CONTACT: Preston Cox or Scarlet Jaldin, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041 or (202) 482–4275, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 20, 2024.[1] On July 3, 2024, Commerce postponed the preliminary determination of this investigation until September 23, 2024.[2] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[3]

The deadline for the preliminary determination is now September 30, 2024.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic 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 Investigation

The product covered by this investigation is solar cells from Malaysia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[6] We received several comments concerning the scope of this investigation, as well as in the companion less-than-fair-value (LTFV) and countervailing duty (CVD) investigations of solar cells, as it appeared in the *Initiation Notice.* We are currently evaluating the scope comments filed by interested parties. We intend to issue our preliminary decision regarding the scope of the LTFV and CVD investigations in the preliminary determinations of the companion LTFV investigations, the deadline for which is November 27, 2024.[7] We will incorporate the scope decisions from the LTFV investigations into the scope of the final CVD determination for this investigation after

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 89 FR 43816 (May 20, 2024) (*Initiation Notice*).

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 89 FR 55231 (July 3, 2024).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice.*

[7] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than Fair-Value Investigations,* 89 FR 77473 (September 23, 2024) (*LTFV Preliminary Postponement*).

considering any relevant comments submitted in scope case and rebuttal briefs.[8]

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[9] For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

In making these findings, Commerce relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference, where appropriate, in selecting from among the facts otherwise available.[10] For further information, *see* the ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final determination in this investigation with the final determination in the companion LTFV investigation of solar cells from Malaysia based on a request made by the petitioner.[11] Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than February 10, 2025.[12]

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Hanwha Q CELLS Malaysia Sdn. Bhd. (Hanwha Q CELLS) and Jinko Solar Technology Sdn Bhd (Jinko Solar) that are not zero, *de minimis,* or based entirely on facts otherwise available. However, because publicly ranged sales values for all mandatory respondents are not on the record of this investigation, for the preliminary determination, we are unable to weight average the subsidy rates of Hanwha Q CELLS and Jinko Solar derive an estimated all-others rate for companies not individually examined. Therefore, we calculated a simple average of the subsidy rates calculated for Hanwha Q CELLS and Jinko Solar for application to the all-others rate.

Rate for Non-Responsive Companies

Three exporters and/or producers of solar cells from Malaysia (Baojia New Energy, Pax Union Resources SDN BHD, and SunMax Energy SDN BHD, collectively, the non-responsive companies) did not respond to Commerce's quantity and value (Q&V) questionnaire. We find that, by not responding to the Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD subsidy rate for the non-responsive companies on facts otherwise available.

In addition, we preliminary determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce's Q&V questionnaire, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the non-responsive companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Hanwha Q CELLS Malaysia Sdn. Bhd	14.72
Jinko Solar Technology Sdn Bhd and its cross-owned companies: Jinko Solar (Malaysia) Sdn. Bhd. and Omega Solar Sdn. Bhd	3.47
Baojia New Energy	* 123.94
Pax Union Resources SDN BHD	* 123.94
SunMax Energy SDN BHD	* 123.94
All Others	9.13

* Rate based on facts available with adverse inferences.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in Appendix I of this notice entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed in

[8] The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[10] *See* sections 776(a) and (b) of the Act.

[11] *See* Petitioner's Letter, ''Request to Align Countervailing Duty Investigation Final Determinations with Antidumping Duty Investigation Final Determinations,'' dated September 23, 2024.

[12] *See LTFV Preliminary Postponement.*

this preliminary determination to interested parties within five days of its public announcement of the preliminary determination, or if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register,** in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g), following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the CVD and LTFV investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing CVD and LTFV investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments not related to the scope of this investigation may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[13] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[14]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[15] Further, we request that interested parties limit their public, executive summary of each issue to no more than 450 words, not including citations. We intend to use the public, executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the public, executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[16]

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 in the **Federal Register**. 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.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of solar cells from Malaysia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: September 30, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of the investigation.

Excluded from the scope of the investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of the investigation are crystalline silicon photovoltaic cells, not exceeding 10,000 mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Additionally, excluded from the scope of the investigation are panels with surface area from 3,450 mm^2 to 33,782 mm^2 with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and

[13] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[14] *See* 19 351.309(c)(2) and (d)(2).

[15] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[16] *See APO and Service Final Rule.*

3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Also excluded from the scope of the investigation are:

(1) Off grid CSPV panels in rigid form with a glass cover, with the following characteristics: (A) a total power output of 100 watts or less per panel; (B) a maximum surface area of 8,000 cm² per panel; (C) do not include a built-in inverter; (D) must include a permanently connected wire that terminates in either an 8 mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors; (E) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and (F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

(2) Off grid CSPV panels without a glass cover, with the following characteristics: (A) a total power output of 100 watts or less per panel; (B) a maximum surface area of 8,000 cm² per panel; (C) do not include a built-in inverter; (D) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and (E) each panel is (1) permanently integrated into a consumer good; (2) encased in a laminated material without stitching, or (3) has all of the following characteristics: (i) the panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB–A connector.

In addition, the following CSPV panels are excluded from the scope of the investigation: off-grid CSPV panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water: (A) a total power output of no more than 80 watts per panel; (B) a surface area of less than 5,000 square centimeters (cm²) per panel; (C) do not include a built-in inverter; (D) do not have a frame around the edges of the panel; (E) include a clear glass back panel; and (F) must include a permanently connected wire that terminates in a twoport rectangular connector.

Additionally excluded from the scope of this investigation are off-grid small portable crystalline silicon photovoltaic panels, with or without a glass cover, with the following characteristics: (1) a total power output of 200 watts or less per panel; (2) a maximum surface area of 16,000 cm² per panel; (3) no built-in inverter; (4) an integrated handle or a handle attached to the package for ease of carry; (5) one or more integrated kickstands for easy installation or angle adjustment; and (6) a wire of not less than 3 meters either permanently connected or attached to the package that terminates in an 8 mm diameter male barrel connector.

Also excluded from the scope of this investigation are off-grid crystalline silicon photovoltaic panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water: (A) a total power output of no more than 180 watts per panel at 155 degrees Celsius; (B) a surface area of less than 16,000 square centimeters (cm²) per panel; (C) include a keep-out area of approximately 1,200 cm² around the edges of the panel that does not contain solar cells; (D) do not include a built-in inverter; (E) do not have a frame around the edges of the panel; (F) include a clear glass back panel; (G) must include a permanently connected wire that terminates in a two-port rounded rectangular, sealed connector; (H) include a thermistor installed into the permanently connected wire before the twoport connector; and (I) include exposed positive and negative terminals at opposite ends of the panel, not enclosed in a junction box.

Modules, laminates, and panels produced in a third-country from cells produced in a subject country are covered by the investigation; however, modules, laminates, and panels produced in a subject country from cells produced in a third-country are not covered by the investigation.

Also excluded from the scope of this investigation are all products covered by the scope of the antidumping and countervailing duty orders on *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012).

Merchandise covered by the investigation is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8541.42.0010 and 8541.43.0010. Imports of the subject merchandise may enter under HTSUS subheadings 8501.71.0000, 8501.72.1000, 8501.72.2000, 8501.72.3000, 8501.72.9000, 8501.80.1000, 8501.80.2000, 8501.80.3000, 8501.80.9000, 8507.20.8010, 8507.20.8031, 8507.20.8041, 8507.20.8061, and 8507.20.8091. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Injury Test
V. Use of Facts Available and Adverse Inferences
VI. Subsidies Valuation Information
VII. Benchmarks and Interest Rates
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2024–23678 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity for appointment to serve as a District Export Council member.

SUMMARY: The Department of Commerce is currently seeking nominations of individuals for consideration for appointment by the Secretary of Commerce to serve as members of the newly established New Mexico District Export Council (DEC). DECs are closely affiliated with the U.S. Export Assistance Centers (USEACs) of the U.S. and Foreign Commercial Service (US&FCS), which is part of the Global Markets unit within the International Trade Administration, and play a key role in the planning and coordination of export activities in their communities.

DATES: Nominations for individuals will be accepted through October 15, 2024.

FOR FURTHER INFORMATION CONTACT: Please contact Indalecio Vallejos, Director of the New Mexico USEAC for more information on the DEC and the nomination process. Mr. Vallejos can be reached by email *Indalecio.vallejos@trade.gov*. For general program information, contact Laura Barmby, District Export Council Program Manager, US&FCS, at (202) 482–2675.

SUPPLEMENTARY INFORMATION: District Export Councils support the mission of US&FCS by facilitating the development of an effective local export assistance network, supporting the expansion of export opportunities for local U.S. companies, serving as a communication link between the business community and US&FCS, and assisting in coordinating the activities of trade assistance partners to leverage available resources. Individuals appointed to a DEC become part of a select corps of trade professionals dedicated to providing international trade leadership and guidance to the local business community and assistance to the Department of Commerce on export development issues. DEC members are volunteers. DEC members are not special government employees. DEC members receive no compensation for their participation in DEC activities or reimbursement for travel and other personal expenses.

Nomination Process: The DEC has a maximum membership of 35. All appointments will be effectively

immediately. Approximately half of the positions open on the DEC will be appointed to a term ending December 31, 2025, and the remainder for the term ending December 31, 2027. The online nomination form is available at *https://app.keysurvey.com/f/41751734/3f30/*.

All potential nominees must complete the online nomination form linked above and consent to sharing of the information on that form, if appointed, with other DEC members, relevant government agencies and private sector organizations with a focus on trade. Interested individuals are highly encouraged to reach out to the local USEAC Director to learn more about the DEC and to begin the application process as soon as possible.

Eligibility and Appointment Criteria: Appointment is based upon an individual's international trade leadership in the local community, ability to influence the local environment for exporting, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to DEC activities. Members must be employed as exporters or export service providers or in a profession which supports U.S. export promotion efforts. DEC member appointments are made without regard to political affiliation. DEC membership is open to U.S. citizens and permanent residents of the United States. As representatives of the local exporting community, DEC Members must reside in, or conduct the majority of their work in, the territory that the DEC covers. DEC membership is not open to federal government employees. Individuals representing foreign governments, including individuals registered with the Department of Justice under the Foreign Agents Registration Act, must disclose such representation and may be disqualified if the Department determines that such representation is likely to impact the ability to carry out the duties of a DEC member or raise an appearance issue for the Department.

Selection Process: Nominations of individuals who have applied for DEC membership will be forwarded to the local USEAC Director for the Director's consideration. The local USEAC Director ensures that all nominees meet the membership criteria. The local USEAC Director then evaluates all nominees to determine their interest, commitment, and qualifications. In reviewing nominees, the local USEAC Director strives to ensure a balance among exporters from a manufacturing or service industry and export service providers. A fair representation should be considered from companies and organizations that support exporters, representatives of local and state government, and trade organizations and associations. Membership should reflect the diversity of the local business community, encompass a broad range of business and industry sectors, and be distributed geographically across the DEC service area, and where possible, the Department of Commerce will also consider the ethnic, racial, and gender diversity and various abilities of the United States population.

The local USEAC Director determines which nominees to forward to the US&FCS Office of U.S. Field for further consideration for recommendation to the Secretary of Commerce. A candidate's background and character are pertinent to determining suitability and eligibility for DEC membership. Since DEC appointments are made by the Secretary, the Department must make a suitability determination for all DEC nominees. After completion of a vetting process, the Secretary selects nominees for appointment to the local DEC. DEC members are appointed by and serve at the pleasure of the Secretary of Commerce.

Authority: 15 U.S.C. 1512 and 4721.

Laura Barmby,

District Export Council Program Manager.

[FR Doc. 2024–23762 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–920]

Lightweight Thermal Paper From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain companies subject to the administrative review of the antidumping duty order on lightweight thermal paper (paper) from the People's Republic of China (China), are not eligible for separate rates and are, therefore, part of the China-wide entity. The period of review (POR) is November 1, 2022, through October 31, 2023.

DATES: Applicable October 15, 2024.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2024, Commerce published the preliminary results of the 2022–2023 administrative review of the antidumping duty order [1] on lightweight thermal paper from China in the **Federal Register** and invited interested parties to comment.[2] We received no comments from interested parties on the *Preliminary Results,* and we have made no changes to the *Preliminary Results.* Accordingly, there is no decision memorandum accompanying this notice and the final results are unchanged from the *Preliminary Results.* Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this *Order* includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m2) (with a tolerance of ±4.0 g/m2) or less; irrespective of dimensions; [3] with or without a base coat [4] on one or both sides; with thermal active coating(s) [5] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat; [6] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the Harmonized Tariff Schedule of the United States (HTSUS)

[1] *See Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People's Republic of China,* 73 FR 70959 (November 24, 2008) (*Order*).

[2] *See Lightweight Thermal Paper from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023,* 89 FR 51499 (June 18, 2024) (*Preliminary Results*).

[3] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

[4] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[5] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[6] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, 4823.40.00, 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050.[7] [8] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Final Results of Review

Because we received no comments, we made no changes from the *Preliminary Results.* We continue to find that: (1) Guangdong Guanhao High-Tech (Guangdong Guanhao); (2) Guangdong Polygon New Materials (Guangdong Polygon); (3) and Henan Jianghe Paper (Henan Jianghe) did not file separate rate applications or certifications and, thus, did not demonstrate their eligibility for separate rate status and, therefore, are part of the China-wide entity. As stated in the *Preliminary Results,* no party requested a review of the China-wide entity.[9] Moreover, we did not self-initiate a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity's entries are not subject to the review, and the weighted-average dumping margin for the China-wide entity (*i.e.,* 115.29 percent) is not subject to change.[10]

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results,* there are no calculations to disclose.

Assessment

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered this review. Because Commerce finds the three companies subject to this review, Guangdong Guanhao, Guangdong Polygon, and Henan Jianghe are part of the China-wide entity in the final results, Commerce will instruct CBP to liquidate entries containing subject merchandise exported by the companies under review at the China-wide entity rate of 115.29 percent.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided for by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (115.29 percent); [11] and (3) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 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

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: October 8, 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. 2024–23696 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

[7] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for ''other'' including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for ''other,'' including LWTP).

[8] As of January 1, 2009, the ITC deleted HTSUS subheadings 4811.90.8040 and 4811.90.9090 and added HTSUS subheadings 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050 to the HTSUS (2009). *See* Harmonized Tariff Schedule of the United States (2009), available at *https://www.usitc.gov.* These HTSUS subheadings were added to the scope of the order in lightweight thermal paper's LTFV investigation.

[9] *See Preliminary Results,* 89 FR at 51500.

[10] *See Order,* 73 FR at 70959.

[11] *See Order,* 73 FR at 70959.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–887]

Carbon and Alloy Steel Threaded Rod From India: Final Results of Antidumping Duty Administrative Review, and Partial Rescission; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that carbon and alloy steel threaded rod (steel threaded rod) from India was sold in the United States at below normal value during the period of review (POR), April 1, 2022, through March 31, 2023. Further, we are rescinding this review with respect to 83 companies.

DATES: Applicable October 15, 2024.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta or Samuel Frost, 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) 482–2593 or (202) 482–8180, respectively.

SUPPLEMENTARY INFORMATION:

Background

This administrative review covers 29 companies.[1] Commerce selected two

[1] We initiated this administrative review with respect to 112 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 38021 (June 12, 2023). However, we are rescinding this review for 83 companies that did not have reviewable entries

respondents for individual examination, Mangal Steel Enterprises Limited (Mangal) and Shree Luxmi Fasteners/The Emerging Impex (SLF/TEI).[2]

On May 6, 2024, Commerce published the *Preliminary Results* of this administrative review and invited interested parties to comment on the *Preliminary Results*.[3] On June 5, 2024, we received a timely-filed case brief from Sigma Piping Products (2019), LLC (Sigma), a U.S. importer of subject merchandise,[4] and on June 10, 2024, we received a timely-filed rebuttal brief from Vulcan Threaded Products, Inc. (the petitioner).[5]

On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[6] Thereafter, Commerce partially extended the deadline for issuing the final results until October 8, 2024.[7] For a complete description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[8]

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [9]

The merchandise covered by the scope of this *Order* is carbon and alloy steel threaded rod from India. A complete description of the scope of the *Order* is provided in the Issues and Decision Memorandum.[10]

Rescission of Administrative Review, in Part

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.[11] At the end of the administrative review, any suspended entries are liquidated at the assessment rate computed for the review period.[12] Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate. In the *Preliminary Results,* Commerce preliminarily rescinded this review with respect to 83 companies because those companies had no reviewable, suspended entries of subject merchandise and invited parties to comment.[13] We received no comments on our preliminary rescission of the review with respect to these companies. Accordingly, in the absence of suspended entries of subject merchandise during the POR for these 83 companies 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).[14]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice at Appendix I. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record, we made certain changes to the margin calculations for these final results. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for 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 a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review.

Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have calculated weighted-average dumping margins of zero percent for Mangal and 10.94 percent for SLF/TEI. Therefore, in accordance with section 735(c)(5)(A) of the Act, we are applying SLF/TEI's weighted average dumping margin of 10.94 percent to the non-examined companies, because this is the only rate that is not zero, *de minimis,* or based entirely on facts available.

Final Results of the Review

Commerce determines that the following estimated weighted-average dumping margins exist during the period April 1, 2022, through March 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Mangal Steel Enterprises Limited	0.00
Shree Luxmi Fasteners/The Emerging Impex	10.94
Companies Not Selected for Individual Review [15]	10.94

of subject merchandise during the POR. *See* ''Rescission of Administrative Review, in Part'' section below.

[2] *See* Memorandum, ''Respondent Selection,'' dated June 28, 2023. Commerce preliminarily determined to treat Shree Luxmi Fasteners (SLF) and its affiliate The Emerging Impex (TEI) as a single entity for purposes of this review. Because no parties commented on this preliminary decision, for these final results Commerce continues to treat these companies as a single entity. *See Carbon and Alloy Steel Threaded Rod from India: Preliminary Results and Preliminary Rescission of Antidumping Duty Administrative Review, in Part, 2022–2023,* 89 FR 37174 (May 6, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *Id.*

[4] *See* Sigma's Letter, ''Sigma Comments on Preliminary Results,'' dated June 5, 2024 (Sigma's Case Brief).

[5] *See* Petitioner's Letter, ''Rebuttal Brief,'' dated June 10, 2024 (Petitioner's Rebuttal Brief).

[6] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[7] *See* Memoranda, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2022–23,'' dated August 14, 2024; and ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2022–2023,'' dated October 1, 2024.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Carbon and Alloy Steel Threaded Rod from India; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[9] *See Carbon and Alloy Steel Threaded Rod from India: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 85 FR 19925 (April 9, 2020) (*Order*).

[10] *See* Issues and Decision Memorandum at ''Scope of the *Order.*''

[11] *See, e.g., Forged Steel Fittings from Taiwan: Rescission of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 71317, 71318 (November 9, 2020); *see also Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Rescission of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 54084 (October 26, 2018).

[12] *See* 19 CFR 351.212(b)(1).

[13] *See Preliminary Results,* 89 FR at 37175–76.

[14] Appendix III identifies all companies for which we have rescinded this review.

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date publication of the notice of final results in the **Federal Register**.[16]

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Because the weighted-average dumping margin for Mangal has been determined to be zero percent, we intend to instruct CBP to liquidate Mangal's entries without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2).

SLF/TEI's weighted average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent). Therefore, we calculated importer-specific assessment rates based on the ratio of the total dumping calculated for the examined sales to the total entered value of the sales. Where an importer-specific assessment rate for SLF/TEI is either zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Mangal or SLF/TEI for which these companies did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation of 0.00 percent,[17] if there is no rate for the intermediate company(ies) involved in the transaction.[18] For the companies that were not selected for individual examination, we will instruct CBP to liquidate entries at the rate established in these final results of review.

For the companies for which this review is rescinded with these final results (*see* Appendix III), we will instruct CBP to assess antidumping duties on any suspended at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1)(i).

We intend to issue instructions to CBP no earlier than 35 days after the publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed in these final results will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 0.00 percent, the all-others rate established in the LTFV investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation.[19] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 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.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: October 8, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
  Comment 1: Whether Commerce Should Redetermine the Cash Deposit Rate for Kanika Exports (Kanika)
  Comment 2: Whether Commerce Should Use a Different Methodology To Determine Kanika's Dumping Margin
VI. Recommendation

Appendix II—List of Companies Not Individually Examined

1. Aadi Shree Fastener Industries
2. Babu Exports
3. Bhansali Inc.
4. Chirag International
5. Everest Industrial Corporation
6. Fence Fixings
7. Fine Thread Form Industries
8. Ganpati Fastners Pvt., Ltd.
9. GDPA Fasteners
10. Goodgood Manufacturers
11. Idea Fasteners Pvt., Ltd.
12. Kanika Exp.
13. Kapson India
14. Kapurthala Industrial Corporation
15. Kova Fasteners Pvt., Ltd.
16. Maharaja International
17. Maya Enterprises
18. Nishant Steel Industries
19. Nuovo Fastenings Pvt., Ltd.
20. R A Exp
21. R K Fasteners (India)
22. Rods & Fixing Fasteners
23. S K Overseas

[15] *See* Appendix II for a full list of these companies.

[16] *See* 19 CFR 351.224(b).

[17] *See Order,* 85 FR at 19926.

[18] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[19] *See Order,* 85 FR at 19926.

24. Singhania International Ltd.
25. The Technocrats Co.
26. Viraj Profiles Ltd.
27. Yogendra International

Appendix III—List of Companies for Which We Are Rescinding the Administrative Review

1. A H Enterprises
2. Aanjaney Micro Engy Pvt., Ltd.
3. Accurate Steel Forgings (I) Ltd.
4. Alps Industries Ltd.
5. Apex Thermocon Pvt., Ltd.
6. Ash Hammer Union
7. Astrotech Steels Pvt., Ltd.
8. Atlantic Container Line Pvt., Ltd.
9. Ats Exp. 07
10. Atz Shipping Trade & Transport Pvt.
11. BA Metal Processing
12. Boston Exp. & Engineering Co.
13. C.H.Robinson International (India)
14. C.P.World Lines Pvt., Ltd.
15. Century Distribution Systems Inc.
16. Charu Enterprises
17. Daksh Fasteners
18. Dedicated Imp. & Exp. Co.
19. Dhiraj Alloy & Stainless Steel
20. Dsv Air and Sea Pvt., Ltd.
21. Eastman Industries Ltd.
22. Eos Precision
23. ESL Steel Ltd
24. Everest Exp.
25. Farmparts Company
26. Galorekart Marketplace Pvt., Ltd.
27. Ganga Acrowools Ltd.
28. Gateway Engineering Solution
29. Gee Pee Overseas
30. Geodis India Pvt., Ltd. (Indel)
31. Jindal Steel And Power Ltd.
32. JSW Steel Ltd.
33. Kanchan Trading Co.
34. Kanhaiya Lal Tandoor (P) Ltd.
35. Karna International
36. Kei Industries Ltd.
37. King Exports
38. Linit Exp. Pvt., Ltd.
39. Mahajan Brothers
40. Meenakshi India, Ltd.
41. Metalink
42. MKA Engineers And Exporters Pvt., Ltd.
43. National Cutting Tools
44. NJ Sourcing
45. Noahs Ark International Exp.
46. Oia Global India Pvt., Ltd.
47. Otsusa India Pvt., Ltd.
48. Paloma Turning Co. Pvt., Ltd.
49. Patton International Ltd.
50. Perfect Tools & Forgings
51. Permali Wallace Pvt., Ltd.
52. Polycab India Ltd.
53. Pommada Hindustan Pvt., Ltd.
54. Poona Forge Pvt., Ltd.
55. Raajratna Ventures Ltd.
56. Raashika Industries Pvt., Ltd.
57. Rajpan Group
58. Rambal Ltd.
59. Randack Fasteners India Pvt., Ltd.
60. Ratnveer Metals Ltd.
61. Rimjhim Ispat Ltd.
62. S.M Forgings & Engineering
63. Sandip Brass Industries
64. Sandiya Exp. Pvt., Ltd.
65. Sansera Engineering Pvt., Ltd.
66. Silverline Metal Engineering Pvt. Lt
67. Sri Satya Sai Enterprises
68. Steampulse Global Llp
69. Steel Authority Of India Ltd.
70. Suchi Fasteners Pvt., Ltd.
71. Supercon Metals Pvt., Ltd.
72. Tekstar Pvt., Ltd.
73. Tijiya Exp. Pvt., Ltd.
74. Tijiya Steel Pvt., Ltd.
75. Tong Heer Fasteners
76. Trans Tool Pvt., Ltd.
77. Universal Engineering and Fabricat
78. V.J Industries Pvt., Ltd.
79. Vidushi Wires Pvt., Ltd.
80. Vrl Automation
81. VV Marine Pvt., Ltd.
82. Zenith Precision Pvt., Ltd.
83. Zenith Steel Pipes And Industries L

[FR Doc. 2024–23774 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–124, C–570–125]

Certain Vertical Shaft Engines Between 99cc and Up to 225cc and Parts Thereof From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 2, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *Zhejiang Amerisun Technology Co., Ltd.* v. *United States,* Court No. 23–00011, sustaining the U.S. Department of Commerce's (Commerce) remand redetermination pertaining to the scope ruling for the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc and parts thereof from the People's Republic of China finding modified vertical shaft engines, such as the modified R210–S engine manufactured by Chongqing Rato Technology Co., Ltd. (Chongqing Rato) to be excluded from the orders. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's scope ruling, and that Commerce is amending the scope ruling to find that certain engines, such as Chongqing Rato's R210–S engine, manufactured by Chongqing Rato is excluded from the orders.

DATES: Applicable October 12, 2024.

FOR FURTHER INFORMATION CONTACT: Ajay K. Menon, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0208.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2022, Commerce found that modified vertical shaft engines, such as the R210–S engine manufactured by Chongqing Rato, were included in the scope of the orders.[1]

Zhejiang Amerisun Technology, Co., Ltd. appealed Commerce's Final Scope Ruling. On February 20, 2024, the CIT remanded the Final Scope Ruling to Commerce, holding that: (1) because the scope does not specify that a right-angle gearbox connected to the horizontal crankshaft may be part of the engine, Commerce's finding that the scope did not contain an exhaustive list of components that may comprise an engine was unsupported by substantial evidence and not in accordance with law; (2) the Wikipedia articles submitted by Briggs & Stratton Corporation (the petitioner) on which Commerce relied to support its factual conclusions were unreliable and irrelevant; and (3) an academic article submitted by the petitioner on which Commerce also relied to support its factual conclusions was irrelevant because it did not specifically address walk-behind lawn mowers or discuss secondary drive shafts.[2]

In its final remand redetermination, issued in April 2024, Commerce found that certain engines, such as Chongqing Rato's R210–S engine at issue in the Final Scope Ruling to be excluded from the scope of the orders.[3] The CIT sustained Commerce's final redetermination.[4]

Timken Notice

In its decision in *Timken,*[5] as clarified by *Diamond Sawblades,*[6] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a

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[1] *See* Memorandum, ''Scope Ruling on Modified Vertical Shaft Engines,'' dated December 22, 2022 (Final Scope Ruling).

[2] *See Zhejiang Amerisun Technology Co., Ltd.* v. *United States,* 687 F. Supp. 3d 1282 (CIT 2024).

[3] *See Final Results of Redetermination Pursuant to Court Remand, Zhejiang Amerisun Technology Co., Ltd.* v. *United States,* Consol. Court No. 23–00011, Slip Op. 24–20 (CIT February 20, 2024), dated April 11, 2024, available at *https://access.trade.gov/public/FinalRemandRedetermination.aspx.*

[4] *See Zhejiang Amerisun Technology Co., Ltd.* v. *United States,* Court No. 23–00011, Slip. Op. 24–104 (CIT October 2, 2024).

[5] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[6] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

''conclusive'' court decision. The CIT's October 2, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's Final Scope Ruling. Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

In accordance with the CIT's October 2, 2024, final judgment, Commerce is amending its Final Scope Ruling and finds that the scope of the orders does not cover the products addressed in the Final Scope Ruling.

Liquidation of Suspended Entries

Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, the cash deposit rate will be zero percent for the modified R210–S engine manufactured by Chongqing Rato. In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce will instruct CBP to liquidate entries of the modified R210–S engine manufactured by Chongqing Rato without regard to antidumping and countervailing duties and to lift suspension of liquidation of such entries.

At this time, Commerce remains enjoined by CIT from liquidating entries excluded from the scope of the orders by the Final Scope Ruling. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: October 8, 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. 2024–23695 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1, 2024, through June 30, 2024.

DATES: Comments must be submitted by November 14, 2024.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov,* Docket No. ITA–2024–0006. The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

All comments should be addressed to Abdelali Elouaradia, Deputy Assistant Secretary for Enforcement and Compliance, at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 805 of title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. Commerce submitted its last subsidy report to the Congress on June 27, 2024.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries which had exports accounting for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4407.1100, 4407.1200, 4407.1300, 4407.1400, and 4407.1900, during the period January 1, 2024, through June 30, 2024. Official U.S. import data, published by the United States International Trade Commission's DataWeb, indicate that five countries (Austria, Brazil, Canada, Germany, and Sweden) exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we intend to rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1, 2024, through December 31, 2024, to select the countries subject for the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the General Agreements on Tariffs and Trade 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.[1]

Parties should include in their comments: (1) the country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (no more than 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Dated: October 7, 2024.

Dawn Shackleford,

Executive Director for Trade Agreements Policy and Negotiations.

[FR Doc. 2024–23731 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE353]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Sand Island Pile Dikes Repairs on the Columbia River

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

ACTION: Notice; issuance of a modified incidental harassment authorization.

[1] *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued a modified incidental harassment authorization (IHA) to U.S. Army Corps of Engineers (USACE) to incidentally harass marine mammals during construction associated with Sand Island Pile Dikes Repairs on the Columbia River.

DATES: This modified IHA is effective through July 31, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-army-corps-engineers-sand-island-pile-dikes-repairs-columbia.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

History of Request

On March 4, 2022, NMFS received a request from the USACE for two consecutive IHAs to take marine mammals incidental to the Sand Island Pile Dikes Repairs Project on the Columbia River over the course of 2 years. The USACE's request was for take of seven species of marine mammals by Level B harassment and, for a subset of these species (harbor seal (*Phoca vitulina*) and harbor porpoise (*Phocoena phocoena*)), Level A harassment. On August 22, 2023, NMFS published a **Federal Register** notice (87 FR 51346) announcing the issuance of the IHAs, which were valid for year 1 from August 1, 2023 through July 31, 2024 and for year 2 from August 1, 2024 through July 31, 2025.

On August 19, 2024, NMFS received a request from the USACE to modify the year 2 IHA. Following receipt of additional information, NMFS accepted the request on September 11, 2024. The original year 2 IHA authorized, by Level B harassment only, six takes of humpback whale (from the California/Oregon/Washington stock designated at the time; *Megaptera novaeangliae*) and two takes from the West Coast Transient stock of killer whale (*Orcinus orca*).

Sightings of humpback whales have increased in the work area from previous years. Humpback whale feeding groups have begun utilizing the mouth of the Columbia River as foraging ground. The USACE had recorded four potential takes of humpback whale by Level B harassment as of September 11, 2024 after 24 days of in-water pile driving work, with 80 in-water days remaining. In addition, there have been several recent sightings of transient killer whales in the area. These sightings represent a change to occurrence data considered by NMFS and which informed the original take estimates. Therefore, the USACE is requesting a modification to the year 2 authorization to increase the authorized take of humpback whale and killer whale, by Level B harassment only.

Description of the Activity and Anticipated Impacts

There are no changes to the specified activity or to the mitigation, monitoring, and reporting requirements as described for the original year 2 IHA (87 FR 39481, July 1, 2022). Please see the additional relevant documents related to the issuance of the initial IHA, including the USACE's application and the notice of issuance of the IHA (87 FR 51346, August 22, 2022) (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-army-corps-engineers-sand-island-pile-dikes-repairs-columbia*) for more detailed descriptions.

Detailed Description of the Action

A detailed description of the construction activities can be found in the aforementioned documents associated with the issuance of the initial year 2 IHA. The location and general nature of the activities are identical to those described in the previous documents. As of September 11, 2024, 24 days in-water work had been completed out of a projected total of 104 days.

Description of Marine Mammals

A description of the marine mammals in the area of the activities can be found in these previous documents, which remains applicable to this modified IHA as well. In addition, NMFS has reviewed the draft 2023 Stock Assessment Reports (SARs; Young *et al.,* 2023; available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*), information on relevant Unusual Mortality Events, and recent scientific literature, and incorporated that into table 1 below.

Table 1 lists all species or stocks for which take is expected and authorized to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in

NMFS' Alaska Marine Mammal SARs. All values presented in table 1 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* Note that the stock abundances of humpback whale, harbor porpoise, and Steller sea lion have updated since the **Federal Register** notice of issuance was published (87 FR 51346, August 22, 2022). The updates figures are reflected in table 1.

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Central America/Southern Mexico—California/Oregon/Washington.	E, D, Y	1,494 (0.171, 1,284, 2021)	3.5	14.9
		Mainland Mexico—CA/OR/WA	T, D, Y	3,477 (0.101, 3,185, 2018)	43	22
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	West Coast Transient	-, -, N	349 [4] (N/A, 349, 2018)	3.5	0.4
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Northern Oregon/Washington Coast.	-, -, N	22,074 (0.391, 16,068, 2024).	161	3.2
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-, -, N	36,308 (N/A, 36,308, 2022) [5].	2,592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Oregon/Washington Coast	-, -, N	24,732 [6] (UNK, UNK, 1999)	UND	10.6
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013).	5,122	13.7

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] Based on counts of individual animals identified from photo-identification catalogues. Surveys for abundance estimates of these stocks are conducted infrequently.

[5] Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

[6] The abundance estimate for this stock is greater than 8 years old and is therefore not considered current. PBR is considered undetermined for this stock, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

Humpback Whales

On September 8, 2016, NMFS divided the once single species into 14 distinct population segments (DPS) under the ESA, removed the species-level listing as endangered, and, in its place, listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. There are four DPSs in the North Pacific, including Western North Pacific and Central America, which are listed as endangered, Mexico, which is listed as threatened, and Hawaii, which is not listed.

The 2022 Pacific SARs described a revised stock structure for humpback whales which modifies the previous stocks designated under the MMPA to align more closely with the ESA-designated DPSs (Caretta et al., 2023; Young et al., 2023). Specifically, the three previous North Pacific humpback whale stocks (Central and Western North Pacific stocks and a CA/OR/WA stock; take of humpback whales authorized through the original Year 2 IHA was from the latter stock) were replaced by five stocks, largely corresponding with the ESA-designated DPSs. These include Western North Pacific and Hawaii stocks and a Central America/Southern Mexico-CA/OR/WA stock (which corresponds with the Central America DPS). The remaining two stocks, corresponding with the Mexico DPS, are the Mainland Mexico-CA/OR/WA and Mexico-North Pacific stocks (Caretta et al., 2023; Young et al., 2023). The former stock is expected to occur along the west coast from California to southern British Columbia, while the latter stock may occur across the Pacific, from northern British Columbia through the Gulf of Alaska and Aleutian Islands/Bering Sea region to Russia. Only the Mainland Mexico-CA/OR/WA and Mexico-North Pacific stocks are expected to be affected by the specified activity, and take previously authorized for the CA/OR/WA stock is here reallocated to these two newly designated stocks, as discussed below.

We have determined that no new information affects our original analysis of potential impacts under the initial Year 2 IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the issuance of the original year 2 IHA, which remains applicable to the modification of the IHA. NMFS is not

aware of new information regarding potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take for the specified activities are found in the **Federal Register** notice of proposed IHAs (87 FR 3948, July 1, 2022). The types and sizes of piles, ensonified areas and source levels, and methods of pile driving remain unchanged from the IHA.

The modification addresses USACE's concerns that the ongoing construction activities could result in exceeding levels of authorized take of humpback whale and killer whale. Sightings of humpback whales have increased in the project area from previous years. Humpback whale feeding groups have begun utilizing the mouth of the Columbia River as foraging ground, arriving in the lower Columbia estuary as early as mid-June, and have been observed as late as mid-November with whale peak abundance coinciding with the peak abundance of forage fish in mid-summer. Humpback whales were observed in the immediate vicinity of West and East Sand Islands in late summer and fall of 2015 and 2016. They were also observed in the area in 2017 and 2019, but their presence was not documented in 2018. Under the 2023 year 1 IHA, no humpback whales were detected in 34 days of pile driving.

According to Wade *et al.* (2021), the probabilities that humpback whales encountered in Oregon and California (*i.e.,* south of the Columbia River) belong to various DPSs are as follows: Mexico DPS, 58 percent; and Central America DPS, 42 percent. The probabilities that humpback whales found in Washington and Southern British Columbia waters (*i.e.,* north of the Columbia River) belong to various DPSs are as follows: Hawai'i DPS, 69 percent; Mexico DPS, 25 percent; and Central America DPS, 6 percent (Wade *et al.,* 2021). In this area, these DPSs correspond with the newly designated Mainland Mexico-CA/OR/WA, Central America/Southern Mexico-CA/OR/WA, and Hawaii stocks, respectively. Since the Columbia River is considered the dividing line between these two areas, the correct proportion of humpback whales likely to be encountered is unclear, *i.e.,* whether the probabilities are closer to those assumed for the regions north or south of the Columbia River. NMFS conservatively assumes here that take of humpback whale would be the same as at a location south of the Columbia River, with 58 percent likely from the Mexico stock and 42 percent from the Central America stock.

The USACE has recorded four takes of humpback whale by Level B harassment as of September 11, 2024 after 24 days of in-water pile driving work which equates to a daily take rate of 0.17 animals/day. NMFS had originally authorized six takes by Level B harassment. With 80 days in-water work remaining, the projected take at the rate described above would result in 14 takes in addition to the 4 takes already recorded. NMFS is further authorizing an additional 10 takes by Level B harassment to ensure adequate consideration of likely take in light of the present increased occurrence of humpback whales. Therefore, NMFS has authorized a total of 28 humpback whale takes by Level B harassment.

The USACE also requested an increase in authorized take by Level B harassment of killer whales. NMFS had authorized two takes by Level B harassment under the original year 2 IHA. Under the 2023 year 1 IHA, no killer whales were detected in 34 days of pile driving according to the monitoring report submitted by the USACE. Based on recent anecdotal sightings, the USACE was concerned about potentially exceeding authorized take. The USACE felt that killer whales are more likely to enter into the project than previously considered. NMFS agreed with this assessment and modified the original IHA accordingly. The modal group sizes for transient killer whales ranges from three to four (Shields *et al.* 2018). NMFS assumed take of 2 groups of 4 in addition to the 2 already authorized in the year 2 IHA for a total of 10 takes by Level B harassment.

Table 2 shows the authorized take of all marine mammals by Level A and Level B harassment including revisions to authorized take of humpback whale and killer whale.

TABLE 2—AUTHORIZED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT BY YEAR, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Authorized take by Level A harassment	Authorized take by Level B harassment	Total proposed take	Stock	Stock abundance	Percent of stock
Year 2:						
Humpback whale [1]	0	12	12	Central America/Southern Mexico—California/Oregon/Washington.	1,494	<0.01
	0	16	16	Mainland Mexico—CA/OR/WA	3,477	0.46
Killer whale	0	10	10	West Coast Transient	349	0.28
Harbor porpoise	27	163	190	Northern Oregon/Washington Coast	22,074	0.86
California sea lion	0	23,421	23,421	U.S	257,606	9.09
Steller sea lion	0	29,502	29,502	Eastern	36,308	81.25
Harbor seal	54	5,361	5,415	Oregon/Washington Coast	24,732	21.89
Northern elephant seal	0	6	6	California Breeding	187,363	<0.01

[1]Humpback whales from the Central America/Southern Mexico-CA/OR/WA stock and the Mainland Mexico-CA/OR/WA stock are likely to occur in the project area in the respective percentages of 42 and 58 percent (Wade *et al.* 2021).

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring and reporting measures are identical to those included in the initial year 2 IHA and remain relevant for this modified IHA. These can be found in the documents supporting the issuance of the two consecutive final IHAs.

Determinations

With the exception of the revised take numbers for humpback whale and killer whale, by Level B harassment only, the USACE's in-water construction activities as well as mitigation and reporting requirements are unchanged from those in the year 2 IHA. The effects of the activity on the affected species and stocks remain unchanged.

The additional takes by Level B harassment would be due to potential behavioral disturbance and potential temporary threshold shift (TTS). No serious injury or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction

method and the implementation of the planned mitigation measures (see *Description of Mitigation, Monitoring and Reporting Measures* section).

The USACE's pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area of the stock's range. Level A and Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein.

The additional authorized takes of humpback whale and killer whale represent a minor increase in the percent of stock taken that was authorized in the initial year 2 IHA, and the anticipated impacts are identical to those described in the **Federal Register** notice of issuance of final IHA (87 FR 51346, August 22, 2022). The increases in authorized takes by Level B harassment for humpback and killer whale are extremely small when compared to stock abundance. The increase in authorized take of humpback and killer whale by Level B harassment is less than 0.01 percent for the Central America/Southern Mexico DPS and no greater than 0.46 percent for the Mainland Mexico DPS. Therefore, this activity will not cause effects on annual rates of recruitment or survival. We have determined that the impacts resulting from this activity are not expected to adversely affect annual rates of recruitment or survival for humpback whale, killer whale or any other species where NMFS has authorized take.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the USACE's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Regional Office.

As part of the original IHA, NMFS authorized incidental take of humpback whales from the California/Oregon/Washington stock that was designated at the time, and which included whales from the ESA-listed Mexico and Central America DPSs. The effects of this Federal action were adequately analyzed in the NMFS West Coast Region's Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Sand Island Pile Dike Repair Project, dated June 14, 2022, which concluded that the action is not likely to adversely affect humpback whales from the Mexico and Central America DPSs or their designated critical habitat. This modification of the IHA does not change the existing analysis and, therefore, the prior determination remains unchanged.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the modification of the IHA continues to qualify to be categorically excluded from further NEPA review.

Authorization

NMFS has issued a modified IHA to the USACE for conducting construction activities associated Sand Island Dikes Repair Project on the Columbia River that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: October 8, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–23681 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Information; Data for Marine Spatial Studies in Maryland, New Jersey, and Delaware

AGENCY: National Centers for Coastal Ocean Science, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; request for information.

SUMMARY: NOAA's National Ocean Service (NOS) National Centers for Coastal Ocean Science (NCCOS), hereafter NOAA, in partnership with the Bureau of Ocean Energy Management (BOEM), is working to build spatial planning capacity in the United States (U.S.) Central Atlantic region. Through this Request for Information, NOAA is seeking public input to identify coastal and marine spatial data or other critical information to inform marine spatial analyses in Maryland, New Jersey, and Delaware. The input we receive from the data development workshop meeting, as well as the responses to the items listed in the **SUPPLEMENTARY INFORMATION** section of this document, will be used to inform potential coastal and ocean development activities in the U.S. Central Atlantic region, such as renewable energy development.

DATES: Interested persons are invited to provide input in response to this Request for Information through November 1, 2024. Late-filed input will be considered to the extent practicable.

Verbal input will be accepted during a public meeting to be held in Columbia, Maryland on October 16–17, 2024.

ADDRESSES: Interested persons are invited to provide input using one of the following methods:

• *Electronic Submission:* Submit electronic written public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NOS–2024–0122 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov*

without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

• *Oral submission:* NOAA will accept verbal input at a data development workshop. The meeting will be held at the Maryland Innovation Center in Columbia, Maryland on Wednesday, October 16, 2024 from 8:30 a.m. to 5 p.m. Eastern Standard Time (EST) and Thursday, October 17, 2024 from 8:30 a.m. to 5 p.m. (EST). There will be a registration window from 8:30 a.m. to 9 a.m. (EST) each day before the start of the meeting.

Reports of meeting results will also be published and made available to the public in the weeks following the meeting. If you are unable to provide electronic written comments or participate in the meeting, please contact Bryce O'Brien at *bryce.obrien@noaa.gov* or (802) 331–0290 for alternative submission methods.

FOR FURTHER INFORMATION CONTACT: James Morris, NOAA NCCOS, at *james.morris@noaa.gov* or 252–666–7433.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA is an agency of the United States Federal Government that works to conserve and manage coastal and marine ecosystems and resources. NOAA works to make fisheries sustainable and productive, provide safe seafood to consumers, conserve threatened and endangered species and other protected resources, and maintain healthy ecosystems. NOAA has jurisdiction and responsibility for its trust marine resources in the U.S. Central Atlantic region as well as significant interest in supporting the resilience of coastal and marine-dependent communities and promoting equity and environmental justice. For these reasons, it is important for NOAA to invest in research that informs marine spatial studies in the U.S. Central Atlantic region, including socioeconomic research that ensures meaningful participation of local communities and supports equitable processes for planning and siting of new and existing marine industries and conservation areas.

NOAA has been engaged with the Bureau of Ocean Energy Management (BOEM) to support siting and environmental review for offshore wind energy areas in U.S. Federal waters (*https://www.boem.gov/renewable-energy*) to ensure protection of trust resources in any offshore development activities.

II. Purpose of This Request for Information

The purpose of this Request for Information is to promote data development to inform marine spatial studies in Maryland, New Jersey, and Delaware, with an emphasis on data needs for offshore wind energy. In addition to input received from the public through the electronic and verbal submissions, NOAA aims to inform the public about its coastal and ocean planning processes and capabilities, discuss the current data available for each ocean sector (*e.g.,* national security, fisheries, industry, natural resources, cultural resources), and gather ideas for other data sources. NOAA hopes to come out of the meetings with a strengthened relationship with the public and a list of best available data and data gaps.

III. Specific Information Requested To Inform Marine Spatial Studies in Maryland, New Jersey, and Delaware

Through this Request for Information, NOAA seeks written public input to inform marine spatial studies in the U.S. Central Atlantic region. NOAA is particularly interested in receiving input concerning the items listed below. Responses to this Request for Information are voluntary, and respondents need not reply to items listed. When providing input, please specify if you are providing general feedback on marine spatial studies and/or if you are responding to one of the specific item number(s) below:

1. Specific datasets related to ocean sectors, natural resources, and/or human activities you recommend NOAA use in marine spatial studies.

2. Major concerns you have related to use of any specific datasets that may be used in marine spatial studies.

3. Major concerns you have related to gaps in scientific knowledge or data that could impact marine spatial planning efforts.

4. Specific data or information you recommend NOAA or other partners collect, if it is not currently available or has not been previously collected.

5. Ways in which NOAA can better engage and collaborate with the public and local communities to promote economic, social, and ecological resilience as well as protect trust resources.

6. Ways in which NOAA can build upon existing capacity and resources for regional ocean spatial planning.

Sean Corson,

Director, National Centers for Coastal Ocean Science, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–23776 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE330]

Endangered and Threatened Species; Draft Recovery Plan for the Giant Manta Ray (Mobula birostris); Notice of Initiation of a 5-Year Review for the Giant Manta Ray

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

ACTION: Notice of availability of draft recovery plan; request for comments; notice of initiation; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce the availability of a Draft Endangered Species Act (ESA) Recovery Plan (Draft Recovery Plan) for the threatened giant manta ray (*Mobula birostris*) for public review. We are soliciting review and comment from the public and all interested parties on the Draft Recovery Plan, and will consider all substantive comments received during the review period before submitting the Recovery Plan for final approval. We are also initiating a 5-year review of the giant manta ray and are requesting new information on its status.

DATES: Comments on the Draft Recovery Plan must be received by December 16, 2024.

ADDRESSES: You may submit comments on the Draft Recovery Plan, identified by NOAA–NMFS–2024–0110 by any of the following methods:

Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal. Visit *https://www.regulations.gov* and type NOAA–NMFS–2024–0110 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway (SSMC3), Silver Spring, MD

20910, Attn: Giant Manta Ray Recovery Plan.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Draft Recovery Plan and supporting documents are available online at: *https://www.fisheries.noaa.gov/species/giant-manta-ray/conservation-management.*

FOR FURTHER INFORMATION CONTACT: Maggie Miller, (301) 427–8457, *margaret.h.miller@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under our jurisdiction, unless it is determined that such plans would not promote the conservation of the species. Section 4(f)(1) of the ESA requires that recovery plans incorporate, to the maximum extent practicable: (1) site-specific management actions necessary to achieve the plan's goals; (2) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; and (3) estimates of the time required and costs to implement recovery actions.

We listed the giant manta ray (*Mobula birostris*) as a threatened species under the ESA on January 22, 2018 (83 FR 2916). The giant manta ray is found worldwide in tropical, subtropical, and temperate bodies of water. Yet, despite its large range, the species is encountered infrequently (with the exception of a few areas noted for manta ray aggregations). Although there is considerable uncertainty regarding the species' current abundance throughout its range, the best available information indicated that the species experienced population declines of potentially significant magnitude due to fisheries-related mortality within the Indian Ocean and the Western Pacific and Eastern Pacific subregions of its range, which we determined qualifies as a ''significant portion its range'' under the final Significant Portion of Its Range (SPR) policy (79 FR 37577; July 1, 2014). Based on the best available scientific and commercial information, and after considering efforts being made to protect the giant manta ray, we determined that it was likely to become an endangered species within the foreseeable future throughout a significant portion of its range (83 FR 2916; January 22, 2018). Accordingly, the giant manta ray was listed as threatened.

Globally, giant manta rays are both targeted and caught as bycatch in a number of fisheries throughout their range, and are most susceptible to artisanal/small-scale fisheries (Miller and Klimovich 2017). With the expansion of the international mobulid gill plate market and increasing demand for manta ray products, estimated take of giant manta rays, particularly in many portions of the SPR, frequently exceeds numbers of identified individuals in those areas. Observations from these areas also indicate declines in sightings and landings of the species. Given the species' extremely low reproductive output and overall productivity, it is inherently vulnerable to threats that would deplete its abundance, with a low likelihood of recovery. Unfortunately, efforts to address overutilization of the species through regulatory measures appear inadequate, with evidence of targeted fishing of the species and bycatch retention despite prohibitions, and a lack of local, regional, and international measures and/or enforcement (Miller and Klimovich 2017).

Development of the Draft Recovery Plan

In December 2019, we developed a recovery outline to systematically and cohesively guide recovery for the giant manta ray until we completed a recovery plan. The recovery outline is available on our website at: *https://www.fisheries.noaa.gov/species/giant-manta-ray/conservation-management.*

In 2022, we held a virtual meeting to elicit expert opinion on the challenges associated with recovering a wide-ranging species and potential ways to facilitate the recovery of the giant manta ray. We invited experts from a range of relevant disciplines to participate in the meeting and provide input and feedback. We utilized the information provided at this meeting to prioritize threats that are most urgent and significant and will need to be minimized/controlled for the recovery of the species. This helped serve as the foundation for our recovery criteria, actions and activities.

The recovery planning components for the giant manta ray are divided into three separate documents. The first document, the Recovery Status Review, provides detailed information on the giant manta ray's biology, ecology, status and threats, and conservation efforts to date, which has typically been included in the background section of a species' recovery plan. This separate document is designed to inform all post-listing activities, including recovery planning, and is a comprehensive update to the original 2017 status review (Miller and Klimovich 2017). The Recovery Status Review may be revised as new information becomes available. The second document, the Draft Recovery Plan, focuses on the statutory components of a recovery plan, as required under the ESA to be incorporated to the maximum extent practicable: (1) a description of site-specific management actions necessary for the conservation and survival of the species (recovery actions); (2) objective, measurable criteria that, when met, will allow the species to be removed from the endangered and threatened species list; and (3) estimates of the time and cost required to achieve the plan's goals. Site-specific recovery actions in the Draft Recovery Plan are described at a relatively high level and are strategic in nature. The third document, the Draft Recovery Implementation Strategy, is a flexible, operational document separate from the Draft Recovery Plan. The Draft Recovery Implementation Strategy provides specific activities necessary to implement fully recovery actions in the Draft Recovery Plan, while affording us the ability to modify these activities efficiently to reflect changes in the information available as well as progress towards recovery. All three of the recovery planning documents, including the Recovery Status Review, the Draft Recovery Plan, and the Draft Recovery Implementation Strategy, are available on the NMFS giant manta ray website at: *https://www.fisheries.noaa.gov/species/giant-manta-ray/conservation-management.*

We have determined that this Draft Recovery Plan for the giant manta ray meets the statutory requirements for a recovery plan and are proposing to adopt it as the ESA recovery plan for this threatened species. Section 4(f)(4) of the ESA requires that public notice and an opportunity to comment be provided prior to final approval of a recovery plan. This notice solicits comments on this Draft Recovery Plan.

Contents of the Draft Recovery Plan

The Draft Recovery Plan presents NMFS' proposed recovery goal, objectives, and criteria, which, when met, would allow the giant manta ray to be delisted. The proposed demographic and threats-based recovery objectives and criteria are based on the listing factors found in the ESA section 4(a)(1). The proposed demographic and threats-based recovery objectives and criteria for the giant manta ray address threats from significant population declines, targeted catch in artisanal/small-scale fisheries, bycatch-related mortality in artisanal/small-scale and commercial fisheries, international trade of its gill plates, inadequate regulatory mechanisms, and illegal retention and enforcement issues. Additionally, it identifies stressors that should be monitored for potential future impact, such as climate change. The Draft Recovery Plan also describes specific information on the following: current status of the giant manta ray, threats that have contributed to the species' decline, recovery strategies to address the threats, and site-specific recovery actions with timelines. Finally, the Draft Recovery Plan estimates the time and costs required to implement recovery actions.

The Draft Recovery Implementation Strategy provides specific, prioritized activities necessary to implement fully recovery actions in the Draft Recovery Plan. This stepped-down approach will afford us the ability to modify these activities efficiently to reflect changes in the information available as well as progress towards recovery.

How NMFS and Others Expect To Use the Plan

In addition to continuing to carry out actions already underway, such as satellite and acoustic tag deployment and analysis, genetic sampling, and other research activities designed to improve our understanding of manta ray distribution, abundance, and population connectivity, we have begun implementation of other actions described in the Draft Recovery Plan. For example, we are currently providing domestic education and training programs for fishermen to enhance safe handling of giant manta rays and providing the public with outreach messaging to reduce harm and increase awareness of giant manta rays. In addition, we anticipate reviewing whether additional protective regulations under section 4(d) of the ESA may be appropriate to provide for the conservation of the giant manta ray in U.S. waters. After public comment and the adoption of the Recovery Plan, our intention is to implement the actions and activities for which we have authority and funding; encourage other international, Federal, State, and local agencies to implement recovery actions and activities for which they have responsibility, authority, and funding; and work cooperatively with the public and local stakeholders on implementation of other recovery actions and activities. We expect the Recovery Plan to guide us and other Federal agencies in evaluating Federal actions under ESA section 7, as well as in implementing other provisions of the ESA.

Public Comments Solicited

We are soliciting written comments on the Draft Recovery Plan. All substantive comments received by the date specified above will be considered and incorporated, as appropriate, prior to our decision on whether to approve this Recovery Plan. While we invite comments on all aspects of the Draft Recovery Plan, we are particularly interested in comments on the proposed objectives, criteria, and actions, as well as comments on the estimated time and cost of recovery actions and activities.

In addition, the ESA requires that we conduct a review of listed species at least once every five years. This will be the first review of this species pursuant to this provision of the ESA since it was listed in 2018 under the ESA. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. On the basis of such reviews, we determine under the ESA 4(c)(2)(B) whether any species should be removed from the list (*i.e.,* delisted) or reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). Any change in federal classification would require a separate rulemaking process.

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the giant manta ray. Comments and information submitted will be considered in the 5-year review, as applicable.

Authority: 16 U.S.C. 1533(f)

Dated: October 8, 2024.

Lisa Manning,

Acting Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–23755 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE379]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Habitat Committee (HC) will hold an online public meeting.

DATES: The online meeting will be held Tuesday, October 29, 2024, from 9 a.m. to 5 p.m., Pacific Time, and Wednesday, October 30, 2024, from 9 a.m. to 12 p.m., or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including a proposed agenda and instructions on how to attend 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: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the HC to consider items on the Pacific Council's November meeting agenda and to prepare supplemental reports as necessary. Topics will include current habitat issues, fishing regulation changes at Cordell Bank (California), research on benthic disturbance and biogeochemical cycling, and other topics as necessary.

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: October 8, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–23663 Filed 10–11–24; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, October 16, 2024—10:00 a.m.–12:00 p.m. (See **MATTERS TO BE CONSIDERED**).

PLACE: The meeting will be held remotely, and in person at 4330 East West Highway, Bethesda, Maryland, 20814.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Decisional Matter: Draft Final Rule: Safety Standard for Infant Support Cushions.

Briefing Matter: Fiscal Year 2025 Operating Plan.

To attend the meeting remotely, please use the following link: https://cpsc.webex.com/cpsc/j.php?MTID=m569336dacbad291c7ee5cea24627e107.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: October 9, 2024.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2024–23810 Filed 10–10–24; 11:15 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0112]

Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006; Correction

AGENCY: Department of Education (ED), Office of Career, Technical, and Adult Education (OCTAE).

ACTION: Correction notice.

SUMMARY: On September 11, 2024, the 60-day comment period published in the **Federal Register** (FRN Vol. 89, No. 176, pages 73638–9) for the proposed revised information collection, Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006, with an end date of November 12, 2024. An error was made to the Docket No.: ED–2024–SCC–0112 posting with the current instrument version of the Perkins V Consolidated Annual Report. Approximately two weeks after the publication on September 23, 2024, ED corrected this error and posted the correct version of the instrument, Perkins V Consolidated Annual Report 1830–0569 revision to the record. As a result, the Department is extending the public comment period two weeks. The new end date of the comment period is November 26, 2024.

The PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: October 9, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–23732 Filed 10–11–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–527–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 27, 2024, Florida Gas Transmission Company, LLC (Florida Gas), 1300 Main Street, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208(f)(2) of the Commission's regulations under the Natural Gas Act (NGA), and Florida Gas' blanket certificate issued in Docket No. CP82–553–000, for authorization to reduce the Maximum Allowable Operating Pressure (MAOP) from 975 pounds per square inch gage (psig) to 721 psig of its existing 1.3-mile-long, 3-inch-diameter Auburndale Lateral located in Polk County, Florida. The Project will allow Florida Gas to maintain compliance with Pipeline and Hazardous Materials Safety Administration regulations. Moreover, Florida Gas asserts that the proposed MAOP reduction will not affect its ability to meet its current contractual obligations nor result in any abandonment of service to its customers, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions concerning this request should be directed to Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main Street, Houston, Texas, 77002, or call (713) 989–2605, or fax (713) 989–1205, or via email to *blair.lichtenwalter@energytransfer.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to

intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on December 6, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is December 6, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is December 6, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 6, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–527–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–527–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main Street, Houston, Texas, 77002, or by email (with a link to the document) at *blair.lichtenwalter@energytransfer.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.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23672 Filed 10–11–24; 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: RP25–37–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming—SRE Interim Service to be effective 11/1/2024.
Filed Date: 10/1/24.
Accession Number: 20241001–5411.
Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP25–39–000.
Applicants: EOG Resources, Inc., Devon Gas Services, L.P.
Description: Joint Petition for Temporary Waiver of Capacity Release Regulations, et al. of EOG Resources, Inc. et al.
Filed Date: 10/4/24.
Accession Number: 20241004–5121.
Comment Date: 5 p.m. ET 10/16/24.

Docket Numbers: RP25–40–000.
Applicants: Granite State Gas Transmission, Inc.
Description: Compliance filing: A Petition for Approval of Settlement to be effective 11/1/2024.
Filed Date: 10/4/24.
Accession Number: 20241004–5139.
Comment Date: 5 p.m. ET 10/16/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23675 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2423–031]

Great Lakes Hydro America, LLC; Notice of Availability of Final 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 license for the Riverside Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Final Environmental Assessment (FEA) for the project. No Federal land is occupied by project works or located within the project boundary.

The FEA contains 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 FEA 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/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23665 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2311–067]

Great Lakes Hydro America, LLC; Notice of Availability of Final 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 license for the Upper Gorham Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Final Environmental Assessment (FEA) for the project. No Federal land is occupied by project works or located within the project boundary.

The FEA contains 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 FEA 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/*

eSubscription.aspx to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23669 Filed 10–11–24; 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
Prohibited:		
1. P–2701–061	10–1–2024	Brookfield Renewable.
Exempt:		
1. P–14861–002	10–4–2024	FERC Staff.[1]
2. ER24–2172–000, ER24–2893–000	10–4–2024	Commonwealth of Pennsylvania.[2]

[1] Memorandum regarding email communication with the Washington State Preservation Office.
[2] Governor Josh Shapiro.

Dated: October 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23747 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC25–1–000]

Evergy Missouri West, Inc.; Notice of Filing

Take notice that on October 7, 2024, Evergy Missouri West, Inc. requested from the Chief Accountant of the Federal Energy Regulatory Commission (Commission or FERC) approval of the accounting entries related to its acquisition of a portion of Dogwood Energy LLC's undivided ownership interest in the Dogwood Energy Facility.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed

proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Comment Date: 5:00 p.m. Eastern Time on October 29, 2024.

Dated: October 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23748 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2287–053]

Central Rivers Power, NH LLC; Notice of Availability of Final 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 license for the J. Brodie Smith Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Final Environmental Assessment (FEA) for the project. No federal land is occupied by project works or located within the project boundary.

The FEA contains 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 FEA 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/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: October 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23749 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15358–000]

Low Head Hydro M 21, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 29, 2024, Low Head Hydro-M 21, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the proposed Mississippi Locks and Dam 21 Hydroelectric Project, a hydropower project proposed to be located at the U.S. Army Corps of Engineers' (Corps) Mississippi Lock and Dam 21, located on the Mississippi River, in Adams County, Illinois and Marion County, Missouri. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Mississippi Locks and Dam 21 Hydroelectric Project would consist of the following: (1) a new hydropower structure located approximately 100 feet downstream of the existing Corps submersible dam, connected to the west side of the dam via a new proposed access road; (2) thirty Very Low Head (VLH) turbine-generator units located in concrete channels (turbine bays) within the hydropower structure, each rated with a capacity of 500 kilowatts providing a total rated capacity of 15 megawatts; (3) a new unlined earth intake channel located upstream of the powerhouse which will convey flow from the upper pool to the turbine bays; (4) a 150-foot-long guide wall proposed on both sides of the new intake channel; (5) a new unlined earth excavated tailrace with stone riprap proposed to be 300-foot-wide and 300-foot-long; (6) a 150-foot-long guide wall proposed on both sides of the new tailrace channel; (7) a new 14-foot-wide concrete deck proposed to connect the approach dam on the west side to the existing Corps operation yard on the east; and (8) a control building and substation on the west river bank connecting the transmission line to an interconnection point. The proposed project would have an estimated annual generation of 71,400 megawatt-hours.

Applicant Contact: Allen W. Skelly, Low Head Hydro M21, LLC, 127 Longwood Blvd., Mount Orab, Ohio 45154; phone: (937) 802–8866.

FERC Contact: Shivani Khetani; phone: (212) 273–5917, or by email at *shivani.khetani@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you

may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15358–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15358) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23744 Filed 10–11–24; 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: PR25–3–000.
Applicants: Southern California Gas Company.
Description: § 284.123(g) Rate Filing: Offshore Delivery Service Rate Revision October 2024 to be effective 10/1/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5005.
Comment Date: 5 p.m. ET 10/29/24.
§ 284.123(g) Protest: 5 p.m. ET 12/9/24.

Docket Numbers: RP25–41–000.
Applicants: Cadeville Gas Storage LLC.
Description: § 4(d) Rate Filing: Cadeville Tariff—Revised Contact Information to be effective 10/7/2024.
Filed Date: 10/7/24.
Accession Number: 20241007–5173.
Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: RP25–42–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.8.24 Negotiated Rates—Freepoint Commodities LLC R–7250–50 to be effective 11/1/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5043.
Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: RP25–44–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.8.24 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–31 to be effective 11/1/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5047.
Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: RP25–45–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.8.24 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–32 to be effective 11/1/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5049.
Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: RP25–46–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Short Term Capacity Release NRA Filing eff 11–8–24 to be effective 11/8/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5069.
Comment Date: 5 p.m. ET 10/21/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23750 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2327–047]

Great Lakes Hydro America, LLC; Notice of Availability of Final 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 license for the Cascade Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Final Environmental Assessment (FEA) for the project. No Federal land is occupied by project works or located within the project boundary.

The FEA contains 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 FEA 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.

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Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23667 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–525–000]

Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 27, 2024, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208(b), and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), and Natural's blanket certificate issued in Docket No. CP82–402–000, for authorization to construct its Delaware Basin North Project (Project) located in Bailey County, Texas. Natural's Project will consist of the following upgrades at its existing Compressor Station 168: (1) replacement of the existing 4,000 horsepower (hp) Unit 2 with a new 5,500 hp Caterpillar G3616 unit, (2) modifications to the suction and discharge piping and valves to accommodate the new unit, (3) certain operational enhancements to its existing Unit 1, and (4) installation of new gas cooling equipment. The Project will allow Natural to provide 50,000 Dekatherms per day of incremental firm transportation service from the Delaware Basin production area to various markets on Natural's system. The estimated cost for the project is $34,500,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions concerning this request should be directed to Francisco Tarin, Director, Regulatory, for Kinder Morgan, Inc., as Operator of Natural Gas Pipeline Company of America LLC, at 2 North Nevada Avenue, Colorado Springs, Colorado 80903, at (719) 667–7515, or at *francisco_tarin@kindermorgan.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on December 6, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is December 6, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is December 6, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

your comments on or before December 6, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–525–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–525–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: Francisco Tarin, Director, Regulatory, for Kinder Morgan, Inc., as Operator of Natural Gas Pipeline Company of America LLC, at 2 North Nevada Avenue, Colorado Springs, Colorado 80903, or by email (with a link to the document) at *francisco_tarin@kindermorgan.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.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23673 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2326–054]

Great Lakes Hydro America, LLC; Notice of Availability of Final 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 license for the Cross Power Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Final Environmental Assessment (FEA) for the project. No Federal land is occupied by project works or located within the project boundary.

The FEA contains 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 FEA 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/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23668 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–528–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 27, 2024, Florida Gas Transmission Company, LLC (FGT), 1300 Main St., Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208(f)(2) of the Commission's regulations under the Natural Gas Act (NGA), and FGT's blanket certificate issued in Docket No. CP82–533–000, for authorization to reduce the Maximum Allowable Operating Pressure (MAOP) of FGT's 6-inch-diameter Tampa South Lateral located in Hillsborough County, Florida (Tampa South Lateral MAOP Reduction Project). FGT states the Tampa South Lateral MAOP Reduction Project will allow FGT to remain in compliance with the Pipeline and Hazardous Materials Safety Administration regulations and provide more efficient operations by lowering the MAOP of the Tampa South Lateral from 975 pounds per square inch gage (psig) to 888 psig. FGT states there are no construction costs associated with the project, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal**

Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions concerning this request should be directed to Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, or call (713) 989–2605, or fax (713) 989–1205, or by email to *blair.lichtenwalter@energytransfer.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on December 6, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is December 6, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is December 6, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 6, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–528–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–528–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

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: Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, or by email (with a link to the document) at *blair.lichtenwalter@energytransfer.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.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23671 Filed 10–11–24; 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 exempt wholesale generator filings:

Docket Numbers: EG25–4–000.
Applicants: Pluto Energy Storage, LLC.
Description: Pluto Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/8/24.
Accession Number: 20241008–5176.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: EG25–5–000.
Applicants: Kola Energy Storage, LLC.
Description: Kola Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/8/24.
Accession Number: 20241008–5187.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: EG25–6–000.
Applicants: Jackson Fuller Energy Storage, LLC.
Description: Jackson Fuller Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/8/24.
Accession Number: 20241008–5188.
Comment Date: 5 p.m. ET 10/29/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–2687–001.
Applicants: California Independent System Operator Corporation.
Description: Tariff Amendment: 2024–10–08 Deficiency Response—2024 Tariff Clarification to be effective 8/3/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5155.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER24–3018–000.
Applicants: Serrano Solar, LLC.
Description: Supplement to 09/11/2024, Serrano Solar, LLC tariff filing.
Filed Date: 9/27/24.
Accession Number: 20240927–5290.
Comment Date: 5 p.m. ET 10/18/24.

Docket Numbers: ER25–50–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original GIA, Service Agreement No. 7380; AF1–245 to be effective 9/6/2024.
Filed Date: 10/7/24.
Accession Number: 20241007–5161.
Comment Date: 5 p.m. ET 10/28/24.

Docket Numbers: ER25–51–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Attachment X to be effective 12/16/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5020.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–52–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-City Breeze BESS 1st Amended Generator Interconnection Agreement to be effective 9/17/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5034.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–53–000.
Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2024–10–08_SA 4362 ITC Midwest-ATC TIA to be effective 10/9/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5078.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–54–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2024–10–08 Rules of Conduct Enhancements—Tariff Amendment to be effective 12/31/9998.
Filed Date: 10/8/24.
Accession Number: 20241008–5090.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–55–000.
Applicants: Luz Solar Partners Ltd., IX.
Description: Tariff Amendment: Notice of Cancellation to be effective 10/9/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5097.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–57–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 211 Revisions to be effective 12/8/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5168.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–58–000.
Applicants: Sentinel Energy Center, LLC.
Description: § 205(d) Rate Filing: Amended Black Start Agreement to be effective 10/9/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5174.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–59–000.
Applicants: AES Pike County Energy Storage, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 11/7/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5180.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–60–000.
Applicants: Fox Squirrel Solar LLC.
Description: § 205(d) Rate Filing: 2024–10–08 Fox Squirrel Reactive Power Compensation Rate Schedule Filing to be effective 10/9/2024.
Filed Date: 10/8/24.
Accession Number: 20241008–5181.
Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–61–000.
Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: Amendments to FPL FERC Rate Schedule No. 317 with LCEC to be effective 1/1/2022.

Filed Date: 10/8/24.

Accession Number: 20241008–5185.

Comment Date: 5 p.m. ET 10/29/24.

Docket Numbers: ER25–62–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: Amendments to FPL FERC Rate Schedule No. 322 with FKEC to be effective 1/1/2022.

Filed Date: 10/8/24.

Accession Number: 20241008–5189.

Comment Date: 5 p.m. ET 10/29/24.

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: October 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23746 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2422–058]

Great Lakes Hydro America, LLC; Notice of Availability of Final 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 license for the Sawmill Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Final Environmental Assessment (FEA) for the project. No Federal land is occupied by project works or located within the project boundary.

The FEA contains 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 FEA 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/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23666 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25–2–000.

Applicants: DESRI Holdings, L.P., Airport Solar LLC, Assembly Solar, LLC, Assembly Solar I, LLC, Assembly Solar II, LLC, Assembly Solar III, LLC, Arroyo Solar LLC, Arroyo Energy Storage LLC, Balko Wind, LLC, Balko Wind Transmission, LLC, Bartonsville Energy Facility, LLC, Big River Solar, LLC, Blue Bird Solar, LLC, Castle Solar, LLC, Cuyama Solar, LLC, Cove Mountain Solar, LLC, Cove Mountain Solar 2, LLC, Dressor Plains Solar, LLC, Drew Solar, LLC, Drew Solar-CA, LLC,DWW Solar II, LLC, Elektron Solar, LLC, Gravel Pit Solar III, LLC, Gravel Pit Solar IV, LLC, Gray Hawk Solar, LLC, Hecate Energy Highland LLC, Highland Solar Transco Interconnection LLC, Horseshoe Solar, LLC, Hunter Solar LLC, Hunter Solar, LLC, Iris Solar, LLC, Long Lake Solar, LLC,MS Solar 2, LLC, North Star Solar PV LLC, Portal Ridge Solar B, LLC, Portal Ridge Solar C, LLC, Prairie State Solar, LLC, Rancho Seco Solar II LLC, Red Horse III, LLC, Red Horse Wind 2, LLC, River Fork Solar, LLC, Rocket Solar, LLC, Rocking R Solar, LLC, San Juan Solar 1, LLC, Sigurd Solar LLC,SJS 1 Storage, LLC, Speedway Solar, LLC, St. James Solar, LLC, Steel Solar, LLC,TPE Alta Luna, LLC, Willow Springs Solar, LLC, Sunlight Road Solar, L.L.C.,62SK 8ME LLC,63SU 8ME LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of DESRI Holdings, L.P.

Filed Date: 10/4/24.

Accession Number: 20241004–5222.

Comment Date: 5 p.m. ET 10/25/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25–3–000.

Applicants: Wheatsborough Solar, LLC.

Description: Wheatsborough Solar, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 10/7/24.

Accession Number: 20241007–5103.

Comment Date: 5 p.m. ET 10/28/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–2815–000.

Applicants: Harquahala Sun 1, LLC.

Description: Supplement to 08/20/2024 Harquahala Sun 1, LLC tariff filing.
Filed Date: 10/4/24.
Accession Number: 20241004–5142.
Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: ER24–2816–000.
Applicants: Harquahala Sun 2, LLC.
Description: Supplement to 08/20/2024 Harquahala Sun 2, LLC tariff filing.
Filed Date: 10/4/24.
Accession Number: 20241004–5155.
Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: ER25–47–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2024–10–04 NSP–CAPX–JDA–Alex-Big Oaks 766–0.0.0 to be effective 9/3/2024.
Filed Date: 10/4/24.
Accession Number: 20241004–5209.
Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25–48–000.
Applicants: NextEra Energy Transmission Southwest, LLC, Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: NextEra Energy Transmission Southwest, LLC submits tariff filing per 35.13(a)(2)(iii: NextEra Energy Transmission Southwest, LLC Formula Rates Revisions to be effective 1/1/2025.
Filed Date: 10/7/24.
Accession Number: 20241007–5056.
Comment Date: 5 p.m. ET 10/28/24.

Docket Numbers: ER25–49–000.
Applicants: NSTAR Electric Company.
Description: § 205(d) Rate Filing: Vicinity Energy Boston, Inc.—Design and Engineering Agreement to be effective 10/8/2024.
Filed Date: 10/7/24.
Accession Number: 20241007–5058.
Comment Date: 5 p.m. ET 10/28/24.

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.

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Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23676 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD24–10–000]

Reliability Technical Conference; Second Supplemental Notice of Commissioner-Led Technical Conference

As announced in the Notices of Technical Conference issued in this proceeding on July 9, 2024, and September 24, 2024, the Federal Energy Regulatory Commission (Commission) will convene its annual Commissioner-led Reliability Technical Conference on Wednesday, October 16, 2024. The conference will take place from approximately 10:00 a.m. to 12:45 p.m. Eastern time. The 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 conference will be available to view online.

The purpose of this conference is to discuss policy issues related to the reliability and security of the Bulk-Power System. Attached to this Supplemental Notice is an agenda for the technical conference, which includes the technical conference program and expected panelists.

While the technical conference is not for the purpose of discussing any specific matters before the Commission, some discussions may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

	Docket Nos.
PJM Interconnection, L.L.C	ER24–2172–000 ER24–2172–001
Midcontinent Independent System Operator, Inc.	ER23–2977–000 ER23–2977–001 ER23–2977–002 ER23–2977–003
Southwest Power Pool, Inc	ER24–2953–000
Southwest Power Pool, Inc	ER24–1317–000
Complaint of Sierra Club v. *Southwest Power Pool, Inc.*	EL24–96–000
Southwest Power Pool, Inc	ER24–2397–000
Southwest Power Pool, Inc	ER24–1221–000
PJM Interconnection, L.L.C	ER24–2447–000 ER24–2447–001
Midcontinent Independent System Operator, Inc.	ER24–1638–000
PJM Interconnection, L.L.C	ER24–2995–000
California Independent System Operator Corporation.	ER24–2671–000
Midcontinent Independent System Operator, Inc.	ER24–2797–000
Southwest Power Pool, Inc	ER24–2798–000
Midcontinent Independent System Operator, Inc.	ER24–2871–000
Southwest Power Pool, Inc	ER24–2825–000
Southwest Power Pool, Inc	ER24–2184–000
Southwest Power Pool, Inc	ER24–2185–000
Complaint of Michael Mabee	EL21–99–000
Baltimore Gas & Electric Company and PECO Energy Company.	EL24–149–000

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.

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.

For more information about this conference, please contact Michael Gildea at *Michael.Gildea@ferc.gov* or (202) 502–8420 or Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23677 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2288–057]

Central Rivers Power, NH LLC; Notice of Availability of Final 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 license for the Gorham Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Final Environmental Assessment (FEA) for the project. No federal land is occupied by project works or located within the project boundary.

The FEA contains 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 FEA 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/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23670 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2490–031]

Green Mountain Power Corporation; Notice of Intent To Prepare an Environmental Assessment

On August 30, 2022, the Green Mountain Power Corporation filed a minor relicense application for the 0.5-megawatt Taftsville Hydroelectric Project No. 2490 (project). The project is located on the Ottauquechee River in the Village of Taftsville, in Windsor County, Vermont. No Federal or Tribal lands occur within or adjacent to the project boundary.

In accordance with the Commission's regulations, on June 12, 2024, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, staff does not anticipate that licensing the project would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to relicense the project.[1]

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA.	August 25, 2025.

[1] In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1728292340. 40 CFR 1501.5(c)(4) (2024).

Any questions regarding this notice may be directed to David Gandy at (202) 502–8560 or *david.gandy@ferc.gov.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23664 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–524–000]

BBT AlaTenn, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 24, 2024, BBT AlaTenn, LLC (AlaTenn) filed in the above referenced docket, a prior notice request pursuant to sections 157.205(b), 157.208(b), and 157.210, of the Commission's regulations under the Natural Gas Act (NGA) and AlaTenn's blanket certificate issued in Docket No. CP85–359–000, for authorization to (1) construct approximately 3,800 feet of 16-inch-diameter pipeline; (2) acquire a 37-mile-long pipeline (Trigas Line); and (3) construct new piping and valves to connect the acquired Trigas Line to AlaTenn's system, all located in Colbert County, Alabama (AlaTenn Pride Loop Project). The Project will enable AlaTenn to provide its customers with enhanced gas supply access and increased operational flexibility. The estimated cost of the project is $4,241,541, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652

(toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions concerning this request should be directed to Scott T. Langston, Senior Vice President & Chief Commercial Officer, BBT AlaTenn, LLC, 1501 McKinney Street, Suite 800, Houston, Texas 77010, by phone at (303) 408–1925, or by email at *slangston@blackbearllc.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on December 6, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is December 6, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is December 6, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 6, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–524–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–524–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Scott T. Langston, Senior Vice President & Chief Commercial Officer, BBT AlaTenn, LLC, 1501 McKinney Street, Suite 800, Houston, Texas 77010, or by email at *slangston@blackbearllc.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.

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: October 7, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23674 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2300–052]

Great Lakes Hydro America, LLC; Notice of Availability of Final 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 license for the Shelburne Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Final Environmental Assessment (FEA) for the project. No Federal land is occupied by project works or located within the project boundary.

The FEA contains 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 FEA 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/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: October 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23743 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL24–80–000; EL24–81–000; EL24–82–000; EL24–83–000]

Midcontinent Independent System Operator, Inc., PJM Interconnection, L.L.C., Southwest Power Pool, Inc., ISO New England, Inc.; Notice of Extension of Time

On September 30, 2024, Advanced Energy Economy, the American Clean Power Association, and the Solar Energy Industries Association (collectively, the Clean Energy Associations) filed a motion for a 14-day extension of time—from October 11, 2024 to October 25, 2024—for interested entities to submit responses in the above-referenced proceedings.[1] No answers were filed.

Upon consideration, notice is hereby given that an extension of time for interested entities to file responses in the above-referenced proceedings is granted to and including October 25, 2024.

Dated: October 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23745 Filed 10–11–24; 8:45 am]

BILLING CODE 6717–01–P

[1] *Midcontinent Indep. Sys. Operator, Inc.,* 187 FERC ¶ 61,170, at P 72 & ordering para. (E) (2024).

DEPARTMENT OF ENERGY

Western Area Power Administration

Provo River Project—Rate Order No. WAPA–221

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed formula rate for power service.

SUMMARY: The Colorado River Storage Project Management Center (CRSP MC) of the Western Area Power Administration (WAPA) proposes a new formula rate for the Provo River Project (PRP) power service. The existing rate for this service expires on March 31, 2025. This rate action proposes no change to the existing formula rate under Rate Schedule PR–2 other than extending the effective date for a 5-year period through March 31, 2030.

DATES: A consultation and comment period will begin October 15, 2024 and end November 14, 2024. CRSP MC will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed formula rate submitted by WAPA to FERC for approval should be sent to: Rodney Bailey, CRSP Manager, CRSP MC, Western Area Power Administration, 1800 South Rio Grande Drive, Montrose, CO 81401, or email: *CRSPMC-rateadj@wapa.gov.* The CRSP MC will post information about the proposed formula rate and written comments received to its website at: *www.wapa.gov/about-wapa/regions/crsp/rates/.*

FOR FURTHER INFORMATION CONTACT: Tamala Gheller, Rates Manager, CRSP MC, Western Area Power Administration, (970) 240–6545 or email: *gheller@wapa.gov.*

SUPPLEMENTARY INFORMATION: On June 10, 2020, FERC approved and confirmed Rate Schedule PR–2 under Rate Order No. WAPA–189 on a final basis through March 31, 2025.[1] This schedule applies to PRP power service.

The existing formula rate provides sufficient revenue to recover annual costs within the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2. The proposed rate continues the formula-based methodology that includes an annual update to the financial data in the rate formula. CRSP MC intends the proposed

[1] *Order Confirming and Approving Rate Schedule on a Final Basis,* FERC Docket No. EF20–1–000.

formula-based rate to go into effect April 1, 2025. The proposed formula rate would remain in effect until March 31, 2030, or until WAPA changes the formula rate through another public rate process pursuant to 10 CFR part 903, whichever occurs first.

The Deer Creek Dam, Reservoir, and Power Plant are components of the Deer Creek Division of the PRP, located on the Provo River in Utah. The marketing plan for the PRP was published in the **Federal Register** (88 FR 16433) on March 17, 2023. New contracts are effective October 1, 2024, through September 30, 2054. This marketing plan sets the parameters for WAPA to market the output of the PRP. Final allocations of PRP power, as published in the **Federal Register** (89 FR 23994) on April 5, 2024, were provided to Heber Light and Power and seven members of Utah Associated Municipal Power Systems and Utah Municipal Power Agency (Customers) in the Provo River drainage area.

The Customers purchase all power generation from the project and pay the annual revenue requirement in monthly installment payments based on the estimates of operation, maintenance, and capitalized replacement expenses for the Deer Creek Power Plant. The payments are not dependent upon the power made available for sale or the rate of generation each year. CRSP MC reconciles the estimate to actual expenses at the end of the fiscal year and includes the difference in the next year's annual revenue requirement.

Legal Authority

Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985, and February 21, 2019.[2] The proposed action constitutes a minor rate adjustment, as defined by 10 CFR 903.2(e). In accordance with 10 CFR 903.15(a) and 903.16(a), CRSP MC has determined it is not necessary to hold public information and public comment forums for this rate action but is initiating a 30-day consultation and comment period to give the public an opportunity to comment on the proposed formula rate. CRSP MC will review and consider all timely public comments at the conclusion of the consultation and comment period and make amendments or adjustments to the proposal as appropriate. Proposed rates will then be approved on an interim basis.

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

WAPA is establishing the formula rate for the PRP in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152).[3]

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2024, effective August 30, 2024, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that CRSP MC initiates or uses to develop the proposed formula rate are available for inspection and copying at the CRSP MC, located at 1800 South Rio Grande Avenue, Montrose, CO 81401. Many of these documents and supporting information are also available on WAPA's website at: *www.wapa.gov/about-wapa/regions/crsp/rates/.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.[4]

[3] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

[4] In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on October 8, 2024, by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 9, 2024.

Jennifer Hartzell,

Alternate Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–23768 Filed 10–11–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2024–0063; FRL–12335–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Clean Watersheds Needs Survey (CWNS) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Clean Watersheds Needs Survey (CWNS) (Renewal)'' (EPA ICR Number 0318.14, OMB Control Number 2040–0050) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2024. Public comments were previously requested via the **Federal Register** on March 11, 2024, during a 60-day

comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before November 14, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2024–0063, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Joshua Klein, Office of Water, State Revolving Fund Branch, (7309J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 557–6786; email address: *cwns@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through October 31, 2024. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on March 11, 2024, during a 60-day comment period (89 FR 17464). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Clean Watersheds Needs Survey (CWNS) is required by the Clean Water Act (CWA) section 516(b)(1)(B) as well as CWA section 609, which was added by the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58, November 15, 2021. It is a periodic inventory of existing and planned publicly owned wastewater conveyance and treatment, combined sewer overflow correction, stormwater management and other water pollution control infrastructure in the United States, as well as an estimate of how much of this infrastructure may need to be repaired or upgraded. The CWNS also asked for information regarding new infrastructure that is needed. The CWNS is a joint effort between the EPA and the states. The CWNS collects cost and technical data from states that is associated with POTWs and other water pollution control facilities, existing and planned. The respondents who provide this information to the EPA are state and territory agencies responsible for environmental pollution control (states) and local facility contacts who provide documentation to the states (facilities).

No confidential information is used, nor is sensitive information protected from release under the Public Information Act. The EPA achieves national consistency in the final results through the application of uniform guidelines and validation techniques.

Form numbers: None.

Respondents/affected entities: States, Territories, and Facilities.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 56 States and Territories, 6,684 Facilities (per year).

Frequency of response: Every 4 years.

Total estimated burden: 13,342 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $799,208 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is an increase of 3,698 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is based upon an increase in facility universe. The prior ICR estimated that states would submit only half of their facilities (16,048). The majority of the states submitted most of their facilities in 2022 (30,881), almost doubling the estimated facility universe.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–23683 Filed 10–11–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12316–01–OA]

Local Government Advisory Committee: Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Local Government Advisory Committee (LGAC). Qualified nominees for the LGAC hold elected positions with local, tribal, state, or territorial governments, or serve in a full-time government position appointed by an elected official. EPA is seeking up to 12 individuals to serve one- or two-year terms beginning in January 2025. For more information on the LGAC, including member bios, recent meeting summaries and recommendations, visit: *https://www.epa.gov/ocir/local-government-advisory-committee-lgac.* For more details regarding the nomination process, please see information under **SUPPLEMENTARY INFORMATION**.

DATES: To be considered for 2025 appointments, nominations should be submitted by November 14, 2024.

How To Apply: Submit nominations electronically to *LGAC@epa.gov* with a subject heading of 'LGAC 2024 NOMINATION' and complete the form at *https://forms.gle/TB8ehr4iJFWG4kGZ6.*

FOR FURTHER INFORMATION CONTACT: Frank Sylvester, LGAC Designated Federal Officer (DFO) at (202) 564–1279/*sylvester.frank.j@epa.gov* or *LGAC@epa.gov.*

SUPPLEMENTARY INFORMATION:

Qualifications

The Local Government Advisory Committee (LGAC) is chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463, to advise the EPA Administrator on environmental issues impacting local governments. Members of LGAC will provide advice and recommendations on a broad range of issues related to promoting and protecting public health and the environment. For 2025 the topics addressed may include but not be limited to:

- Continued implementation of the Bipartisan Infrastructure Law and Inflation Reduction Act

- Bolstering resilience to the impacts of climate change;
- Developing capacity for technical assistance at the local level;
- Supporting local governments in the assessment and remediation of PFAS chemicals and other emerging contaminants.
- Advancing the EPA's 2022–2026 Strategic Plan

Viable candidates must be current elected officials representing local, state, tribal, or territorial governments or officials who have been appointed directly by a local, state, tribal, or territorial elected official. Preference will be given to qualified candidates who demonstrate experience developing and implementing environmental programs consistent with the 2025 topics listed above. To maintain geographical diversity of the Committee, preference for LGAC membership may also be given to qualified candidates from tribal or territorial governments.

Additional criteria to be considered may include: experience with multi-sector partnerships; coalition-building and grassroots involvement; involvement and leadership in national, state or regional intergovernmental associations; and diversity in vocational/career/volunteer background.

Time Commitment

New LGAC members are appointed for one-year terms and are eligible for reappointment for one- or two-year terms for up to six years. In 2025, the Committee plans to hold two or three full-day, public meetings, where both in-person and online participation options will be available.

In addition to public meetings, workgroups will be created to address the 2025 topics noted above, as well as any emerging issues. Members will be encouraged to serve on one or more workgroups, where they will be asked to share their experiences working on an issue, recommend experts on an issue for the Committee to consult with, debate the nuances of policy implementation, and review written recommendations before they are shared with the full Committee. Applicants should plan to spend an average of three hours per month on Committee work. While EPA is unable to provide compensation for services, official Committee travel and related expenses (lodging, etc.) will be fully reimbursed.

Nominations

Nominations must be submitted in electronic format. To be considered, all nominations should be completed using the application at this link: *https://forms.gle/TB8ehr4iJFWG4kGZ6.*

Other sources, in addition to this **Federal Register** notice, may be utilized in the solicitation of nominees. EPA expressly values diversity, equity, and inclusion, and encourages the nominations of elected and appointed officials from diverse backgrounds so that the LGAC looks like America and reflect the country's rich diversity. Individuals may self-nominate.

Dated: October 8, 2024.

Francis Sylvester,

EPA Designated Federal Officer Local Government Advisory Committee.

[FR Doc. 2024–23763 Filed 10–11–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2024–0087; FRL–12336–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Urban Waters Federal Partnership Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Urban Waters Federal Partnership Program (EPA ICR Number 2801.01, OMB Control Number 2040–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on March 27, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before November 14, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2024–0087, to EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Tara O'Hare, Partnership Programs Branch, Oceans, Wetlands and Communities Division, Office of Wetlands, Oceans and Watersheds, Mail Code 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–8836; fax number: 202–566–1336; email address: *ohare.tara@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on March 27, 2024, during a 60-day comment period (89 FR 21252). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Urban Waters Federal Partnership is a voluntary program created in 2011 that seeks to reconnect urban communities, particularly those that are overburdened or economically distressed, with their waterways to become stewards for clean urban waters. Working with a diverse set of partners, the program seeks to help communities restore and protect water quality and revitalize adjacent rural, suburban, and urban neighborhoods throughout the watershed. As part of its strategic planning efforts, the EPA encourages programs to develop meaningful performance measures, set ambitious targets, and link budget expenditures to results. Data collected under this ICR will assist the Urban Waters Federal Partnership in demonstrating results

and carrying out evaluation efforts to ensure continual program improvement. In addition, the data will help the EPA estimate the environmental and programmatic impact of the program and evaluate the health of the partnership at each location.

Form numbers: Workplan Form 6100–084; Annual Reporting Form 6100–085; Partnership Evaluation Form 6100–083.

Respondents/affected entities: Respondents consist of Urban Waters Federal Partnership Ambassadors and a wide variety of organizations and businesses that partner with Ambassadors at each Urban Waters Federal Partnership designated location.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 2,806 (total).

Frequency of response: Urban Waters Federal Partnership designated locations will submit a Workplan every other year. Urban Waters Federal Partnership designated locations will submit Annual Reporting Forms and Partnership Evaluation Forms each year.

Total estimated burden: 9,600 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $443,946 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the estimates: This is a new collection.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–23684 Filed 10–11–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 252551]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 16, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–XXXX.

Title: Facilitating Implementation of Next Generation 911 Services (NG911).

Form Number: N/A.

Type of Review: New information collection.

Respondents: State, Local, or Tribal Government, and business or other for-profit entities.

Number of Respondents and Responses: 1,543 respondents; 2,840 responses.

Estimated Time per Response: 2–40 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in sections 1, 2, 4(i), 201, 214, 222, 225, 251(e), 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 214, 222, 225, 251(e), 301, 303, 316, 332, and the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, as amended, 47 U.S.C. 615 note, 615, 615a, 615a–1, 615b; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c.

Total Annual Burden: 10,012 hours.

Total Annual Cost: No Cost.

Needs and Uses: In a Report and Order released on July 19, 2024, FCC 24–78, published at 89 FR 78066, September 24, 2024, the Commission adopted rules to advance the nationwide transition to Next Generation 911 (NG911).[1] These rules require wireline providers, Commercial Mobile Radio Service (CMRS) providers, covered text providers, providers of interconnected Voice over Internet Protocol (VoIP) services, and providers of Internet-based Telecommunications Relay Service (internet-based TRS) (collectively, OSPs) to take actions to start or continue the transition to NG911 in coordination with 911 Authorities. Associated with these rules, the Commission seeks OMB approval for notification and recordkeeping requirements applicable to 911 Authorities and OSPs, as described in more detail herein.

Specifically, the rules require OSPs to take steps in two phases to complete all translation and routing to deliver 911 traffic, including associated routing and location information, in the requested IP-based format. These requirements are intended to correspond to and complement the readiness phases for 911 Authorities so that once a 911 Authority is ready to receive NG911 traffic in a specific IP format, the OSP will be required to deliver it in that format. In Phase 1, OSPs will be required to deliver 911 traffic in a basic Session Initiation Protocol (SIP) format to NG911 Delivery Points designated by the 911 Authority in the 911 Authority's State or territory, and complete connectivity testing. In Phase 2, OSPs will be required to deliver 911 traffic in SIP format that complies with NG911 commonly accepted standards to NG911 Delivery Points designated by the 911 Authority in the 911 Authority's State or territory, install and put into operation all necessary equipment, software, and other infrastructure, and complete connectivity testing. For each phase, OSPs must meet certain implementation deadlines. OSPs must bear the financial responsibility for such transmission, including costs associated with completing any needed TDM-to-IP translation and the costs of delivering associated routing and location

[1] The Report and Order was corrected via two errata released on September 5, 2024, and October 1, 2024.

information in the requested IP-based format.

This rulemaking necessitates three information collections. First, under 47 CFR 9.31(a) and (b), 911 Authorities that wish to make Phase 1 or Phase 2 valid requests for delivery of 911 traffic in IP-based formats must provide notification containing certain certifications and information to either serving OPSs or to a registry to be made available by the Commission.

Second, in 47 CFR 9.31(c), OSPs that wish to challenge 911 Authorities' valid requests may submit a petition to the Public Safety and Homeland Security Bureau (PSHSB) within 60 days of the receipt of a Phase 1 or 2 request from a 911 Authority. Such challenge petitions must meet applicable procedural requirements and must be in the form of an affidavit that contains certain supporting information. The affected 911 Authority may file an opposition to the OSP's petition, and parties may file replies to oppositions. Filing parties must serve a copy of the document on the other party at the time of filing.

Third, in 47 CFR 9.34, 911 Authorities and OSPs may enter into voluntary mutual agreements that establish terms different from the Commission's rules. Within 30 days of the date when any such agreement is executed, or subsequently modified or terminated, the participating OSP must notify the Commission and provide information about alternative terms and transition deadlines.

OSPs will use the information collected pursuant to section 9.31(a) and (b) that is submitted by 911 Authorities to trigger their NG911 transition obligations described in section 9.29(a) and (b), respectively, and their NG911 implementation deadlines set forth in section 9.30(a) and (b), respectively. OSPs will receive notifications either directly from 911 Authorities, or from a registry where 911 Authorities may submit notifications. To the extent that 911 Authorities submit their valid request notifications in a registry made available by the Commission pursuant to section 9.31(a)(5) and (b)(6), the Commission will use the information collected pursuant to section 9.31(a) and (b) to monitor the progress of valid requests at each phase of the NG911 transition and to keep track of implementation deadlines associated with each valid request.

PSHSB will use the information collected pursuant to section 9.31 that is submitted by the OSPs in their petitions challenging 911 Authorities' valid requests, as well as information submitted by 911 Authorities who file oppositions to such petitions and information submitted by OSPs who file replies to such oppositions, to determine whether to pause the implementation deadline for that OSP, affirm the request of the 911 Authority as valid, or take other action as necessary. The requirements should simplify the enforcement and complaint process for both OSPs and 911 Authorities regarding OSPs' implementation deadlines.

In addition, the information collected pursuant to section 9.34(a) and (b) provides the Commission with awareness of any changes to the obligations of OSPs under the rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–23650 Filed 10–11–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0508; FR ID 252784]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 16, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0508.

Title: Parts 1 and 22 Reporting and Recordkeeping Requirements.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Individuals or households, and State, Local or Tribal Governments.

Number of Respondents and Responses: 15,448 respondents; 16,166 responses.

Estimated Time per Response: 0.13 hours–10 hours.

Frequency of Response: Recordkeeping requirement; On occasion, quarterly, and semi-annual reporting requirements; Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 222, 303, 309 and 332.

Total Annual Burden: 2,579 hours.

Annual Cost Burden: $19,116,900.

Needs and Uses: On August 16, 2013, the Federal Communications Commission (Commission) released a Third Report and Order (FCC 13–115) in MM Docket No. 93–177 to harmonize and streamline its rules regarding tower construction near AM stations. The reforms included establishing a single protection scheme for tower construction and modification near AM tower arrays. The Commission's rules previously contained several sections in different rule parts that addressed tower construction near AM antennas and were intended to protect AM stations from the effects of such tower construction, including (among others not relevant here), 47 CFR 22.371. With adoption of this Order, 47 CFR 22.371 was removed and was replaced by a

new rule, 47 CFR 1.30002, which is not covered by this Supporting Statement.

On November 10, 2014, the Commission released a Report and Order and Further Notice of Proposed Rulemaking (FCC 14–181) in WT Docket No. 12–40 to reform its rules governing the 800 MHz Cellular Radiotelephone (Cellular) Service. In the Report and Order (Cellular R&O), the Commission changed the Cellular licensing model from site-based to geographic-based. The revised Cellular Service licensing model entailed eliminating several filing requirements that had outlived their usefulness in this mature commercial wireless service that was launched in the early 1980s; it also streamlined application content requirements, and deleted obsolete provisions associated with the legacy site-based regime.

Subsequently, on March 24, 2017, the Commission released a Second Report and Order in that same docket (Cellular Second R&O), together with a companion Report and Order in WT Docket No. 10–112 concerning the Wireless Radio Services (WRS), which include the Cellular Service among others (WRS R&O) (FCC 17–27). The Cellular Second R&O and WRS R&O revised or eliminated certain licensing rules and modernized outdated radiated power and other technical rules applicable to the Cellular Service. As part of FCC 17–27, the Commission also released a Second Further Notice of Proposed Rulemaking in which it sought comment on deleting certain recordkeeping and administrative rules applicable to the Public Mobile Services (including the Cellular Service), which are governed by Part 22 of the Commission's rules.

On July 13, 2018, the Commission released a Third report and Order in the Cellular Reform proceeding (Cellular 3d R&O) (FCC 18–92), in which it deleted certain Part 22 rules that either imposed administrative and recordkeeping burdens that are outdated and no longer serve the public interest, or that are largely duplicative of later-adopted rules and are thus no longer necessary. Among the rule deletions and of relevance to this information collection, the Commission deleted rule section 22.303, resulting in discontinued information collection for that rule section.

The Commission is now seeking approval from the Office of Management and Budget (OMB) for a three year extension of this information collection.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–23709 Filed 10–11–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

TIME AND DATE: October 22, 2024; 1:00 p.m.

PLACE: The meeting will be held at the Surface Transportation Board at the address below and also streamed live on the Federal Maritime Commission's YouTube channel.

Surface Transportation Board, 395 E Street SW, Room #1042 (Hearing Room), Washington, DC 20423

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The meeting will be held on October 22, 2024, beginning at 1:00 p.m. in the Hearing Room of the Surface Transportation Board and the public portion of the meeting will be streamed live on the Federal Maritime Commission's YouTube channel. Any person wishing to attend the public portion of the meeting in-person should report to Surface Transportation Board with enough time to clear building security procedures. If technical issues prevent the Commission from streaming live, the Commission will post a recording of the public portion of the meeting on the Commission's YouTube channel following the meeting.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC:

1. Update on Enforcement
2. Update on Status of Ocean Shipping Reform Act of 2022—Charge Complaints
3. Update on Federal Maritime Commission Information Technology

PORTIONS CLOSED TO THE PUBLIC:

1. Internal Portion—Update on Enforcement
2. Internal Portion—Update on Status of Ocean Shipping Reform Act of 2022—Charge Complaints
3. Internal Portion—Update on Federal Maritime Commission Information Technology

CONTACT PERSON FOR MORE INFORMATION: David Eng, Secretary, (202) 523–5725.

David Eng,

Secretary, Federal Maritime Commission.

[FR Doc. 2024–23891 Filed 10–10–24; 4:15 pm]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 14, 2024.

A. Federal Reserve Bank of Cleveland (Nadine M. Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *SB Financial Group, Inc., Defiance, Ohio;* to acquire Marblehead Bancorp, and thereby indirectly acquire The Marblehead Bank, both of Marblehead, Ohio.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–23784 Filed 10–11–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: October 22, 2024 at 10 a.m. eastern daylight time (EDT).

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 828 801 968 #; or via web: *https://www.frtib.gov/.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION: BOARD MEETING AGENDA.

Open Session

1. Approval of the September 24, 2024, Board Meeting Minutes
2. Monthly Reports
   (a) Participant Report
   (b) Legislative Report
3. Quarterly Reports
   (c) Investment Review
   (d) Audit Status
   (e) Budget Review
4. Internal Audit Update
5. OEA Annual Presentation
6. Social Science Update

Closed Session

7. Information covered under 5 U.S.C. 552b(c)(6), (c)(9)(B), and (c)(10).

Authority: 5 U.S.C. 552b(e)(1).

Dated: October 9, 2024.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–23779 Filed 10–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–855B, CMS–R–48 and CMS–10239]

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 November 14, 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:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Medicare Enrollment Application for Clinics/Group Practices and Other Suppliers; *Use:* Various sections of the Act, the United States Code (U.S.C.), Internal Revenue Service (IRS) Code, and the CFR require providers and suppliers to furnish information concerning the amounts due and the identification of individuals or entities that furnish medical services to beneficiaries before payment can be made. The Form CMS–855B application is submitted when the applicant first requests Medicare enrollment. The application is used by the MACs to collect data to ensure the applicant has the necessary credentials to provide the health care services for which they intend to bill Medicare; this includes data that allows the Medicare contractor to correctly price, process, and pay the applicant's claims. It also gathers information that enables MACs to ensure that the supplier is neither excluded from the Medicare program nor debarred, suspended, or excluded from any other Federal agency or program. The application is also used by enrolled suppliers when they are reporting a change in their ownership, a change in their current Medicare enrollment information, or are revalidating or reactivating their Medicare enrollment. *Form Number:* CMS–855B (OMB control number: 0938–1377); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profits, and Not-for Profits; *Number of Respondents:* 132,800; *Number of Responses*: 132,800; *Total Annual Hours:* 155,884. (For questions regarding this collection, contact Frank Whalen at 410–786–1302 or *Frank.Whelan@cms.hhs.gov.*)

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Hospital Conditions of Participation (CoPs) and Supporting Regulations; *Use:* The purpose of this package is to request from the Office of Management and Budget (OMB) approval of the

reinstatement with change of the information collection request associated with OMB control number: 0938–0328.

The information collection requirements described herein are needed to implement the Medicare and Medicaid Conditions of Participation (CoPs) for a total of 5,132 facilities that includes: 4,994 accredited and non-accredited hospitals and 138 Critical Access Hospitals (CAHs) with Distinct Part Units (DPUs); specifically, 119 CAHs with psychiatric DPUs and 19 CAHs with rehabilitation DPUs. The information collection requirements for the 1,245 CAHs without DPUs (1,383 total CAHs less 138 CAHs with DPUs) are covered under OMB control number: 0938–1043 (CMS–10239).

As previous stated, this notice is related to a reinstatement of the information collection request that expired on 11/30/2017. The previous iteration of this OMB control number 0938–0328 (approved November 14, 2014) had a burden of 14,424,655 annual hours. For this requested reinstatement, with changes, the adjusted annual hourly burden for industry is 3,566,521 hours at an annual cost of $310,989,894. The decrease in burden hours is primarily due to the fact that many of the information collections that were previously required as CoPs by CMS are now customary and usual industry practice and would take place in the absence of the Medicare and Medicaid programs. In addition, where possible, CMS reduced the burden of CoPs with prior information collections. For example, the burden for individual hospitals that are part of a multi-hospital system was reduced by allowing a multi-hospital system, which represent approximately 70% of hospitals today, to develop a unified Quality Assessment and Performance Improvement (QAPI) program rather than requiring each hospital in the system to maintain separate programs and reporting requirements.

This reinstatement also reflects a change in how the annual burden costs for information collection requirements for Hospital CoPs are calculated. In prior submissions, the fully loaded wage estimates applied only an additional 33% to the hourly wage to account for fringe benefits. This reinstatement applies an additional 100% to the median hourly wage to reflect the costs more accurately to hospitals for compliance with the current CoPs.

Additional changes reflected in this reinstatement are some of the information collections were placed on participating hospitals as CoPs during the recent COVID–19 Public Health Emergency (PHE), specifically regarding collecting and reporting data on incidents and hospital management of infection diseases. The burden of many of these information collections were accounted for in other OMB submissions, such as the ''Unified Hospital Data Surveillance System (U.S. Healthcare COVID–19 Collection'' (OMB control number 0990–0478), and some of these collections ended or were revised after HHS declared the end of the COVID–19 PHE in April 2024. As a result, this reinstatement does not include information collection requirements that have expired, and only includes the annual burden and costs to participating hospitals and CAHs with DPUs for information collections that have remained as CoPs after the COVID–19 PHE ended. In addition, in anticipation of an upcoming final rule titled ''Medicare and Medicaid Programs and the Children's Health Insurance Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2025 Rates; Quality Programs Requirements; and Other Policy Changes,'' this package includes burden estimates for additional information collection requirements that CMS is adding as CoPs in the interest of public health and ensuring resiliency in the U.S. health care system. The aforementioned final rule, CMS–1808–F (RIN 0938–AV34), is currently on public display at the Office of the Federal Register and scheduled for publication on August 28, 2024.

Finally, this reinstatement incorporates additional information collection requirements associated with a number of new CoPs for hospitals and CAHs regarding obstetrical services which are outlined in detail in the July 2024 proposed rule titled ''Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs, Including the Hospital Inpatient Quality Reporting Program; Health and Safety Standards for Obstetrical Services in Hospitals and Critical Access Hospitals; Prior Authorization; Requests for Information; Medicaid and CHIP Continuous Eligibility; Medicaid Clinic Services Four Walls Exceptions; Individuals Currently or Formerly in Custody of Penal Authorities; Revision to Medicare Special Enrollment Period for Formerly Incarcerated Individuals; and All-Inclusive Rate Add-On Payment for High-Cost Drugs Provided by Indian Health Service and Tribal Facilities'' (89 FR 59186). *Form Number:* CMS–R–48 (OMB control number: 0938–0328); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profit); *Number of Respondents:* 4,664; *Total Annual Responses:* 2,647,647; *Total Annual Hours:* 3,566,521 (For policy questions regarding this collection contact Claudia Molinar at 410–786–8445).

3. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Conditions of Participation for Critical Access Hospitals (CAH) and Supporting Regulations; *Use:* The purpose of this package is to request from the Office of Management and Budget (OMB) the approval to reinstate, with changes, the information collection request, associated with OMB Control Number 0938–1043, titled ''Critical Access Hospital (CAH) Conditions of Participation (CoPs) and Supporting Regulations.''

Sections 1820 and 1861(mm) of the Social Security Act provide that CAHs participating Medicare meet certain specified requirements. The regulations containing the information collection requirements are located at 42 CFR part 485, subpart F. These regulations implement sections 1102, 1138, 1814(a)(8), 1820(a–f), 1861(mm), 1864, and 1871 of the Act.

This is a reinstatement of the information collection request that expired on March 31, 2024. The previous iteration of this OMB No. 0938–1043 (approved March 25, 2021) had a burden of 33,905 annual hours. For this requested reinstatement, with changes, the estimated total annual burden hours for the industry is 898,332 hours and the estimated annual burden costs are $74,020,673.

The increase in burden hours from the prior package is primarily due to new information collections associated with new CoPs for CAHs outlined in the two CMS rules referenced below. The new CoPs include multiple information collection requirements that are one-time burdens for developing new policies and protocols and ongoing reporting requirements, such as daily or biweekly reporting of respiratory illnesses as well as maternal deaths. The reasons for the increased information collections are discussed in more detail in the rules and are summarized in the information collection request.

(1) Obstetrical services included in the proposed rule, Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs, Including

the Hospital Inpatient Quality Reporting Program; Health and Safety Standards for Obstetrical Services in Hospitals and Critical Access Hospitals; Prior Authorization; Requests for Information; Medicaid and CHIP Continuous Eligibility; Medicaid Clinic Services Four Walls Exceptions; Individuals Currently or Formerly in Custody of Penal Authorities; Revision to Medicare Special Enrollment Period for Formerly Incarcerated Individuals; and All-Inclusive Rate Add-On Payment for High-Cost Drugs Provided by Indian Health Service and Tribal Facilities, 89 FR 59186 (July 22, 2024) (hereinafter referred to as the ''July 2024 Proposed Rule'').

(2) Reporting of acute respiratory illnesses in the interest of public health and ensuring resiliency in the U.S. health care system included in the Final rule: Medicare and Medicaid Programs and the Children's Health Insurance Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2025 Rates; Quality Programs Requirements; and Other Policy Changes. The aforementioned final rule, CMS–1808–F (RIN 0938–AV34), is currently on display at the Office of the Federal Register and scheduled for publication on August 28, 2024 (hereinafter referred to as the ''August 2024 Final Rule'').

The change in total burden hours is also due to prior information collection requests are exempt from the PRA because the requirements are customary and usual industry practice and would take place in the absence of the Medicare and Medicaid programs. *Form Number:* CMS–10239 (OMB control number: 0938–1043); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profit); *Number of Respondents:* 1,245; *Total Annual Responses:* 9,145; *Total Annual Hours:* 898,332 (For policy questions regarding this collection contact Claudia Molinar at 410–786–8445).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–23737 Filed 10–11–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher; KISQALI (ribociclib)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that the supplemental application for KISQALI (ribociclib), approved September 17, 2024, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: *Cathryn.Lee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that the supplemental application (Supplement-18) for KISQALI (ribociclib) meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about KISQALI (ribociclib), go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: October 8, 2024.

Eric Flamm,

Acting Associate Commissioner for Policy.

[FR Doc. 2024–23651 Filed 10–11–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–4095]

Using Relative Supersaturation To Support 'Urinary Tract Health' Claims for Adult Maintenance Cat Food; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry #284 entitled ''Using Relative Supersaturation To Support 'Urinary Tract Health' Claims for Adult Maintenance Cat Food.'' FDA's Center for Veterinary Medicine (CVM) has evaluated the use of relative supersaturation (RSS) methodology to support urinary tract health claims for certain adult maintenance cat food. RSS is a measurement that estimates the potential for crystal formation and bladder stone growth, which is a common affliction in cats. This guidance provides recommendations for how pet food manufacturers can use RSS methodology to substantiate general structure or function claims that an adult maintenance cat food supports urinary tract health by promoting a healthy mineral content in the urinary tract.

DATES: The announcement of the guidance is published in the **Federal Register** on October 15, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–4095 for ''Using Relative Supersaturation To Support 'Urinary Tract Health' Claims for Adult Maintenance Cat Food.'' 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, 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 guidance document.

FOR FURTHER INFORMATION CONTACT: Karen Donnelly, Center for Veterinary Medicine, Food and Drug Administration, 12225 Wilkins Ave., Rockville, MD 20852, 240–402–9802, *karen.donnelly2@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 30, 2023 (88 FR 83552), FDA published the notice of availability for a draft guidance entitled ''Using Relative Supersaturation To Support 'Urinary Tract Health' Claims for Adult Maintenance Cat Food,'' giving interested persons until February 28, 2024, to comment on the draft guidance. FDA received four comment submissions from industry and industry associations, with multiple comments each on the draft guidance. Comments include requests for more clarity in the recommended study design and parameters, more opportunity to develop studies in consultation with FDA, shorter mechanism of action statement for the label, and questions on the length of recommended studies. These comments were considered as the guidance was finalized. A summary of changes includes: We clarified the language describing the recommended minimum 40-day study for utility and safety, we removed the recommendation to keep animals on a study for up to 26 weeks while we review the submitted data, we shortened the recommended mechanism of action statement for the label and added language indicating that other versions may also be acceptable, we added clarifying language about the target values for demonstrating utility, and we removed conjugated bilirubin from the recommended analytes included in a serum chemistry panel as being redundant if total bilirubin is measured. In addition, editorial changes were made to improve clarity, including creating new headings for the ''Combined Safety and Utility Study'' and ''Other Considerations'' sections instead of having them under the ''Target Animal Safety'' heading. The guidance announced in this notice finalizes the draft guidance dated November 30, 2023.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Using Relative Supersaturation To Support 'Urinary Tract Health' Claims for Adult Maintenance Cat Food.'' 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

FDA concludes that this final guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 4, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–23706 Filed 10–11–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–4409]

Endosseous Dental Implants and Endosseous Dental Implant Abutments—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Endosseous Dental Implants and Endosseous Dental Implant Abutments—Performance Criteria for Safety and Performance Based Pathway.'' The device-specific guidance identified in this notice was developed in accordance with the finalized guidance entitled ''Safety and Performance Based Pathway.'' This guidance has been implemented without prior comment, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on October 15, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–D–4409 for ''Endosseous Dental Implants and Endosseous Dental Implant Abutments—Performance Criteria for Safety and Performance Based Pathway.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Endosseous Dental Implants and Endosseous Dental Implant Abutments—Performance Criteria for Safety and Performance Based Pathway'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jason Ryans, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD 20993–0002, 301–796–4908.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency is announcing the availability of the final guidance document ''Endosseous Dental Implants and Endosseous Dental Implant Abutments—Performance Criteria for Safety and Performance Based Pathway.'' This device-specific guidance document provides performance criteria for premarket notification (510(k)) submissions to support the optional Safety and Performance Based Pathway, as described in the guidance entitled ''Safety and Performance Based Pathway.'' [1] As described in that guidance, substantial equivalence is rooted in comparisons between new devices and predicate devices. However, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) does not preclude FDA from using performance

[1] Available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/safety-and-performance-based-pathway.*

criteria to facilitate this comparison. If a legally marketed device performs at certain levels relevant to its safety and effectiveness, and a new device meets those levels of performance for the same characteristics, FDA could find the new device as safe and effective as the legally marketed device. Instead of reviewing data from direct comparison testing between the two devices, FDA could support a finding of substantial equivalence with data demonstrating the new device meets the level of performance of an appropriate predicate device(s). Under this optional Safety and Performance Based Pathway, a submitter of an endosseous implant and endosseous implant abutment device could satisfy the requirement to compare its device with a legally marketed device by, among other things, independently demonstrating that the device's performance meets performance criteria as established in the relevant above-listed guidance rather than using direct predicate comparison testing for some of the performance characteristics.

This guidance is being implemented without prior public comment because FDA has determined that prior public participation for this guidance is not feasible or appropriate (see section 701(h)(1)(C) of the FD&C Act (21 U.S.C. 371(h)(1)(C)) and 21 CFR 10.115(g)(2)). FDA has determined that this guidance document presents a less burdensome policy that is consistent with public health. Although this policy is being implemented immediately without prior comment, it remains subject to comment in accordance with FDA's good guidance practices regulation (21 CFR 10.115(g)(3)(D)). FDA will consider all comments received and revise the guidance document as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Endosseous Dental Implants and Endosseous Dental Implant Abutments—Performance Criteria for Safety and Performance Based Pathway. 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. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products*. This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*. Persons unable to download an electronic copy of ''Endosseous Dental Implants and Endosseous Dental Implant Abutments—Performance Criteria for Safety and Performance Based Pathway'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00021017 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new 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 (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part; guidance; or FDA form	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions and Early Payor Feedback Request Programs for Medical Devices.	0910–0756

Dated: October 4, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–23716 Filed 10–11–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product; MIPLYFFA (Arimoclomol)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that MIPLYFFA (arimoclomol), approved on September 20, 2024, manufactured by Zevra Denmark AS, meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that MIPLYFFA (arimoclomol), manufactured by Zevra Denmark AS, meets the criteria for a priority review voucher. MIPLYFFA (arimoclomol) is indicated for the treatment of adults and pediatric patients 2 years of age and older with Niemann-Pick disease type C.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm*. For further information about MIPLYFFA (arimoclomol), go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/*.

Dated: October 8, 2024.

Eric Flamm,

Acting Associate Commissioner for Policy.

[FR Doc. 2024–23646 Filed 10–11–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0335]

Revocation of Emergency Use of a Biological Product During the COVID–19 Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Janssen Biotech, Inc. (Janssen), for the Janssen COVID–19 Vaccine. FDA revoked the Authorization on June 1, 2023, under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocation, which includes an explanation of the reasons for the revocation, is reprinted in this document.

DATES: The Authorization is revoked as of June 1, 2023.

ADDRESSES: Submit written requests for a single copy of the revocation 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 request or include a Fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On February 27, 2021, FDA issued an Authorization (EUA 27205) to Janssen for the Janssen COVID–19 Vaccine, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on May 27, 2021 (86 FR 28608), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorization were made available on FDA's website. The authorization of a biological product for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Request

In a request received by FDA on May 22, 2023, Janssen requested withdrawal of, and on June 1, 2023, FDA revoked, the Authorization for the Janssen COVID–19 Vaccine. Janssen notified FDA that the last lots of the Janssen COVID–19 Vaccine purchased by the U.S. Government have expired, that there is no demand for new lots of the Janssen COVID–19 Vaccine in the United States, and that it does not intend to update the strain composition of this vaccine to address emerging variants. Based on FDA's understanding that Janssen does not intend to offer the Janssen COVID–19 Vaccine in the United States under the EUA anymore and Janssen's request that FDA revoke the EUA for the Janssen COVID–19 Vaccine, FDA has determined that it is appropriate to revoke this Authorization to protect the public health or safety.

III. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA for the Janssen COVID–19 Vaccine. Although FDA revoked the Authorization for the Janssen COVID–19 Vaccine on June 1, 2023, as was publicly announced on the Agency's website, publication of notice of this revocation in the **Federal Register** was inadvertently delayed. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

IV. Electronic Access

An electronic version of this document and the full text of the Authorizations and revocation are available on the internet at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

June 1, 2023

Janssen Biotech, Inc.
Attention: Ms. Ruta Walawalkar
920 Route 202
Raritan, NJ 08869

Re: Revocation of EUA 27205 - Janssen COVID-19 Vaccine

Dear Ms. Walawalkar:

This letter is in response to the request from Janssen Biotech, Inc. received on May 22, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the Janssen COVID-19 Vaccine issued on February 27, 2021, as subsequently amended. Janssen Biotech, Inc has informed the FDA that the last lots of the Janssen COVID-19 Vaccine purchased by the United States Government have expired, that there is no demand for new lots of the Janssen COVID-19 Vaccine in the United States, and that Janssen Biotech, Inc does not intend to update the strain composition of this vaccine to address emerging variants.

The authorization of a biological product for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because FDA understands that Janssen Biotech, Inc. no longer intends to offer the Janssen COVID-19 Vaccine in the United States under the EUA and because Janssen Biotech, Inc. has requested that FDA withdraw the EUA for the Janssen COVID-19 Vaccine, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization.

Accordingly, FDA hereby revokes EUA 27205 for the Janssen COVID-19 Vaccine, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Janssen COVID-19 Vaccine is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the Federal Register, pursuant to section 564(h)(1) of the Act.

Sincerely,

Peter W. Marks -S

Digitally signed by Peter W. Marks -S
Date: 2023.06.01 14:08:52 -04'00'

Peter Marks, M.D, Ph.D.
Director
Center for Biologics Evaluation and Research

Dated: September 27, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–23637 Filed 10–11–24; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product; AQNEURSA (Levacetylleucine)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that AQNEURSA (levacetylleucine), approved on September 24, 2024, manufactured by IntraBio Inc., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that AQNEURSA (levacetylleucine), manufactured by IntraBio Inc., meets the criteria for a priority review voucher. AQNEURSA (levacetylleucine) is indicated for the treatment of neurological manifestations of Niemann-Pick disease type C in adults and pediatric patients weighing ≥15 kg.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseases Conditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about AQNEURSA (levacetylleucine), go to the ''Drugs@FDA'' website at *http://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: October 8, 2024.

Eric Flamm,

Acting Associate Commissioner for Policy.

[FR Doc. 2024–23712 Filed 10–11–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 89 FR 19832 dated March 20, 2024) to reorganize sections of the Maternal and Child Health Bureau (MCHB).

This reorganization updates and/or realigns functions, including delegations of authority for MCHB (RM).

Chapter RM—Maternal and Child Health Bureau (RM)

Section RM.10 Organization

Establish the Office of Strategy, Innovation, and External Affairs and the Division of Women's Health.

Following this realignment, MCHB includes the following components:

- Office of the Associate Administrator (RM),
- Office of Policy and Planning (RMA),
- Office of Strategy, Innovation, and External Affairs (RMB),
- Office of Operations and Management (RM1),
- Division of Services for Children with Special Health Needs (RM2),
- Division of Child, Adolescent, and Family (RM3),
- Division of Maternal and Child Health Workforce Development (RM4),
- Division of Healthy Start and Perinatal Services (RM5),
- Division of State and Community Health (RM6),
- Division of Home Visiting and Early Childhood Systems (RM8),
- Office of Epidemiology and Research (RM9), and
- Division of Women's Health (RMC).

Section RM.20 Function

Update the functional statements for the Office of the Associate Administrator, Office of Policy and Planning, Division of Healthy Start and Perinatal Services, and Division of Home Visiting and Early Childhood Systems and add the functional statement for the Office of Strategy, Innovation, and External Affairs and Division of Women's Health:

Office of the Associate Administrator (RM)

The Office of the Associate Administrator provides national leadership and policy direction for MCHB programs. These programs are designed to improve the health of women of childbearing age, infants, children, adolescents and their families, children with special health needs, and persons with hemophilia. Specifically, the Office: (1) coordinates the planning, development, implementation, and evaluation of MCHB's programs and activities; (2) facilitates effective, collaborative relationships with other health and related programs; (3) establishes program mission, goals, objectives, and policy with broad Administration guidelines; (4) arranges and provides technical assistance to ensure that grantees meet program expectations; (5) serves as principal contact point across HRSA, HHS, and other agencies on matters concerning the health status of America's mothers and children; and (6) provides information and reports on MCHB's programs to Congress, other federal agencies, the public, and other stakeholders.

Office of Policy and Planning (RMA)

The Office of Policy and Planning serves as MCHB's focal point for the development of MCHB policy and program planning. Specifically, the Office: (1) supports the Office of the Associate Administrator in identifying, planning, and implementing policy and program priorities across MCHB; (2) advises and assists in the development, coordination, and management of program and policy documents and responses to departmental and HRSA initiatives; and (3) coordinates with other components within HRSA, HHS, federal agencies, state and local governments, and other public and private organizations on issues affecting MCHB programs and policies.

Office of Strategy, Innovation, and External Affairs (RMB)

The Office of Strategy, Innovation, and External Affairs serves as MCHB's focal point for strategic planning,

communications, external engagement, and program development. Specifically, the Office works closely with the Office of the Associate Administrator to develop strategic plans, facilitate program alignment, and support special initiatives.

Division of Healthy Start and Perinatal Services (RM5)

The Division of Healthy Start and Perinatal Services provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focused on maternal, infant, family, and women's health for targeted populations, especially for those at high-risk for poor health and health outcomes. Specifically, the Division: (1) administers local, state, and national programs on perinatal and women's health, with an emphasis on infant mortality reduction and eliminating disparities in infant, maternal, and women's health outcomes before and after pregnancy; (2) develops policy and provides technical assistance, national resource development and dissemination, and workforce development to address national trends in maternal, infant, family, and women's health status and gaps in evidence-based healthcare services for these populations as well as Division programs; (3) administers funds and other resources for grants, contracts, and cooperative agreements; (4) coordinates with MCHB, agency, departmental, and intradepartmental initiatives in promoting the Division's program objectives and the mission of MCHB; (5) coordinates the Advisory Committee on Infant and Maternal Mortality; (6) liaises with public, private, professional, and non-governmental organizations for Division programs; (7) disseminates information on Division programs to local, state, and national audiences; (8) participates in strategic and policy planning, health services research and evaluation, regulatory activities, and fiscal strategic planning, administration, and analysis relating to Division programs; and (9) provides technical assistance and support to central and regional office staff of MCHB, HRSA, HHS, and other federal agencies.

Division of Home Visiting and Early Childhood Systems (RM8)

The Division of Home Visiting and Early Childhood Systems plans, develops, implements, oversees, monitors, and evaluates national programs, including the Maternal, Infant, and Early Childhood Home Visiting Program and a portfolio of early childhood systems programs. Specifically, the Division: (1) provides leadership and coordination of federal, regional, state, local, and non-governmental efforts to promote the health and well-being of pregnant women, infants, young children and their families; (2) develops, analyzes, and/or disseminates policies, standards, guidelines, research, and evaluation information for the various Division programs; (3) establishes and maintains cooperative relationships within HRSA, with other federal agencies, and with other relevant public and private organizations to implement programs to improve maternal and child health outcomes, develop and improve comprehensive coordinated early childhood systems, conduct research and evaluation, and advance educational and training programs for the early childhood workforce; (4) administers and manages a program of interagency agreements, cooperative agreements, grants, and contracts that will enhance service delivery and systems building; and (5) provides technical assistance and engagement to state and local health personnel, other federal agencies, and other stakeholders on maternal health, early childhood health and development, and comprehensive and coordinated systems of care.

Division of Women's Health (RMC)

The Division of Women's Health provides national leadership in policy, planning, programming, outreach, and education to improve the health, wellness, and safety of women across the lifespan. Specifically the Division: (1) provides leadership, technical assistance, and support to improve health outcomes for women; (2) engages with health professionals and other stakeholders to identify and disseminate the latest evidence and best practices in women's health; (3) establishes short-range and long-range goals, plans, leads, and administers activities that improve women's health; (4) enhances the health care infrastructure and service delivery system by supporting innovative programs throughout the lifespan for women as well as for children and families; and (5) works to improve prevention, early identification, treatment, and referral for health services for women and their families.

Section RM.30 Delegation of Authority

All delegations of authority and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, if allowed, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

(Authority: 44 U.S.C. 3101)

Carole Johnson,

Administrator.

[FR Doc. 2024–23783 Filed 10–11–24; 8:45 am]

BILLING CODE 4165–15–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 Bret Rutherford, M.D. (Respondent), who was formerly a Research Psychiatrist, New York State Psychiatric Institute (NYSPI). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grants R01 MH102293 and R61/R33 MH110029. The administrative actions, including debarment for a period of three (3) years followed by supervision for a period of three (3) years, were implemented beginning on September 27, 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:

Bret Rutherford, M.D., New York State Psychiatric Institute (NYSPI): Based on the report of an investigation conducted by NYSPI and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Bret Rutherford (Respondent), former Research Psychiatrist, NYSPI, engaged in research misconduct in research supported by PHS funds, specifically, NIMH, NIH, grants R01 MH102293 and R61/R33 MH110029.

ORI found that Respondent engaged in research misconduct by recklessly falsely reporting that all human research subjects met the inclusion/exclusion criteria for late-life depression studies in five (5) published papers, thus affecting the reported clinical research methods and results including demographics,

gait speed, Positron Emission Tomography (PET) scan brain activities, depression scores, Magnetic Resonance Imaging (MRI) brain volumes, neuromelanin MRI contrast values, cognition tests, diffusion brain imaging data, and other neurocognitive assessments and conclusions in five (5) published papers:

• Effects of L–DOPA Monotherapy on Psychomotor Speed and [^{11}C]Raclopride Binding in High Risk Older Adults With Depression. *Biol. Psychiatry* 2019 Aug 1;86(3):221–229. doi: 10.1016/j.biopsych.2019.04.007 (hereafter referred to as ''*Biol. Psychiatry* 2019''). Retraction in: *Biol. Psychiatry* 2023 Feb 15;93(4):382. doi: 10.1016/j.biopsych.2022.12.007.

• Neuroanatomical predictors of L–DOPA response in older adults with psychomotor slowing and depression: A pilot study. *J. Affect. Disord.* 2020 Mar 15;265:439–444. doi: 10.1016/j.jad.2020.01.066 (hereafter referred to as ''*J. Affect. Disord.* 2020''). Retraction in: *J. Affect. Disord.* 2023 Jun 1;330:369. doi: 10.1016/j.jad.2023.03.021.

• Association between neuromelanin-sensitive MRI signal and psychomotor slowing in late-life depression. *Neuropsychopharmacology* 2021 Jun;46(7):1233–1239. doi: 10.1038/s41386–020–00860–z (hereafter referred to as ''*Neuropsychopharmacology* 2021''). Retraction in: *Neuropsychopharmacology* 2024 Jun;49(7):1202. doi: 10.1038/s41386–024–01851–0.

• Slowed Processing Speed Disrupts Patient Expectancy in Late Life Depression. *Am. J. Geriatr. Psychiatry* 2021 Ju1;29(7):619–630. doi: 10.1016/j.jagp.2020.11.001 (hereafter referred to as ''*Am. J. Geriatr. Psychiatry* 2021a''). Erratum in: *Am. J. Geriatr. Psychiatry* 2023 Jan;31(1):78–79. doi: 10.1016/j.jagp.2022.09.006.

• Association of White Matter Integrity With Executive Function and Antidepressant Treatment Outcome in Patients With Late-Life Depression. *Am. J. Geriatr. Psychiatry* 2021 Dec;29(12):1188–1198. doi: 10.1016/j.jagp.2021.01.004 (hereafter referred to as ''*Am. J. Geriatr. Psychiatry* 2021b''). Erratum in: *Am. J. Geriatr. Psychiatry* 2023 Jan;31(1):76–77. doi: 10.1016/j.jagp.2022.09.007.

Specifically, ORI found that Respondent recklessly:

• falsely reported that all subjects met the studies' inclusion/exclusion criteria by not having taken exclusionary medications at time of study enrollment for as many as forty-five (45) subjects, by reporting eligibility of subjects who had taken exclusionary medications during a 28-day washout period prior to enrollment for as many as fifteen (15) subjects and by reporting full medication washout periods for as many as eight (8) subjects who received shorter washout periods than 28-days. Specifically, in:

—*Biol. Psychiatry* 2019, the Methods and Materials section falsely reported that all subjects met the protocol's inclusion/exclusion criteria when the medication status of fifteen (15) of the forty-seven (47) subjects failed to meet the exclusion criteria of current treatment or treatment within the last 4 weeks with psychotropic or other medications known to affect dopamine

—*J. Affect. Disord.* 2020, the Methods and Materials and Results sections falsely reported that all subjects met the protocol's inclusion/exclusion criteria when the medication status of a subset of subjects failed to meet the exclusion criteria of within the past 4 weeks treatment with psychotropic or other medications known to affect dopamine

—*Neuropsychopharmacology* 2021, the Methods and Materials and Results section falsely reported that all subjects met the protocol's inclusion/exclusion criteria when the medication status of a subset of subjects failed to meet the exclusion criteria of being treated within the past 4 weeks with psychotropic or other medications known to affect dopamine

—*Am. J. Geriatr. Psychiatry* 2021a, the Method and Results sections falsely reported that all subjects met the protocol's inclusion/exclusion criteria when the medication status of thirty (30) of the one hundred eight (108) subjects failed to meet the exclusion criteria of current treatment with psychotherapy, antidepressants, antipsychotics, or mood stabilizers

—*Am. J. Geriatr. Psychiatry* 2021b, the Methods and Results sections falsely reported that all subjects met the protocol's inclusion/exclusion criteria when the medication status of eighteen (18) of the seventy-one (71) subjects failed to meet the exclusion criteria of current treatment with psychotherapy, antidepressants, antipsychotics, or mood stabilizers

• falsely reported the research methods in *Biol. Psychiatry* 2019, *J. Affect. Disord.* 2020, *Neuropsychopharmacology* 2021, *Am. J. Geriatr. Psychiatry* 2021a, and *Am. J. Geriatr. Psychiatry* 2021b by omitting the medication taper administered to as many as forty (40) subjects after study enrollment

Respondent entered into a Voluntary Exclusion Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent will exclude himself voluntarily for a period of three (3) years beginning on September 27, 2024 (the ''Exclusion Period'') from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement or procurement transactions referred to as ''covered transactions'' in 2 CFR parts 180 and 376 (collectively the ''Debarment Regulations''). At the conclusion of the Exclusion Period, Respondent agrees to have his research supervised for a period of three (3) years (the ''Supervision Period''). During 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) During the Exclusion Period, Respondent will not apply for, permit his name to be used on an application for, receive, or be supported by funds of the United States Government and its agencies made available through contracts, subcontracts, or covered transactions.

(3) During the Supervision Period, the requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution including Respondent's supervisor or collaborators, will provide oversight and guidance. 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.

ii. 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.

(4) 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.

(5) 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.

(6) During the Exclusion and Supervision Periods, 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: October 8, 2024.

Sheila Garrity,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2024–23689 Filed 10–11–24; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The event is free and open to the public, however, registration is required. Please use this link to register: *https://nih.zoomgov.com/webinar/register/WN_DE1zt3OOQqSGZFeVEJS6jw.*

Name of Committee: Sleep Disorders Research Advisory Board.

Date: December 5, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: The purpose of this meeting is to update the Advisory Board and public stakeholders on the research agenda across NIH for the upcoming fiscal year, and the activities of professional societies.

Address: National Institutes of Health, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Bethesda, MD 20892, Virtual Meeting.

Contact Person: Marishka Brown, Ph.D., SDRAB Executive Secretary, Director, National Center on Sleep Disorders Research, National Institutes of Health, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Suite 407B Bethesda, Maryland 20814–7952, 301–435–0199.

Email: *ncsdr@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/sleep-disorders-research,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 9, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23742 Filed 10–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Heart, Lung, and Blood Advisory Council, October 29, 2024, 8 a.m. to October 29, 2024, 5 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on September 30, 2024, 89 FR 79933.

The meeting is cancelled.

Dated: October 9, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23752 Filed 10–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Pathway to Independence Awards (K99/R00).

Date: November 13, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Bethesda, MD 20892–9608, (301) 443–9734, *millerda@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel Innovative Mental Health Services Research.

Date: November 15, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Karin Eyrich Garg, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20892, (301) 793–3050, *karin.garg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 9, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23741 Filed 10–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative Connectivity across Scales (BRAIN CONNECTS): Specialized Projects for Scalable Technologies (U01 Clinical Trial Not Allowed).

Date: November 7, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Bo-Shiun Chen, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *bo-shiun.chen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: October 8, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23685 Filed 10–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: November 13, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W266, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Howard E. Boudreau, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W266, Rockville, Maryland 20850, 240–507–9192, *boudreauh@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Phase IIB Bridge Awards.

Date: November 22, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Business Transition Grant for Early Career Scientists.

Date: December 13, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Cancer Centers Study Section (A).

Date: December 13, 2024.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Caterina Bianco, M.D., Ph.D., Chief, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Rockville, Maryland 20850, 240–276–6459, *biancoc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 8, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23687 Filed 10–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Environmental Health Sciences ESBSC December 1–33, 2024 Meeting.

Date: December 1–3, 2024.

Closed: December 01, 2024, 7:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate discussion of BSC Reviews.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 02, 2024, 8:30 a.m. to 10:00 a.m.

Agenda: Meeting Overview and Q & A Session.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 02, 2024, 10:15 a.m. to 11:55 a.m.

Agenda: Q & A Session.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 02, 2024, 11:55 a.m. to 1:00 p.m.

Agenda: To review and evaluate working Lunch.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 02, 2024, 1:00 p.m. to 1:45 p.m.

Agenda: To review and evaluate 1:1 Sessions with Investigators.

Address: NIEHS, Building 101, Rodbell Auditorium 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 02, 2024, 1:45 p.m. to 3:25 p.m.

Agenda: Q & A Session.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 02, 2024, 3:40 p.m. to 4:10 p.m.

Agenda: To review and evaluate 1:1 Sessions with Investigators.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 03, 2024, 8:30 a.m. to 9:20 a.m.

Agenda: Q & A Sessions.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 03, 2024, 9:20 a.m. to 9:35 a.m.

Agenda: To review and evaluate 1:1 Session with Investigator.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 03, 2024, 9:50 a.m. to 10:40 a.m.

Agenda: To review and evaluate 1:1 Session with Core Managers.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 03, 2024, 10:40 a.m. to 11:30 a.m.

Agenda: Comparative Medicine Branch Summary.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 03, 2024, 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate working Lunch.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 03, 2024, 12:30 p.m. to 2:00 p.m.

Agenda: Poster Session.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 03, 2024, 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate closed Meeting with Fellows, Staff Scientists, Biologists, and Chemists.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 03, 2024, 3:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate BSC Discussion.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 03, 2024, 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate debriefing to NIEHS/DIR Leadership.

Address: NIEHS, Building 101, Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Contact Person: Darryl C. Zeldin, MD.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 9, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23740 Filed 10–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Population Sciences Study Section/ Member Conflict.

Date: November 22, 2024.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Address: Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jagpreet Singh Nanda, Ph.D., Scientific Review Branch, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Rm. 2125D, Bethesda, MD 20892, (301) 451–4454, *jagpreet.nanda@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 8, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23686 Filed 10–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Surgical Towels

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain surgical towels. Based upon the facts presented, CBP has concluded in the final determination that the country of origin of the surgical towels in question is Bangladesh for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 7, 2024. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than November 14, 2024.

FOR FURTHER INFORMATION CONTACT: Marie Durané, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at *marie.durane@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 7, 2024, CBP issued a final determination concerning the country of origin of certain surgical towels for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H339826, was issued at the request of Global Resources International, under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the country of origin of the surgical towels is Bangladesh for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H339826

October 7, 2024

OT:RR:CTF:FTM H339826 MJD

CATEGORY: Origin

Ms. Lisa Murrin, LCB
Senior Consultant, U.S. Trade Advisory Services
Expeditors Tradewin, LLC
795 Jubilee Drive
Peabody, MA 01960

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Surgical Towels

Dear Ms. Murrin:

This is in response to your request, dated April 12, 2024, on behalf of your client, Global Resources International (''GRI''), for a final determination concerning the country of origin of surgical towels, pursuant to Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of Part 177, U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21, *et seq.*). Your request, submitted as an electronic ruling request, was forwarded to this office from the National Commodity Specialist Division. GRI is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a) and is therefore entitled to request this final determination.

Facts

The subject merchandise consists of blue surgical towels made from 100 percent cotton huckaback weave fabric. The imported towels, measuring either 17 x 24 or 17 x 27 inches, may or may not be sterilized, but are autoclaved. The towels are used during surgery for the absorption of fluids. The cotton fabric used to make the towels is from Bangladesh. In Bangladesh, the fabric is woven and dyed blue. Then the fabric is shipped to Vietnam in rolls, where it is cut to size, sewn, autoclaved, packaged, and shipped to the United States. The surgical towels are classified under subheading 6307.90.89, Harmonized Tariff Schedule of the United States (''HTSUS'').

Issue

What is the country of origin of the surgical towels for purposes of U.S. Government procurement?

Law and Analysis

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21–177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511–2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

Emphasis added.

The Secretary of the Treasury's authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19 CFR part 0—Treasury Department Order No. 100–16, 68 FR 28322 (May 23, 2003).

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the

provisions of subpart B of Part 177 consistent with the Federal Procurement Regulation (''FAR''). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The FAR, 48 CFR 25.003, defines ''designated country end product'' as:

a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines ''Least developed country end product'' as an article that:

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

As previously noted, the fabric from Bangladesh is cut to size, sewn, autoclaved, and packaged in Vietnam. Bangladesh is a TAA-designated country, and Vietnam is not.

The information submitted indicates that the surgical towels are made of 100% cotton. GRI also indicates that the goods are classified in subheading 6307.90.89, HTSUS, as a textile product. The rules of origin for textile and apparel products for purposes of the customs laws and the administration of quantitative restrictions are governed by 19 U.S.C. 3592, unless otherwise provided for by statute. These provisions are implemented in the CBP Regulations at 19 CFR 102.21. Section 3592 of title 19 has been described as Congress's expression of substantial transformation as it relates to textile and apparel products. Therefore, the country of origin of the surgical towels for Government procurement purposes is determined by sequential application of the general rules set forth in paragraphs (c)(1) through (c)(5) of 19 CFR 102.21.

Paragraph (c)(1) states: ''The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.'' Since the surgical towels are produced by processing in both Bangladesh and Vietnam, they are not wholly obtained or produced in a single country, territory or insular possession. Therefore paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states: ''Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement specified for the good in paragraph (e) of this section.''

Paragraph (e)(1) provides that ''The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section.'' The applicable rule, that corresponds to subheading 6307.90.89, HTSUS, states:

6307.90 The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

In the instant case, the 100% cotton fabric that is woven and dyed blue in Bangladesh is imported into Vietnam where it is cut to size, sewn, and autoclaved to make surgical towels. Therefore, the country of origin of the surgical towels is Bangladesh, where the 100% cotton fabric that comprises the surgical towel was formed by a fabric-making process. As the surgical towels meet the requirements for goods classified in subheading 6307.90, HTSUS, pursuant to 19 CFR 102.21(c)(2), the country of origin of the surgical towels is Bangladesh.

Based on the analysis above, we find that the country of origin of the subject surgical towels is Bangladesh and, therefore, the surgical towels would be the product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1).

Holding

Based on the facts and analysis set forth above, the country of origin of the instant surgical towels will be Bangladesh.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,
Alice A. Kipel, *Executive Director, Regulations and Rulings, Office of Trade.*

[FR Doc. 2024–23652 Filed 10–11–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0140]

Agency Information Collection Activities; Extension; Collection of Advance Information From Certain Undocumented Individuals on the Land Border

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 16, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0140 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in

accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Advance Collection of Information from undocumented Individuals on the Land Border.

OMB Number: 1651–0140.

Form Number: N/A.

Current Actions: This submission will extend the expiration date of this information collection, with no change to the burden or information collected.

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: Under this collection, CBP collects certain biographic and biometric information from undocumented noncitizens via the CBPOne™ application, prior to their arrival at a Port of Entry (POE), to streamline their processing at the POE. The requested information is that which CBP would otherwise collect from these individuals during primary and/or secondary processing. This information is provided directly by undocumented noncitizens. Providing this information reduces the amount of data entered by CBP Officers (CBPOs) and the corresponding time required to process an undocumented noncitizen at the POE.

The biographic and biometric information being collected in advance, that would otherwise be collected during primary and/or secondary processing at the POEs, includes descriptive information such as: Name, Date of Birth, Country of Birth, City of Birth, Country of Residence, Contact Information, Addresses, Nationality, Employment history (optional), Travel history, Emergency Contact (optional), U.S. and foreign addresses, Familial Information, Marital Status, Identity Document (not a Western Hemisphere Travel Initiative (WHTI) compliant document) (optional), Name and contact information for someone who assisted the user (Optional), Gender, Preferred Language, Height, Weight, Eye color and Photograph.

This collection requires the submission of a live facial photograph for all noncitizens who choose to provide advance information to CBP via CBPOne™. The submission of a live photograph in advance provides CBPOs with a mechanism to match a noncitizen who arrives at the POE with the photograph submitted in advance, therefore identifying those individuals, and verifying their identity as well as conducting advance vetting. The live photograph is particularly important for identity verification if an NGO/IO is not assisting an individual in scheduling their presentation at a POE. In addition, the requirement for a live photo that contains latitude and longitude data points allows CBP to ensure the individual is physically located within the designated geofence areas. Creating designated areas allows an individual to secure an appointment without congregating in potentially dangerous conditions at the U.S. Southwest Border; and only traveling to or through Mexico for the intended purpose of presenting themselves to CBP for inspection.

In addition, CBP allows individuals to request to present themselves for processing at a specific POE on a specific day or days, although such a request does not guarantee that an individual will be processed on a given date or at a given time. Individuals also have the opportunity to modify their requests within the CBPOne™ application to an alternate day or time. The functionality to modify their request to an alternative date and time does not require the collection of new Personal Identification Information (PII) data elements.

Noncitizens who use CBPOne™ are processed in a more streamlined manner at the POE than those who do not use CBPOne™, since their advance information is prepopulated into CBP systems, which reduces manual data entry during processing. Noncitizens who did not submit information through CBPOne™ may need to wait to be processed in a separate line from those who used CBPOne™ (reserved for those who submitted their advance information and scheduled a presentation date).

Based on user and stakeholder feedback, CBPOne™ scheduling occurs through a daily appointment allocation process. Noncitizens submit a daily request in the CBPOne™ application, indicating that they would like an appointment within the next 21 days. Each day at 12:00 p.m. Eastern Time, available appointments are allocated to those who requested an appointment. Individuals who are issued an appointment then have a 23-hour period to complete the scheduling process (until 11:00 a.m. Eastern Time the following day), which includes confirming the appointment time and providing a live facial photograph. By providing a long period of time to complete the scheduling process and confirm the appointment (*i.e.,* 23 hours versus the previous few minutes under a first come, first served scheduling system)), this scheduling feature mitigates certain bandwidth issues that may arise for some users as a result of a large volume of people submitting information during a short window of time. The CBPOne™ application validates the users is within central or northern Mexico, captures a live photo, and matches that photo to the user's registrations photo.

Finally, each day, unconfirmed appointments are reallocated among the current pool of registrations. This process enables noncitizens to request a preferred POE at which to schedule an appointment.

Individuals who use the CBPOne™ application will be able to schedule an appointment to present themselves at the following ports of entry:

- *Arizona:* Nogales;
- *Texas:* Brownsville, Hidalgo, Laredo, Eagle Pass, and El Paso (Paso Del Norte); and
- *California:* Calexico and San Ysidro (Pedestrian West—El Chaparral).

Future and ongoing enhancements to the app are expected based on user and stakeholder feedback to ensure equity in the scheduling process. These enhancements may include expanding appointment slots to additional POEs.

On August 23, 2024, CBP used an emergency revision to this information collection to expand the geofence for Mexican nationals to include all of Mexico and add the Mexican states of Tabasco and Chiapas to the current boundaries for all other nationalities. By adjusting the boundaries, CBP aids the Government of Mexico in its efforts to enforce its immigration laws and regulations and align resources to those areas where migrants are located.

Due to the volume of individuals traveling through Mexico to present at a POE at a designated date and time, CBP has deployed a validation mechanism to assist the Mexican government officials when they encounter an individual or group who claim to have a CBPOne™ appointment. The tool requires the Mexican government official to enter an individual's CBPOne™ confirmation number and date of birth. Once submitted, the tool returns confirmation of any valid CBPOne™ appointment with the appointment date, time, and location, as well as the total number of people in the group.

Type of Information Collection: Advance Information on Undocumented Travelers—Registration.

Estimated Number of Respondents: 500,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500,000.

Estimated Time per Response: 12 minutes.

Estimated Total Annual Burden Hours: 100,000.

Type of Information Collection: Daily Appointment Request.

Estimated Number of Respondents: 500,000.

Estimated Number of Annual Responses per Respondent: 60.

Estimated Number of Total Annual Responses: 30,000,000.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 500,000.

Type of Information Collection: Confirmation of Appointment.

Estimated Number of Respondents: 529,250.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 529,250.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 26,463.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–23777 Filed 10–11–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0NEW]

Agency Information Collection Activities; New Collection of Information; Forced Labor Allegation Portal/Forced Labor Portal

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 14, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Please submit written comments and/or suggestions in English. 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 24482) on April 08, 2024, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Forced Labor Allegation Portal/Forced Labor Portal.

OMB Number: 1651–0NEW.

Form Number: N/A.

Current Actions: New collection of information.

Type of Review: New collection of information.

Affected Public: Businesses, Individuals.

Abstract: U.S. Customs and Borders Protection (CBP) has created a new Forced Labor Allegation Portal and Forced Labor Portal. Currently, information regarding potential forced labor and trade violations are electronically submitted via the e-Allegations website at: *https://www.cbp.gov/trade/e-allegations/.*

Submissions from petitioners for revocation and modification requests are submitted by email to *ForcedLabor@cbp.dhs.gov* (and through the BOX program and the Case Management System—CMS). Exception review information is sent to *UFLPAInquiry@cbp.dhs.gov* mailbox via email with multiple zip files.

Applicability review information is sent to various ports of entry or any of

the ten Centers of Excellence and Expertise via email with multiple zip files or shared secured folders.

U.S. Customs and Border Protection (CBP) enforces section 307 of the Tariff Act of 1930 (19 U.S.C. 1307), which states that ''all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited . . .''

In addition, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125), signed into law on February 24, 2016, removed the ''consumptive demand clause'' for the enforcement of 19 U.S.C. 1307, and mandated CBP to create a division to oversee forced labor enforcement and create a process for the investigation of allegations.

CBP also enforces the Countering America's Adversaries Through Sanctions Act (CAATSA) (Pub. L. 115–44 (August 2, 2017), (22 U.S.C. 9241a)) where goods produced by North Korean nationals or citizens are presumed to be produced under forced labor and are prohibited from entering the U.S. commerce under 19 U.S.C. 1307.

Recently, the Uyghur Forced Labor Prevention Act (UFLPA) (Pub. L. 117–78 (December 23, 2021)) established that any goods produced wholly or in part in the Xinjiang Uyghur Autonomous Region (XUAR) of China, or by entities on the UFLPA Entity List are presumed to be made with forced labor and thus prohibited from importation into the U.S. under 19 U.S.C. 1307. This law allows for the collection of supply chain documentation to substantiate that forced labor was not used in the production of imported goods under an exception review or UFLPA does not apply to the detained shipment under an applicability review.

Sections 12.42 through 12.45 of title 19 of the Code of Federal Regulations (CFR) contain methods for CBP to collect information on forced labor, conduct investigations, and initiate withhold release orders (WRO) or findings to enforce 19 U.S.C. 1307 as well as allow for the collection of information from importers on detained shipments for admissibility review under a WRO.

Individuals, companies (domestic and international), civil society organizations, and nongovernmental organizations may submit allegations of forced labor, request for admissibility, applicability, and exception reviews with CBP under these laws and regulations.

The new Forced Labor Allegation Portal and the Forced Labor Portal will consolidate the various above-mentioned methods of submission into one centralized location, increasing efficiency and reducing the burden of collection to both CBP and the public.

Type of Information Collection: Allegations.

Estimated Number of Respondents: 200.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 200.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 34.

Type of Information Collection: WRO Admissibility Reviews.

Estimated Number of Respondents: 1,900.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,900.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 950.

Type of Information Collection: Modifications/Revocations.

Estimated Number of Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 25.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4.

Type of Information Collection: UFLPA Exception Requests.

Estimated Number of Respondents: 4.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 4.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 2.

Type of Information Collection: UFLPA Applicability Reviews.

Estimated Number of Respondents: 1,500.

Estimated Number of Annual Responses per Respondent: 10.

Estimated Number of Total Annual Responses: 15,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 7,500.

Type of Information Collection: CAATSA Exception Reviews.

Estimated Number of Respondents: 2.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 2.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 0.33.

Dated: October 9, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–23778 Filed 10–11–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2024–0035]

Agency Information Collection Activities: Securing the Cities Field Operator Stakeholder Feedback Survey

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until December 16, 2024. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2024–0035, at:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS–2024–0035. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this survey is to collect qualitative stakeholder feedback information from current law enforcement personnel regarding their experience supporting the Securing the Cities (STC) program, specifically the

use of personal radiation detectors (PRDs). This survey is anonymous and voluntary, and the information collected will be used to improve future STC products or services. Responses to the survey will be used as a key component to the STC PRD Post Implementation Report (PIR). The PIR is conducted after an acquisition capability has been fielded long enough to gather sufficient feedback from the end user on whether the system is meeting performance objectives and operating satisfactorily.

STC is a program supported by the Department of Homeland Security (DHS) Countering Weapons of Mass Destruction (CWMD) office. The STC program helps State and local agencies in several regions detect radiological and nuclear materials that could be used in a terrorist attack. STC funds, for example, provide for the purchase of wearable radiation detectors for police officers. Having deployed thousands of radiation detection devices to STC sites, CWMD seeks customer feedback as to the integration of these devices into local law enforcement operations and any potential challenges related to the devices or the training that can be addressed to improve mission operations locally and across all STC regions.

This collection of information is necessary to enable CWMD to garner stakeholder feedback in an efficient, timely manner, in accordance with DHS's commitment to improving service delivery, by which we mean systematic review of the operation of a program compared to a set of explicit or implicit standards, as a means of contributing to the continuous improvement of the program. In this case, the STC program exists within DHS's CWMD Office. The information collected from STC stakeholders will help ensure that participants have an effective and efficient experience with this DHS CWMD program. Feedback will provide insights into STC stakeholder perceptions, experiences, and expectations, thus providing early indication of issues with program operations, or focus attention on areas where communication, training, technology, or changes in operations might improve local (within one STC region) or national (across all STC regions) program effectiveness. These collections will allow for ongoing, collaborative, and actionable communications between DHS and its stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Participants represent State and local agencies across 10 STC regions. All respondents have received training in the use of DHS-funded radiation equipment (*e.g.,* personal radiation detector (PRD)) and are, or have been, using that equipment consistent with the STC program goals and under provisions set forth in cooperative agreements between DHS and each respective STC region. The CWMD Office maintains distribution lists for its programs and participant jurisdictions/entities and will coordinate with each STC region to ensure currency of contact information for prospective survey respondents.

DHS estimates the hour burden cost to the local or State government law enforcement operating in an STC region by multiplying the hour burden times the fully loaded hourly compensation wage for 100 workers. DHS uses a fully loaded compensation wage of $60.56 to represent the respondents for purposes of this information collection request (ICR). The fully loaded compensation wage is based on data presented by the Bureau of Labor Statistics (*bls.gov*) for State and local government workers. DHS estimates an annual hour burden cost of $504.46 (8.33 hours × $60.56 compensation wage) to Local or State government law enforcement operating in an STC region for purposes of this ICR.

The Office of Management and Budget is particularly interested in comments which:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Securing the Cities Field Operator Stakeholder Feedback Survey.

OMB Number: 1601–0014.

Frequency: Annually.

Affected Public: Local or State government law enforcement operating in a STC region.

Number of Respondents: 100.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 8.33.

Robert Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2024–23757 Filed 10–11–24; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7093–N–03]

60-Day Notice of Proposed Information Collection: Office of the Chief Human Capital Officer (OCHCO) Personnel Security Integrated System for Tracking (PerSIST); OMB Control No.: 2501–0038

AGENCY: Office of Administration, Office of the Chief Human Capital Officer (OCHCO), 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 60 days of public comment.

DATES: *Comments Due Date:* December 16, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.regulations.gov.* Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Management Analyst, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402- 5535 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Frederick A. Smith, Director, Human Capital Information Systems, OCHCO, Department of Housing and Urban Development, 451 7th Street SW,

Washington, DC 20410; telephone (714) 955–0804 email: *Frederick.A.Smith@hud.gov.* 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 Frederick A. Smith.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: OCHCO Personnel Security Integrated System for Tracking (PerSIST); 22019 PIV Pre-Screen Application.

OMB Approval Number: 2501–0038.

Type of Request: This is an extension of a currently approved collection.

Form Number: HUD 22019.

Description of the need for the information and proposed use: The PII collected and maintained in PerSIST is relevant and necessary to carrying out the investigatory process used to document and support decisions regarding the suitability, eligibility, and fitness for service of applicants for federal employment and contract positions, including long-term students, interns, or volunteers to the extent that their duties require access to federal facilities, information, systems, or applications.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
22019 PIV Pre-Screen Application	1,625	1	1,625	.17	276.25	$43.77	$12, 091.46
Total	1,625	1	1,625	.17	276.25	43.77	12,091.46

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.

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.

Frederick A. Smith,

Director, Human Capital Information Systems.

[FR Doc. 2024–23705 Filed 10–11–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7082–N–10]

60-Day Notice of Proposed Information Collection: Data Collection and Reporting for HUD's Homeless Assistance Programs—Annual Performance Report and System Performance Report; OMB Control No.: 2506–0145

AGENCY: Office of Community Planning and Development, 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 60 days of public comment.

DATES: *Comments Due Date:* December 16, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.regulations.gov.* Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: William Snow, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *William.Snow@hud.gov* or telephone 202–402–4541. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Data Collection and Reporting for HUD's Continuum of Care Program—Annual Performance Report and System Performance Report.

OMB Approval Number: 2506–0145.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: This request is for clearance of data collection and reporting to enable the U.S. Department of Housing and Urban Development (HUD) Office of

Community Planning and Development (CPD) to continue to manage and assess the effectiveness of its homeless assistance projects on an annual basis. Per 24 CFR 578.103(e), HUD requires recipients and subrecipients that receive funding through the CoC Program (authorized by the McKinney-Vento Homeless Assistance Act, as amended) to prepare and submit annual project-level reports on performance and spending.

This request will also enable the HUD CPD Office to initiate a process to assess the effectiveness of local coordinated systems of homeless assistance. The McKinney-Vento Homeless Assistance Act, as amended, requires communities to measure their performance as a coordinated system, in addition to analyzing performance of specific projects and project types. Section 427 of the Act established a set of selection criteria for HUD to use in awarding CoC Program funding. These selection criteria require CoCs to report to HUD their system-level performance. The intent of these selection criteria are to encourage CoCs, in coordination with Emergency Solutions Grant (ESG) Program recipients and all other homeless assistance stakeholders in the community, to regularly measure their progress in meeting the needs of people experiencing homelessness in their community and to report this progress to HUD. This request is for HUD to collect system-level performance measure data from CoCs on an annual basis, as described in Appendix B of this document.

The project APR and system-level performance measures both rely on a primary data source in each CoC—a local Homeless Management Information System (HMIS). An HMIS is an electronic data collection system that stores project-level and person-level information about homeless persons who access a community's homeless service system. Over the past two decades, HUD has supported the development of local HMIS by funding their development and implementation, by providing technical assistance, and by developing national data standards that enable the collection of standardized information on the characteristics, service patterns and service needs of homeless persons within a jurisdiction and across jurisdictions. These standards are described in HUD's HMIS Data Standards.

In addition to a CoC's HMIS data, the system-level performance measures will also rely on data collected by CoCs as part of their Point-in-Time (PIT) count efforts. CoCs are required by HUD to complete a sheltered PIT count of all homeless persons who are sheltered in emergency shelter, transitional housing, and Safe Havens and a count of unsheltered persons on a single night in January at least once every other year. HUD incentivizes annual participation in the sheltered and unsheltered PIT count through its annual CoC Program Competition. HUD releases a Notice which outlines its data collection guidance for the PIT count and the Housing Inventory Count (HIC), which is an annual point-in-time inventory of projects within a CoC that provide beds and units dedicated to serve persons who are homeless. jurisdictions. These standards are described in HUD's HMIS Data Standards.

ANNUAL PERFORMANCE REPORT

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Annual Performance Report (CoC Program)—Non-profit Recipients.	3,550.00	Annual	1	4	14,200.00	$43.53	$618,126.00
Annual Performance Report (YHDP)—Non-profit Recipients.	200.00	Quarterly	5	5	5,000.00	43.53	217,650.00
Performance Report (Special CoC NOFO Grants that report quarterly)—Non-profit Recipients.	110.00	Quarterly	4	4	1,760.00	43.53	76,612.80
Performance Report (Special CoC NOFO Grants that report annually)—Non-profit Recipients.	28.00	Annual	1	4	112.00	43.53	4,875.36
Annual Performance Report (CoC Builds NOFO)—Non-profit Recipients.	13.00	Annual	1	4	52.00	43.53	2,263.56
Annual Performance Report (CoC Program)—State and Local Recipients.	3,550.00	Annual	1	4	14,200.00	43.53	618,126.00
Annual Performance Report (YHDP)—State and Local Recipients.	200.00	Quarterly	5	5	5,000.00	43.53	217,650.00
Performance Report (Special CoC NOFO Grants that report quarterly)—State and Local Recipients.	110.00	Quarterly	4	4	1,760.00	43.53	76,612.80
Performance Report (Special CoC NOFO Grants that report annually)—State and Local Recipients.	28.00	Annual	1	4	112.00	43.53	4,875.36
Annual Performance Report (CoC Builds NOFO)—State and Local Recipients.	12.00	Annual	1	4	48.00	43.53	2,089.44
Total	7,801.00				42,244.00		1,838,881.32

SYSTEM PERFORMANCE MEASURES REPORT

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Group 1: CoCs with Automated Software Report	385.00	Annual	1	13	5,005.00	$43.53	$217,867.65
Group 2: CoCs with Manual Software Report	15.00	Annual	1	15	225	43.53	9,794.25
Total	400.00		400		5,230		227,405.40

PERFORMANCE DATA CHECK-UP

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Annual Performance Report (CoC Program)	7,100.00	Annual	1	1	7,100.00	$29.76	$211,296.00
Annual Performance Report (YHDP)	400.00	Quarterly	5	1	2,000.00	42.41	84,820.00
Annual Performance Report (Special CoC NOFA Grants).	56.00	Annual	1	1	56.00	29.76	1,666.56
Quarterly Performance Report (Special CoC NOFA Grants).	222.00	Quarterly	4	1	888.00	29.76	26,426.88
CoC Builds	25.00	Annual	1	1	25.00	29.76	744.00
Total	7,778.00		12.00		10,069.00		324,953.44

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
System Performance Measures Reports	400.00	Annual	1.00	1.00	400.00	$42.41	$16,964.00

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.

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.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024–23644 Filed 10–11–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number: FR–7092–N–38]

Privacy Act of 1974; Matching Program

AGENCY: Office of Public and Indian Housing, Real Estate Assessment Center, HUD.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, the Department of Housing and Urban Development (HUD) is providing notice of its intent to re-establish a computer matching agreement (CMA) with the Social Security Administration (SSA) for a recurring matching program with HUD's Office of Public and Indian Housing (PIH) and Office of Housing, involving comparisons of Social Security numbers (SSN) and benefit information provided by participants in any authorized HUD rental housing assistance program. HUD will obtain SSA data and make the results available to: Program administrators such as public housing agencies (PHAs) and private owners and management agents (O/As) (collectively referred to as POAs) to enable them to verify the accuracy of income reported by the tenants (participants) of HUD rental assistance programs, and contract administrators (CAs) overseeing and monitoring O/A operations as well as independent public auditors (IPAs) that audit both PHAs and O/As. The most recent renewal of the current matching agreement expires on October 15, 2024.

DATES: *Comments Due Date:* November 14, 2024. The CMA will become applicable 30 days after the publication of this notice, unless comments have been received from interested members of the public requiring modification and republication of the notice. The matching program will continue for 18 months after the applicable date and may be extended for an additional 12 months, if the respective agency Data Integrity Boards (DIBs) determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to:

Federal e-Rulemaking Portal: https://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *https://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact the Recipient Agency, Bradley Jewitt, Senior Agency Official for Privacy, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6204, Washington, DC 20410, telephone number (202) 402–4025. [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.*

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on March 15, 2022, at 87 FR 14552. Administrators of HUD rental assistance programs rely upon the accuracy of tenant-reported income to determine participant eligibility for and level of rental assistance. The computer matching program may provide indicators of potential tenant unreported or under-reported income,

which will require additional verification to identify inappropriate or inaccurate rental assistance and may provide indicators for potential administrative or legal actions. The matching program will be carried out to detect inappropriate or inaccurate rental assistance. Specifically, the computer matching program will match HUD's tenant data to SSA's death data, Social Security (SS) and Supplemental Security Income (SSI) benefits data.

PARTICIPATING AGENCIES:

Department of Housing and Urban Development and the Social Security Administration.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

42 U.S.C. 3543 authorizes HUD to require rental assistance applicants and participants to disclose their SSNs. HUD requires, as a condition of eligibility, that individuals requesting, or continuing to receive, rental assistance disclose their SSNs (24 CFR 5.216). Section 1106 of the Social Security Act (Act) (42 U.S.C. 1306) and the regulations promulgated thereunder provide legal authority for SSA's disclosures in this agreement (20 CFR part 401). Section 205(r)(3) of the Act (42 U.S.C. 405(r)(3)) provides legal authority for SSA to disclose death data to Federal agencies to ensure proper payment of Federally funded benefits. Pursuant to section 7213 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law (Pub. L.) 108–458, SSA includes death indicators in verification routines that SSA determines to be appropriate.

PURPOSE(S):

HUD's primary objective of the computer matching program is to verify the income of participants in certain rental assistance programs to determine the appropriate level of rental assistance, and to detect, deter, and correct fraud, waste, and abuse in rental housing assistance programs. In meeting these objectives, HUD also is carrying out a responsibility under 42 U.S.C. 1437f(k) to ensure that income data provided to POAs by household members is complete and accurate. HUD's various rental housing assistance programs require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report and recertify the amounts and sources of their income at least annually. However, under the Quality Housing and Work Responsibility Act of 1998, PHAs operating Public Housing programs may offer tenants the option to pay a flat rent or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the changes to the Admissions and Occupancy final rule (March 29, 2000 (65 FR 16692)) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent. Additional uses/benefits of this computer matching program include: (1) increasing the availability of rental assistance to individuals who meet the requirements of the rental assistance programs; (2) after removal of personal identifiers, conducting analyses of SSA death data and benefit information, and income reporting of program participants; and (3) measuring improper payments due to under-reporting of income and/or overpayment of subsidy on behalf of deceased program participants.

CATEGORIES OF INDIVIDUALS:

Covered Programs

This notice of computer matching program applies to individuals receiving assistance from the following rental assistance programs:

a. Disaster Housing Assistance Program (DHAP) under the Unites States Housing Act of 1937

b. Public Housing under 24 CFR part 960

c. Section 8 Housing Choice Voucher (HCV) under 24 CFR part 982

d. Project-Based Vouchers Section 24 CFR parts 880, 881, 883, 884, 886, and 891

e. New Construction Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f)

f. Substantial Rehabilitation Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C.1437f)

g. Section 202/8 of the Housing Act of 1959 (12 U.S.C. 1701q)

h. Rural Housing Services Section 515/8 under section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485)

i. Loan Management Set-Aside Section 236 of the National Housing Act (12 U.S.C. 1715z–1)

j. Property Disposition Set-Aside of the Housing Act of 1959 (12 U.S.C. 1701)

k. Section 101 Rent Supplement of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)

l. Section 202/162 Project Assistance Contract of the Housing Act of 1959 (24 CFR 891.655)

m. Section 202 Project Rental Assistance Contract (PRAC) of the Housing Act of 1959 (12 U.S.C. 1701q)

n. Section 811 PRAC of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013)

o. Section 236 of the National Housing Act (12 U.S.C. 1715z–1)

p. Section 236 Rental Assistance Program (RAP) of the National Housing Act (12 U.S.C. 1715z–1)

q. Section 221(d)(3) Below Market Interest Rate and 236 of the National Housing Act of 1959 (12 U.S.C. 171519(d)(3) and 1715z–1)

r. Section 8 Moderate Rehabilitation (24 CFR part 882)

s. Project-Based Voucher (24 CFR part 983)

Note: The Low-Income Housing Tax Credit and Rural Housing Services Section 515 (non-Section 8) are not included under the rental housing assistance programs covered under this CMA.

CATEGORIES OF RECORDS:

The following are the categories of record in this matching agreement that HUD will provide SSA for each individual for whom HUD requests information:

- First name
- Last name
- SSN
- Date of Birth (DOB)

SSA will provide HUD with the following information for each individual for whom HUD requests information:

- The amount of monthly benefits for each recipient of Title II, Title XVI, and Title VIII benefits
- SSN match/no match response
- In the case of a ''no match'', the reason for the no match response in the form of an error code
- A death indicator, if applicable

SYSTEM(S) OF RECORDS:

SSA will conduct the matching of tenant SSNs and additional identifiers (surnames and DOBs) to tenant data that HUD supplies from its systems of records known as:

1. Tenant Rental Assistance Certification System (TRACS) HUD/HOU–11, published on September 13, 2023 (88 FR 62813);

2. Inventory Management System, Public and Indian Housing Information System (IMS/PIC) and Housing Information Portal (HIP) HUD/PIH.01, published on January 9, 2024 (89 FR 1121); and

3. Enterprise Income Verification (EIV) System, HUD/PIH–5, published on August 17, 2022 (87 FR 50635).

Program administrators utilize the form HUD–50058 module within IMS/PIC system and the form HUD–50059 module within TRACS to provide HUD with the tenant data. SSA will match

the tenant data in TRACS and IMS/PIC to its systems of records known as

1. SSA's Master Files of SSN Holders and SSN Applications (Enumeration System), 60–0058; last fully published December 29, 2010 (75 FR 82121) and amended on July 5, 2013 (78 FR 40542), February 13, 2014 (79 FR 8780), July 3, 2018 (83 FR 31250 and 83 FR 31251), and November 1, 2018 (83 FR 54969);

2. Supplemental Security Income Record and Special Veterans Benefits, 60–0103, last fully published on January 11, 2006 (71 FR 1830) and amended December 10, 2007 (72 FR 69723), July 3, 2018 (83 FR 31250 and 83 FR 31251) and November 1, 2018 (83 FR 64969); and

3. Master Beneficiary Record (MBR), 60–0090, last fully published on January 11, 2006 (71 FR 1826) and amended on December 10, 2007 (72 FR 69723), July 5, 2013 (78 FR 40542), July 3, 2018 (83 FR 31250 and 83 FR 31251), and November 1, 2018 (83 FR 54969).

Bradley Jewitt,

Senior Agency Official for Privacy, Office of Administration.

[FR Doc. 2024–23736 Filed 10–11–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7082–N–11]

60-Day Notice of Proposed Information Collection: Community Development Block Grant Entitlement Program; OMB Control No.: 2506–0077

AGENCY: Office of Community Planning and Development, 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 60 days of public comment.

DATES: *Comments Due Date:* December 16, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.regulations.gov.*

Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Gloria Coates, Senior Community Planning and Development Specialist, Entitlement Communities Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410–5000; email at *gloria.l.coates@hud.gov* or telephone (202) 402–2184. 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. Coates.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Community Development Block Grant Entitlement Program.

OMB Approval Number: 2506–0077.

Type of Request: Revision.

Form Number: N/A.

Description of the need for the information and proposed use: This request identifies the estimated reporting burden associated with information that CDBG entitlement grantees will report in IDIS for CDBG-assisted activities, recordkeeping requirements, and reporting requirements. Grantees are encouraged to update their accomplishments in IDIS on a quarterly basis. In addition, grantees are required to retain records necessary to document compliance with statutory and regulatory requirements, Executive orders, 2 CFR part 200 requirements, and determinations required to be made by grantees as a determination of eligibility. Among the reports grantees now submit in IDIS is the PR 29 Cash on Hand Quarterly Report. This report is a conversion of the SF–425. Federal Financial Report, that grantees submitted by hard copy, but with the addition of data elements related to local account repayment receipt funds and revolving loan funds that grantees may have under their control. As a new form, included in this information collection for the first time, it is also being presented for OMB review and approval and public comment. Also, grantees are required to prepare and submit their Consolidated Annual Performance and Evaluation Reports, which demonstrate the progress grantees make in carrying out CDBG-assisted activities listed in their consolidated plans. This report is due to HUD 90 days after the end of the grantee's program year. The information required for any activity is generally based on the eligibility of the activity and which of the three national objectives (benefit low- and moderate-income persons; eliminate/prevent slums or blight; or meet an urgent need) the grantee has determined that the activity will address.

Respondents: Grant recipients (metropolitan cities and urban counties) participating in the CDBG Entitlement Program.

Estimation number of Respondents: 1,237.

Estimation Number of Responses: The proposed frequency of the response to the collection is on an annual basis.

Frequency of Response: Annually.

TOTAL ESTIMATED BURDENS

Task	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Current Inventory: Recordkeeping pursuant to 24 CFR 570.506	1,237	1	1,237	129.00	159,573.00	47.53	$7,584,504.69
Reporting pursuant to 24 CFR 570.507, 24 CFR 570.200(e) and 570.506(c)	1,237	4	4,948	78.50	388,418.00	47.53	18,461,507.50
Entitlement communities maintain required documentation	1,237	1	1,237	25.00	30,925.00	47.53	1,469,865.25

TOTAL ESTIMATED BURDENS—Continued

Task	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
PR 29 Cash on Hand Quarterly Report	1,237	4	4,948	0.75	3,711.00	47.53	176,383.83
Total	1,237				582,627.00		27,692,261.27

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.

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.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024–23645 Filed 10–11–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24EN05ESBJF00]

Assessment of Biodiversity and Climate Change; Request for Public Comment on the First Draft of Assessment Chapters

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice with comment period.

SUMMARY: The U.S. Geological Survey (USGS) is giving notice of a comment period on draft chapters of the Biodiversity and Climate Change Assessment.

DATES: Comments regarding the draft chapters of the assessment must be submitted by December 16, 2024.

ADDRESSES: You may submit comments by any of the following methods:

- *Electronic portal: https://contribute.globalchange.gov/*
- Email to *biodiversityclimatechange@usgs.gov*
- Mail to Kate Malpeli, 12201 Sunrise Valley Dr., MS–516, Reston, VA 20192, United States

Instructions: Public comments should be accompanied by the commentor's name, phone number, email address, and affiliation (at the commentor's discretion).

FOR FURTHER INFORMATION CONTACT: Kate Malpeli by email at *biodiversityclimatechange@usgs.gov* or by telephone at 919–896–5029. 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: Biodiversity underlies nature's contributions to people (also known as ecosystem services), including food, water, health, hazard protection, and cultural values. Climate change is among the primary drivers of biodiversity loss, and well-managed biodiversity conservation can contribute to climate-change mitigation and adaptation. Understanding the interplay between climate change and biodiversity is critical for the implementation of effective and lasting solutions to climate change and for maintaining biodiversity and nature's contributions to people.

The USGS, the nation's largest water, earth, and biological science agency, was charged by the United States Congress in the Fiscal Year 2022 budget with conducting an assessment that characterizes the state of understanding concerning linkages between climate change and biodiversity for the United States. Climate change impacts and biodiversity drivers cross national boundaries, and accordingly the geographic scope of assessment will include neighboring nations, particularly Canada and Mexico. The assessment process and report production will be led by the USGS, in collaboration with Environment and Climate Change Canada and Mexico's La Comisión Nacional para el Conocimiento y Uso de la Biodiversidad (CONABIO), and is being undertaken by scientists, knowledge holders, practitioners, and policy experts from all three countries. Participation includes engagement from governments at all levels, universities, nonprofit organizations, the private sector, Indigenous Peoples, and local communities. The assessment will characterize the state of understanding concerning key linkages between climate change and biodiversity, identify critical knowledge gaps, and summarize implications for biodiversity and climate-change policy. The assessment will build on the recently completed Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) global assessment of biodiversity and ecosystem services and represent a continental contribution to upcoming IPBES (and other) knowledge products. The primary product will comprise an assessment report, planned for release in early 2025, evaluating the relationships between climate and biodiversity in the United States, Canada, Mexico, and adjacent regions as appropriate, and identifying policy options to conserve biodiversity in the face of climate change.

As the first milestone, USGS and its partners seek public comments on the draft chapters (*https://contribute.globalchange.gov/*) for the assessment of biodiversity and climate change.

Thomas Beard,

Senior Administrator, National Climate Adaptation Science Center.

[FR Doc. 2024–23649 Filed 10–11–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24MR00G6ZW800; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Panhandle Terrapin Project

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before November 14, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments by mail to USGS Wetland and Aquatic Research Center, 7920 NW 73rd St., Gainesville, FL 32653; or by email to Margaret Lamont (*mlamont@usgs.gov*). Please reference OMB Control Number 1028–NEW—Panhandle Terrapin Project in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Margaret Lamont by email at *mlamont@usgs.gov,* or by telephone at 352–209–4306. 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: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 8, 2024 (89 FR 8706). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Diamondback terrapins are the only brackish water turtles in the United States. These turtles inhabit coastal marshes and mangroves from Massachusetts to Texas. Most terrapin populations are in decline due to commercial harvest, incidental capture in crab traps, and loss of nesting habitat due to coastal development. Today, the illegal pet trade has added extra pressure to these already declining populations. While much is known about terrapins along the US Atlantic coast, very little information is available about terrapin populations that inhabit Florida's northwest coast. In fact, the International Union for the Conservation of Nature (IUCN) does not include Northwest Florida within the terrapins' range, however recent studies confirm that terrapins do inhabit the region. This project would use citizen scientists to conduct surveys in potential terrapin habitat throughout the Northwest Florida region to document terrapins and terrapin signs, including hatched eggs and crawls. Volunteers collect detailed information on when and where terrapins or their signs are observed, environmental parameters such as air temperature and weather during the observation, habitat information such as vegetation type at the observation site, level and type of human activities observed at the site, and data on the terrapins or their signs such as number of tracks, nests, eggs or individual terrapins observed. Managers, including state and National Parks, need this information to document species' status and inform conservation decisions, including whether to list or de-list species.

The authority for this collection is 43 U.S.C. 31 *et seq.* The Organic Act of March 3, 1879.

Title of Collection: Panhandle Terrapin Project.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals; county, State and Federal government employees.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 1,000.

Estimated Completion Time per Response: 3 minutes.

Total Estimated Number of Annual Burden Hours: 50 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Weekly from April through October each year.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person is required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Deborah Epperson,

Deputy Center Director, Wetland and Aquatic Research Center, Southeast Region.

[FR Doc. 2024–23700 Filed 10–11–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038883; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fernbank Museum of Natural History, Atlanta, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Fernbank Museum of Natural History has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 14, 2024.

ADDRESSES: Wil Grewe-Mullins, Fernbank Museum of Natural History, 767 Clifton Rd. NE, Atlanta, GA 30307, telephone (404) 929–6312, email *Wil.Grewe-Mullins@fernbankmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Fernbank Museum of Natural History, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at minimum, one individual have been identified from 9LI43, Cunningham Mound A, on St. Catherines Island in Liberty County, Georgia. The four associated funerary objects include one lot ceramic sherds, one lot lithic debitage, one lithic flake tool, and one lot soil samples. These materials were recovered during archaeological excavations conducted in 1975 and 1977 by the American Museum of Natural History (AMNH) under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at the AMNH and on St. Catherines Island, the remains and funerary objects were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations.

Human remains representing, at minimum, five individuals have been identified from 9LI45, Cunningham Mound C, on St. Catherines Island in Liberty County, Georgia. The 19 associated funerary objects include one lot ceramic sherds, one animal bone, two glass fragments, one groundstone object, eight pieces of lithic debitage, one biface, one projectile point, one nail or spike, one lot of unworked shell, one unmodified stone, and one soil sample. These materials were recovered during archaeological excavations conducted in 1975 and 1977 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at the AMNH and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains are all adults and at least two represent females. At least some burials occurred as extended or cremated interments. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Human remains representing, at minimum, three individuals have been identified from 9LI46, Cunningham Mound D, on St. Catherines Island in Liberty County, Georgia. The 66 associated funerary objects include two unmodified stone objects, two hammerstones, one metal bead, one glass bead, two pieces of copper, one metal shot or bullet, one lot ceramic sherds, 37 nails or spikes, 11 projectile points, six scrapers, one lot coffin wood, and one lithic flake. These materials were recovered during archaeological excavations conducted from 1976–1977 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at the AMNH and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains are all adults and at least one is female and another male. At least some burials occurred as flexed or bundled interments. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Human remains representing, at minimum, one individual have been identified from 9LI28, Cunningham Mound E, on St. Catherines Island in Liberty County, Georgia. The two associated funerary objects include one lot of ceramic sherds and one piece of lithic debitage. These materials were recovered during archaeological excavations conducted around 1970 by the University of Georgia under the direction of Dr. Joseph R. Caldwell, and from 1976–1977 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at University of Georgia, the AMNH, and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains represent an adult female interred in a bundle. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Human remains representing, at minimum, 70 individuals have been identified from 9LI18, John's Mound, on St. Catherines Island in Liberty County, Georgia. The 214 associated funerary objects include one lot ceramic sherds, one lot non-human bone, one polished human phalanx, two bone awls, three ceramic vessels, three quartz cobbles, one pearl, one sand dollar, one unmodified stone, one groundstone object, 193 shell beads, one lot marine shell, and five soil samples. These materials were recovered during archaeological excavations conducted in 1969–1970 by the University of Georgia under the direction of Dr. Joseph R. Caldwell. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at University of Georgia and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains represent at least 44 adults and 13 sub-adults, 13 of which have been identified as female and 16 male. Burials occurred as bundled and extended interments. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Human remains representing, at minimum, five individuals were

recovered from 9LI20, Mary's Mound, on St. Catherines Island in Liberty County, Georgia. The 25 associated funerary objects include six whole and partial ceramic vessels, two awls, one lot ceramic sherds, one lithic flake, one pipe fragment, 10 modified whelk shells, three unmodified marine shells, and one lot non-human bone. These materials were recovered during archaeological excavations conducted in 1970 by the University of Georgia under the direction of Dr. Joseph Caldwell, and in 1977 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at University of Georgia, the AMNH, and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains represent at least two adults and three sub-adults, at least two of which are female. Burials occurred as either flexed or bundled interments. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Human remains representing, at minimum, 20 individuals were recovered from 9LI47, McLeod Mound, on St. Catherines Island in Liberty County, Georgia. The 14 associated funerary objects include two projectile points, one lithic scraper, one lot ceramic sherds, one shark tooth, five pieces non-human bone, one lithic debitage, one metal shot or bullet, one mineral fragment, and one unidentified stone. The materials were recovered during archaeological excavations conducted from 1975–1976 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at the AMNH and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains are all adults, at least ten of which are female and three are male. Burials occurred as extended and bundled interments. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Human remains representing, at minimum, 19 individuals were recovered from 9LI26, Seaside Mound I, on St. Catherines Island in Liberty County, Georgia. The eight associated funerary objects include one lot ceramic sherds, one lithic scraper, two projectile points, one modified shell, one modified bone item, one lot non-human bone, and one lot lithic debitage. The materials were recovered during archaeological excavations conducted in 1970 by the University of Georgia under the direction of Dr. Joseph Caldwell, and in 1977 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at University of Georgia, the AMNH, and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains represent at least 15 adults and four sub-adults, at least two of which are female and five male. Burials occurred as bundled and extended interments. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Human remains representing, at minimum, 14 individuals were recovered from 9LI62, Seaside Mound II, on St. Catherines Island in Liberty County, Georgia. The five associated funerary objects include one lot ceramic sherds, one lot lithic debitage, and three projectile points. The materials were recovered during archaeological excavations conducted from 1976–1977 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at the AMNH and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains represent at least 13 adults and one sub-adult, at least four of which are female and three are male. Burials occurred as bundled and extended interments. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Human remains representing, at minimum, one individual were recovered from 9LI12, South New Ground Mound, on St. Catherines Island in Liberty County, Georgia. The one lot of associated funerary objects include one lot of ceramic sherds. The materials were recovered during archaeological excavations conducted in 1976–1977 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at the AMNH and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The remains are those of an adult female. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Associated funerary objects were recovered from 9LI3, South End Mound I, on St. Catherines Island in Liberty County, Georgia. The 224 objects include one lot ceramic sherds, two ceramic pipe stems, one lot lithic debitage, one projectile point, one button, one unidentified metal fragment, 211 shell beads, one lot modified and unmodified whelk shells, three mineral fragments, one unmodified stone, and one lot soil samples. The materials were recovered during archaeological excavations conducted in 1986 by the AMNH under the direction of Dr. David Hurst Thomas, and from 1991–1993 under the direction of Dr. Clark Spencer Larsen. After storage for intervals at The Ohio State University, the AMNH, and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John Noble Foundations. The human remains associated with these objects have been listed in a Notice of Inventory Completion published in the **Federal Register** on August 20, 2009 (74 FR 42098–42100).

Human remains representing, at minimum, 18 individuals were recovered from 9LI273, South End Mound II, on St. Catherines Island in Liberty County, Georgia. The 58 associated funerary objects include one lot ceramic sherds, three glass beads, four hammerstones, one piece unmodified stone, one lot lithic debitage, four lithic bifaces, three modified lithics, 35 lead fragments, three granite items, one lot copper sheet fragments, and two modified shells. The materials were recovered during archaeological excavations conducted from 1979–1980 by the AMNH under the direction of Dr. David Hurst Thomas. The remains were subsequently subjected to bioarcheological study under the direction of Dr. Clark S. Larsen, working in collaboration with the AMNH. After storage for intervals at the AMNH and on St. Catherines Island, the remains were transferred in 2004 to Fernbank Museum of Natural History by the St. Catherines Island and Edward John

Noble Foundations. The remains represent at least 13 adults and two sub adults, at least three of which are female and one male. At least some of the burials represented cremated remains. Funerary objects recovered from the site were also transferred to Fernbank in 2004.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Fernbank Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of at least 157 individuals of Native American ancestry.
- The 640 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Alabama-Quassarte Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after November 14, 2024. If competing requests for repatriation are received, the Fernbank Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Fernbank Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: October 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23724 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038882; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the American Museum of Natural History intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after November 14, 2024.

ADDRESSES: Nell Murphy, American Museum of Natural History, 200 Central Park West, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the American Museum of Natural History and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 17 cultural items have been requested for repatriation. The 17 unassociated funerary objects are one lot of faunal material; one lot of turtle cup fragments; one bone awl; one likely bone awl; one lot of oyster shells; one lot of quahog shell; one lot of scallop shells; one lot of mussel shells; one lot of clam shells; one lot of helix shell; one lot of sea snail shell; one lot of barnacle shell; one lot of fish vertebrae; one lot of pot sherds; one lot of decorated rim sherds; one pot base; and one lot of stone implements. J.B. James, Jr., removed these unassociated funerary objects from Van Cortlandt Park, Bronx County, NY, in 1890 during a road grading project. James gifted these unassociated funerary objects to the Museum in 1895 which accessioned them that year.

Determinations

The American Museum of Natural History has determined that:

- The 17 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after November 14, 2024. If competing requests for repatriation are received, the American Museum of Natural History must determine the

most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The American Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: October 4, 2024

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23723 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038877; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Gilcrease Museum intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after November 14, 2024.

ADDRESSES: Laura Bryant, Gilcrease Museum, 800 S Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Gilcrease Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 14 cultural items have been requested for repatriation. The 14 unassociated funerary objects are 10 sets of strung glass beads, one set of shell beads, and three bone whistles. These were removed from unknown sites in Sacramento County, California in the early 20th century. They were acquired by Thomas Gilcrease likely in the mid-20th century. One set of glass beads was removed from Cliff Mound and acquired by Frank Engles, whose collection was purchased by Thomas Gilcrease in 1950.

Determinations

The Gilcrease Museum has determined that:

- The 14 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after November 14, 2024. If competing requests for repatriation are received, the Gilcrease Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Gilcrease Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: October 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23718 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038884; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after November 14, 2024.

ADDRESSES: Dr. Mark R. Wheeler, Senior Advisor to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 460–0490, email *mark.wheeler@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Associated funerary objects have been identified from CA–SJO–68, located in the northwestern portion of San Joaquin County, CA. The 73 associated funerary objects include flaked, ground, and worked stone; baked clay objects; faunal remains; and worked bone and shell. Currently, at least two objects are missing, and California State University,

Sacramento continues to look for them. The funerary objects were donated to California State University, Sacramento by the estate of Anthony Zallio and the University of California Berkeley in the 1950s. They have since been housed at the University under accessions 81–172.33 and 1974–24.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

The California State University, Sacramento has determined that:

• The 73 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a connection between the associated funerary objects described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria; Tule River Indian Tribe of the Tule River Reservation, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the associated funerary objects described in this notice to a requestor may occur on or after November 14, 2024. If competing requests for repatriation are received, the California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: October 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23725 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038885; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of the Interior, National Park Service, Hopewell Culture National Historical Park, Chillicothe, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Hopewell Culture National Historical Park (HOCU) intends to carry out the disposition of human remains and associated funerary objects removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after November 14, 2024. If no claim for disposition is received by October 15, 2025, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Chris Alford, Superintendent, Hopewell Culture National Historical Park, 16062 State Route 104, Chillicothe, OH 45601, telephone (740) 774–1126, email *chris_alford@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, HOCU, and additional information on the human remains and associated funerary objects in this notice, including the results of consultation, can be found in the related records.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The 126 associated funerary objects are one biface fragment, one faunal remain, two prismatic blade fragments, two pieces of copper, eight chert debitage, 49 fire-cracked rocks, four soil samples, 12 botanical samples, two charcoal samples, and 45 ceramic sherds. In 2004, human remains and funerary objects were removed from the Riverbank Site in Ross County, OH by National Park Service archeologists with the Midwest Archeological Center. The human remains and funerary objects date to the Middle Woodland period.

Determinations

HOCU has determined that:

• The human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• The 126 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• The Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and the Shawnee Tribe have priority for disposition of the human remains and associated funerary objects described in this notice.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by October 15, 2025, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows,

by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after November 14, 2024. If competing claims for disposition are received, HOCU must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. HOCU is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: October 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23726 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038880; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Western Washington University, Department of Anthropology, Bellingham, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Western Washington University (WWU) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after November 14, 2024.

ADDRESSES: Dr. Judith Pine, Western Washington University, Department of Anthropology, Arntzen Hall 340, 516 High Street, Bellingham, WA 98225, telephone (360) 650–4783, email *pinej@wwu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WWU, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified. No associated funerary objects are present.

Representatives from Western Washington University worked at 45–WH–17 in both 1973 and 1977. Dr. Garland Grabert directed a summer field school at the site in 1973. In 1977, Western Washington University entered a contract (C530–695–02) with the city of Blaine, WA, to conduct salvage in conjunction with the construction of the sewage treatment facility. Operations began in June and continued through the end of August 1977. One burial was recovered at 45–WH–17 in 1973 and a total of 40 burials were recovered during the 1977 project. All the known burials and associated funerary objects in the WWU collections from the 1973 and 1977 work were repatriated to the Lummi Nation in the early 1980's.

During the WWU NAGPRA compliance efforts in 1995, closer examination of faunal remains from 45–WH–17 resulted in numerous additional fragments of human bone being recognized. These human remains were listed in the original 1995 WWU NAGPRA Inventory and they, too, were repatriated to the Lummi Nation, upon their request in 2001. During the recent rehousing project described above, one additional human remain was identified from the 45–WH–17 collection and it is described below. No known individuals were identified. No hazardous chemicals are known to have been used to treat the human remains while in the custody of WWU.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The WWU has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Lummi Tribe of the Lummi Reservation and the Nooksack Indian Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after November 14, 2024. If competing requests for repatriation are received, the WWU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The WWU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: October 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23721 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038878; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Willamette University, Salem, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Willamette University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after November 14, 2024.

ADDRESSES: Emilio Solano, Willamette University, 900 State Street, Salem, OR

97209, telephone (503) 370–6027, email *easolano@willamette.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Willamette University, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified. No associated funerary objects are present. The osteological elements from one individual include a mandible, four teeth, two radii, two humeri, five vertebrae, and one femur. There is no known acquisition history of the ancestral remains, but the preponderance of the evidence suggests that either W.S. Laughlin or John Rademaker disturbed and acquired these remains. There were no markings, labels, or other documentation found with this individual. The geographic location is unknown but is likely associated with the Willamette Valley, Oregon mounds excavated by Laughlin or near The Dalles, Oregon site excavation by Rademaker. Cultural affiliation is unknown but likely the Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, or Confederated Tribes of the Warm Springs based on information available, including archeological, geographical, and historical. The remains have not been tested for the presence of any potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

Willamette University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Confederated Tribes of Siletz Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after November 14, 2024. If competing requests for repatriation are received, Willamette University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Willamette University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: October 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23719 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038879; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of the Interior, Bureau of Land Management, Colorado State Office, Tres Rios Field Office, Dolores, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management, Colorado State Office, Tres Rios Field Office (BLM Tres Rios Field Office) intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after November 14, 2024. If no claim for disposition is received by October 15, 2025, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Derek Padilla, Field Office Manager, Bureau of Land Management, Tres Rios Field Office, 29211 Highway 184, Dolores, CO 81323, telephone (970) 882–7296, email *dpadilla@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BLM Tres Rios Field Office, and additional information on the human remains in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing two individuals have been reasonably identified. No associated funerary objects are present. The remains represent one individual from San Miguel County, Colorado, specifically archaeological site 5SM377. The remains from 5SM377 consist of one fragment of a human metatarsal or metacarpal bone, which were inadvertently removed from the site in 2012.

Additionally, remains from a second individual were located next to a road in San Miguel County, Colorado. These remains consist of one human cranium and are unassociated with an archaeological site.

Determinations

The BLM Tres Rios Field Office has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San

Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Ute Tribe; Ysleta del Sur Pueblo; and the Zuni Tribe of the Zuni Reservation, New Mexico have priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by October 15, 2025, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after November 14, 2024. If competing claims for disposition are received, the BLM Tres Rios Field Office must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The BLM Tres Rios Field Office is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: October 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23720 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038881; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the State Historical Society of Wisconsin, otherwise known as the Wisconsin Historical Society (WHS) intends to repatriate a certain cultural item that meets the definition of a sacred object and object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after November 14, 2024.

ADDRESSES: Jacqueline Pozza Reisner, Wisconsin Historical Society, 204 S Thornton Avenue, Madison, WI 53703, telephone (608) 263–3537, email *jacqueline.pozza@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Wisconsin Historical Society, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The item is described in WHS' documentation as a ''Chilkat blanket, 44″ x 24″, plus fringe. Yellow, black, blue and white design. Native dyes. Made at Klukwan, Alaska. Mountain goat wool.'' Through consultation, the design on the blanket has been identified as one owned by the Tlingit. This blanket was donated to WHS by Mrs. P.A. Strommen of Aniwa, Wisconsin. Mrs. Strommen indicated in correspondence that the blanket was ''made by the [Chilkoot] Indians at Klukwan, Alaska.'' WHS has no record of this blanket being treated with any potentially hazardous substances in the past. The one sacred item and object of cultural patrimony is one blanket.

Determinations

The Wisconsin Historical Society has determined that:

- The one object described in this notice is, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural item described in this notice and the Central Council of the Tlingit & Haida Indian Tribes.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after November 14, 2024. If competing requests for repatriation are received, the Wisconsin Historical Society must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Wisconsin Historical Society is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: October 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–23722 Filed 10–11–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Flash-Spun Nonwoven Materials and Products Containing Same, DN 3776;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.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: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of DuPont de Nemours, Inc., DuPont Safety & Construction, Inc., and DuPont Specialty Products USA, LLC on October 9, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash-spun nonwoven materials and products containing same. The complaint names as respondents: Xiamen Dangs New-Materials Co., Ltd. AKA Dawnsens New Materials Co., Ltd. of China; Beijing Dangsheng Technology Co., Ltd. of China; Xiamen Dangsheng Technology Co., Ltd. of China; Kingwills New Material Technology Co., Ltd. of China; Zhejiang Qingyun New Material Co., Ltd. of China; Jiangsu Qingyun New Materials Co., Ltd. AKA Jiangsu Kingwills New Materials Co., Ltd. of China; Shanghai Qingyun New Material Technology Co., Ltd. of China; Kingwills International Ltd. of China; Harbourpoint Innovations Inc. of Raleigh, NC; Impak Corporation of Los Angeles, CA; Shenzhen Zhengming Science and Technology Co., Ltd. of China; Weifang Konzer Safety Protective Equipment Co., Ltd. of China; Jiangsu Tubo New Material Co., Ltd. of China; Emedia Group. Inc. of Greenville, SC; endur-tec, LLC of Anderson, SC; Hangzhou Several Sets of Electronic Commerce Co., Ltd. of China; Hangzhou Qiao Shell Digital Technology Co., Ltd. of China; and Zhenping County Weihe Commerce and Trade Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337 (e)(i).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3776'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 9, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–23772 Filed 10–11–24; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–739–740 and 731–TA–1716–1717 (Preliminary)]

Thermoformed Molded Fiber Products From China and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–739–740 and 731–TA–1716–1717 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of thermoformed molded fiber products from China and Vietnam, provided for in subheading 4823.70.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of China and Vietnam. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by November 22, 2024. The Commission's views must be transmitted to Commerce within five business days thereafter, or by December 2, 2024.

DATES: October 8, 2024.

FOR FURTHER INFORMATION CONTACT: Caitlyn Costello ((202) 205–2058), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on October 8, 2024, by the American Molded Fiber Coalition, which is comprised of Genera, Vonore, Tennessee, Tellus Products, LLC, Belle Glade, Florida, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on Tuesday, October 29, 2024. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before Friday, October 25, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on November 1, 2024, a written brief containing information and arguments pertinent to the subject

matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on October 28, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 8, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–23714 Filed 10–11–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Blockchain Security Standards Council, Inc.

Notice is hereby given that, on September 26, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Blockchain Security Standards Council, Inc., (''BSSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Anchor Labs, Inc., DBA Anchorage Digital, San Francisco, CA; Figment, Inc., Toronto, CANADA; and Ribbit Capital, New York, NY, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BSSC intends to file additional written notifications disclosing all changes in membership.

On July 9, 2024, BSSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 26, 2024 (89 FR 78902).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23656 Filed 10–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Battery Innovation

Notice is hereby given that, on October 1, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Battery Innovation (''CBI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Shenxian Hua Yang Industry Co. Ltd., Liao Cheng, PEOPLE'S REPUBLIC OF CHINA; Camel Group Co. Ltd., Xiangyang, PEOPLE'S REPUBLIC OF CHINA; and Luminous Power Technologies, Gurugram, INDIA, have been added as parties to this venture.

Also, Boab Metals, Perth, AUSTRALIA; Digatron Power Electronics GmbH, Aachen, GERMANY; and NV Bekaert SA, Zwevegem, BELGIUM, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CBI intends to file additional written notifications disclosing all changes in membership.

On May 24, 2019, CBI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2019 (84 FR 29241).

The last notification was filed with the Department on March 18, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 2024 (89 FR 54043).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23661 Filed 10–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on September 25, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between May 12, 2024, and

September 9, 2024, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on May 17, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52092).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23654 Filed 10–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0082]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Law Enforcement Suicide Data Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 16, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Edward L. Abraham, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, Module D–2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; email: *elabraham@fbi.gov* or *UCR@fbi.gov;* telephone: 304–625–4830.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

— Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: In response to the Law Enforcement Suicide Data Collection Act (title 34, United States Code, section 50701), the FBI's Uniform Crime Reporting Program established the LESDC which is designed to gather information on occurrences of suicide and attempted suicide within the law enforcement community. The data will be used to produce a report of information surrounding these incidents which will help promote the understanding of, and elicit further discussion within society about, law enforcement suicide and attempted suicide.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Law Enforcement Suicide Data Collection.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Criminal Justice Information Services Division (CJISD).

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public Law Enforcement Agencies. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of responses is 50 per year.

The time per response is 15 minutes.

CIV estimates that 114 respondents will take three minutes to complete the form.

6. *An estimate of the total annual burden (in hours) associated with the collection:* CJIS estimates 312.5 hours ($50 \times 15\text{min}/60 = 12.5$ hours). There is an additional 300 hours of outreach.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency (1 annually)	Total annual responses	Time per response (min)	Total annual burden (hours)
Ex: Survey (individuals or households)	50		50	15	12.5
Unduplicated Totals	50		50		12.5

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 9, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–23775 Filed 10–11–24; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service and Senior Level Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service and Senior Level Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its 2024 Senior Executive Service (SES) and Senior Level (SL) Standing Performance Review Boards (PRBs). The purpose of the PRB is to provide a fair and impartial review of SES and SL performance appraisals and make recommendations to the appointing authority concerning performance ratings, performance awards, and performance-based pay adjustments.

FOR FURTHER INFORMATION CONTACT: F. Michael Sena, Deputy Director, Human Resources, Justice Management Division, Department of Justice, Washington, DC 20530, (202) 532–4594.

Dated: October 9, 2024.

Jolene Ann Lauria,

Assistant Attorney General for Administration.

2024 Federal Register

List of Names (Alphabetical Order)

Bass, Stacie
Baxter, William H
Brewer, Laurence Neil
Campbell, Romona
Collier, Andrew T
DeTineo, Kristen E
Ducot, Gregory Earl
Flentje, August E
Freeman, Mark R
Govindan, Jay
Griffith, L Cristina
Haungs, Michael J
Hoag, Aaron D
Haar, Daniel
King, Damon Alexander
McCarthy, Andrea Wenz
McCarthy, Patricia M
McHenry, James
Merkle, Phillip K
Messersmith, Cynthia
Milusnic, Louis J
Mizer, Benjamin C
Neumann, Jennifer Scheller
Pelletier, Jonathan
Pfister, Mary B
Posner, Morton J
Raish, Anne S
Reich, Mitchell
Ruisanchez, Alberto J
Satten-Lopez, Elena
Shatz, Eileen M
Spriggs, Dwayne Eugene
Tarlov, Yvette F
Thompson, Sonya D
Toledo, Randy
Ugolini, Francesca
Wilkinson, James
Woodard, Karen D

[FR Doc. 2024–23756 Filed 10–11–24; 8:45 am]

BILLING CODE 4410–CH–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Request for Earnings Information; Correction

ACTION: Request for public comments; correction.

AGENCY: Division of Federal Employees', Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs.

SUMMARY: The Department of Labor (DOL) is correcting a notice that appeared in the **Federal Register** on September 4, 2024. The information provided in the **DATES** section contained an error. DOL is issuing this correction to provide the correct information.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc 2024–19748 appearing at 89 FR 71935 in the **Federal Register** of September 4, 2024, on page 71935 in the 1st column, the following correction is made to the **DATES** section:

The date is corrected to read as follows:

Consideration will be given to all written comments received by November 4, 2024.

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2024–23728 Filed 10–11–24; 8:45 am]

BILLING CODE 4510–CF–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m. to 11:30 a.m. (MST–AZ), Wednesday, October 30, 2024.

PLACE: Virtual Board of Trustees Meeting via Microsoft Teams.

STATUS: This virtual meeting of the Board of Trustees will be open to the public. Members of the public who would like to attend this meeting may request remote access by contacting Sara Moeller at *moeller@udall.gov* prior to October 30, 2024, to obtain the teleconference connection information.

MATTERS TO BE CONSIDERED: (1) Call to Order and Chair's Remarks; (2) Executive Director's Remarks; (3) Welcome New Trustees; (4) Consent Agenda Approval (Minutes of the July 23, 2024, Special Board of Trustees Meeting; Minutes of the August 19, 2024, Special Board of Trustees Meeting; Board Reports submitted for Data and Information Technology, Education Programs, Finance and Internal Controls, John S. McCain III National Center for Environmental Conflict Resolution, and Udall Center for Studies in Public Policy, including the Native Nations Institute for Leadership, Management, and Policy and The University of Arizona Libraries, Special Collections; and Board takes notice of any new and updated personnel policies and internal control methodologies); (5) Agency Strategic Plan Update (2026–2030); (6) The University of Arizona Fiscal Year 2025 Program Work Plan and Funding (including resolutions regarding Allocation of Funds to the Udall Center for Studies in Public Policy and The University of Arizona Libraries, Special Collections and Funds Set Aside for the Native Nations Institute for Leadership, Management, and Policy, a program of the Udall Center for Studies in Public Policy); and (7) Thank You and Farewell to Former Trustee Eric Eberhard (including a resolution regarding Amendment of Operating Procedures of the Board of Trustees of the Morris K. Udall and Stewart L. Udall Foundation).

CONTACT PERSON FOR MORE INFORMATION: Sara Moeller, Chief Operating Officer, 434 E University Blvd., Suite 300, Tucson, AZ 85705, (520) 901–8568.

Dated: October 10, 2024.

David P. Brown,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation.

[FR Doc. 2024–23862 Filed 10–10–24; 4:15 pm]

BILLING CODE 6820–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–10; NRC–2024–0086]

Northern States Power Company; Prairie Island Independent Spent Fuel Storage Installation; License Amendment Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) reviewed an application by Northern States Power Company (NSPM) for amendment of Special Nuclear Materials License No. SNM–2506 which authorizes NSPM to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials. The amendment request sought to revise the license conditions to describe the inspection intervals similar to Technical Specifications Surveillance Requirement Frequency, allowing up to 1.25 times the specified intervals to account for scheduling challenges, including but not limited to inclement weather, security drills, and refueling outages.

DATES: The license amendment was issued September 23, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0086 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0086. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC received, by letter dated April 2, 2024 (ADAMS Accession No. ML24095A075), a license amendment application from NSPM, to amend Special Nuclear Materials License No. SNM–2506, which authorizes the storage of spent fuel at the Prairie Island Independent Spent Fuel Storage Installation (PI ISFSI) located in Welch, Minnesota. Specifically, the amendment sought to revise License Conditions 23(a), 24(A)(2), and 24(B)(2). The subject license conditions are aging management activities with specified inspection intervals of three months or one quarter. NSPM proposed to revise the license conditions to describe the inspection intervals similar to Technical Specifications Surveillance Requirement Frequency, allowing up to 1.25 times the specified intervals to account for scheduling challenges, including but not limited to inclement weather, security drills, and refueling outages.

An NRC administrative completeness review, documented in a letter to NSPM dated May 16, 2024 (ADAMS Accession No. ML24128A257), found the application acceptable to begin a technical review. In accordance with section 72.16 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Filing of application for specific license,'' a notice of docketing was published in the **Federal Register** on May 28, 2024 (89 FR 46176). The notice of docketing included an opportunity to request a hearing and to petition for leave to intervene. No requests for a hearing or petitions for leave to intervene were submitted.

The NRC prepared a safety evaluation report (SER) (ADAMS Accession No. ML24241A169) to document its review and evaluation of the amendment request. In addition, the NRC evaluated an assertion by NSPM that the amendment request satisfied the categorical exclusion criteria specified in 10 CFR 51.22(c)(11). Under 10 CFR 51.22(c)(11), a categorical exclusion is allowed for amendments to materials licenses which are administrative, organizational, or procedural in nature, or which result in a change to process operations or equipment, provided that (i) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (ii) there is no significant increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no significant increase in the potential for or consequences from radiological accidents. As explained in the SER, the NRC determined that the license amendment request satisfied the 10 CFR 51.22(c)(11) categorical exclusion criteria. Consequently, an environmental assessment and finding of no significant impact are not required.

Upon completing its review, the NRC staff determined that the request complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), as well as the NRC's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. The NRC approved and issued Amendment No. 13 to Special Nuclear Materials License No. SNM–2506 (ADAMS Accession No. ML24241A170), held by NSPM for the receipt, possession, transfer, and storage of spent fuel and associated radioactive materials at the PI ISFSI. Pursuant to 10 CFR 72.46(d), the NRC is providing notice of the action taken. Amendment No. 13 was effective as of the date of issuance, September 23, 2024.

Dated: October 8, 2024.

For the Nuclear Regulatory Commission.

Christian Jacobs,

Acting Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024–23647 Filed 10–11–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–39 and K2025–38; MC2025–40 and K2025–39; MC2025–41 and K2025–40; MC2025–42 and K2025–41; MC2025–43 and K2025–42]

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: October 17, 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. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

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]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such 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 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. 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 3041.

[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).

Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2025–39 and K2025–38; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 446 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 17, 2024.

2. *Docket No(s).:* MC2025–40 and K2025–39; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 447 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 17, 2024.

3. *Docket No(s).:* MC2025–41 and K2025–40; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 448 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 17, 2024.

4. *Docket No(s).:* MC2025–42 and K2025–41; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 449 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 17, 2024.

5. *Docket No(s).:* MC2025–43 and K2025–42; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 450 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* October 17, 2024.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–23730 Filed 10–11–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2025–1; Order No. 7676]

Public Inquiry on Modification of Service Performance Measurement Plan

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service request proposing modifications to its Service Performance Measurement Plan for Market Dominant products and related measurement changes. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 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: On October 4, 2024, the Postal Service filed a notice, pursuant to 39 CFR 3055.5,

proposing revisions to its Service Performance Measurement (SPM) Plan for Market Dominant products.[1] The Postal Service also, pursuant to 39 U.S.C. 3691(b)(2), requests approval to apply an existing internal service performance measurement system to USPS Connect Local Mail. Notice at 1. The most recent version of the SPM Plan that is the subject of this proceeding was approved for implementation on May 7, 2024, in Docket No. PI2024–1.[2] Accompanying the Notice is a library reference, which contains a copy of the Postal Service's SPM Plan, revised October 4, 2024 (both redline and clean versions).[3]

On November 10, 2021, the Postal Service announced its intention to conduct a market test of an experimental product denominated as USPS Connect Local Mail.[4] USPS Connect Local Mail is a same day/overnight delivery product intended for local delivery, enabling customers to deposit USPS Connect Local Mail items at participating Destination Delivery Units (DDUs) or present them to mail carriers along their lines of travel to participating DDUs. Notice at 3. The Commission authorized the proposed market test on January 4, 2022.[5] On October 11, 2022, the Postal Service requested that USPS Connect Local Mail be converted to a permanent offering.[6] On January 20, 2023, the Commission dismissed the Postal Service's request without prejudice, finding that the Postal Service's request was premature and that significant issues had been raised by commenters with respect to whether USPS Connect Local Mail as proposed would violate 39 U.S.C. 404a—issues which the Commission found had not been adequately addressed on the record before it at that time.[7] The Commission stated that the Postal Service was free to ''refile its request once it has resolved the issues related to section 404a.'' Order No. 6423 at 15. The Postal Service has now done so, refiling its request in a companion docket to the instant one.[8]

In this docket, the Postal Service states that ''[a]ssuming [its current request to convert USPS Connect Local Mail into a permanent offering] [is] adopted in accordance with the expected date of implementation of January 1, 2025, the Postal Service plans to add USPS Connect Local Mail as a price category within First-Class Mail Flats.'' Notice at 4. To that end, the Postal Service, pursuant to 39 CFR 3055.5, proposes revisions to the SPM Plan. *See id.* at 5. Specifically, the Postal Service proposes to modify the existing SPM Plan to add USPS Connect Local Mail, describe the approach that will be followed to measure its service performance, and identify when such performance measurements will be reported. *Id.*

The Postal Service also, pursuant to 39 U.S.C. 3691(b)(2), requests approval to apply internal service performance measurement to USPS Connect Local Mail. *Id.* at 5–6. Specifically, the Postal Service proposes using its existing internal Intelligent Mail package barcode (IMpb) system, which employs automated equipment to sort and track mailpieces. *Id.* at 6. The Postal Service proposes using IMpb tracking barcodes at acceptance and delivery to measure service performance for USPS Connect Local Mail. *Id.*

With respect to the service standard to be applied to USPS Connect Local Mail, the Postal Service states that:

> On November 30, 2022, 39 [CFR] 121.1 was revised to establish a same-day service standard for USPS Connect Local Mail items accepted . . . at a participating DDU by the Critical Entry Time (CET) and to establish a next-day service standard for USPS Connect Local Mail for items picked-up by a carrier or accepted at a participating DDU after that day's CET.

Notice at 4. The Postal Service explains that this would remain the applicable service standard for USPS Connect Local Mail should it be converted to a permanent offering. *Id.*

Interested persons are invited to comment on the Postal Service's proposed revisions to its SPM Plan and request to use internal service performance measurement for USPS Connect Local Mail. Comments are due November 19, 2024. The Commission does not anticipate the need for reply comments at this time. The Commission intends to evaluate the comments received and use those suggestions to help carry out its service performance measurement responsibilities under Title 39 of the United States Code. Material filed in this docket will be available for review on the Commission's website, *http://www.prc.gov.* The Commission appoints Christopher C. Mohr to represent the interests of the general public (Public Representative) in this docket.

It is ordered:

1. Docket No. PI2025–1 is established for the purpose of considering the Postal Service's proposed revisions to its Service Performance Measurement Plan for Market Dominant products and request to use internal service performance measurement for USPS Connect Local Mail.

2. Interested persons may submit written comments on any or all aspects of the Postal Service's proposals no later than November 19, 2024.

3. Christopher C. Mohr is designated to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2024–23711 Filed 10–11–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] United States Postal Service Notice Concerning Service Standards Measurement for USPS Connect Local and Request for Use of Internal Measurement System, October 4, 2024, at 1 (Notice).

[2] Docket No. PI2024–1, Order Approving Modifications to Service Performance Measurement Plan for Market Dominant Products and Related Measurement Changes, May 7, 2024 (Order No. 7084). *See* Docket No. PI2024–1, Library Reference USPS–LR–PI2024–1–1, March 18, 2024, PDF file ''iSPM_RevPlan_BLACK–LINE—03–18–2024.pdf.''

[3] Library Reference USPS–LR–PI2025–1–1, October 4, 2024, PDF files ''iSPM RevPlan ConnectLocal_Redline.pdf'' and ''iSPM RevPlan ConnectLocal_Blackline.pdf.''

[4] Docket No. MT2022–1, United States Postal Service Notice of Market Test of Experimental Product—USPS Connect Local Mail, November 10, 2021.

[5] Docket No. MT2022–1, Order Authorizing Market Test of Experimental Product—USPS Connect Local Mail, January 4, 2022 (Order No. 6080).

[6] Docket No. MC2023–12, United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, October 11, 2022.

[7] Docket No. MC2023–12, Order Dismissing Without Prejudice the Postal Service's Revised Request to Convert USPS Connect Local Mail Market Test to a Permanent Offering, January 20, 2023 (Order No. 6423); Docket No. PI2023–1, Order Dismissing Without Prejudice Notice of Intent to Establish New Service Standards, Proposed Modifications to Service Performance Measurement Plan for Market Dominant Products, and Request to Use Internal Service Performance Measurement System, January 20, 2023 (Order No. 6424). The Commission had previously also dismissed without prejudice a separate request in the same docket to convert USPS Connect Local Mail to a permanent offering, for procedural reasons. *See* Docket No. MC2023–12, Order Dismissing Without Prejudice Postal Service's Request to Convert USPS Connect Local Mail Market Test to a Permanent Offering, October 17, 2022 (Order No. 6301).

[8] *See* Docket No. MC2025–19, United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, October 3, 2024.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–36 and K2025–35; MC2025–37 and K2025–36; MC2025–38 and K2025–37]

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:* October 16, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

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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]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such 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 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. 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 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2025–36 and K2025–35; *Filing Title:* USPS Request to add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 444 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Anaswar Jayakumar; *Comments Due:* October 16, 2024.

2. *Docket No(s).:* MC2025–37 and K2025–36; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 445 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 16, 2024.

3. *Docket No(s).:* MC2025–38 and K2025–37; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 379 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* October 16, 2024.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–23715 Filed 10–11–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35351; 812–15580]

Institutional Investment Strategy Fund and Buena Capital Advisors, LLC

October 8, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: Institutional Investment Strategy Fund and Buena Capital Advisors, LLC.

FILING DATES: The application was filed on May 29, 2024, and amended on August 28, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on November 4, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest,

any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Arash Ghodoosi, Institutional Investment Strategy Fund, *arash@buenacapital.com,* with a copy to JoAnn M. Strasser, Esq., Thompson Hine LLP, *JoAnn.Strasser@ThompsonHine.com,* and Philip B. Sineneng, Esq., Thompson Hine LLP, *Philip.Sineneng@ThompsonHine.com.*

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended application, dated August 28, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23680 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0785]

Proposed Collection; Comment Request; Extension: Rule 18a–10

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 18a–10 (17 CFR 240.18a–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Exchange Act Rule 18a–10 provides an alternative compliance mechanism pursuant to which stand-alone security-based swap dealers (''SBSDs'') registered as a swap dealer that predominantly engages in a swaps business, and that meet certain conditions set forth in the rule, may elect to comply with the capital, margin, segregation, recordkeeping, and reporting requirements of the Commodity Exchange Act (''CEA'') and the U.S. Commodity Futures Trading Commission's (''CFTC'') rules in lieu of complying with SEC Rules 18a–1, and 18a–3 through 18a–9. Rule 18a–10 requires the firm to provide a written disclosure to its counterparties after it begins operating pursuant to the rule. Furthermore, Rule 18a–10 requires the firm to immediately notify the Commission and the CFTC in writing if it fails to meet a condition in the rule.

There are currently two stand-alone SBSDs operating pursuant to the alternative compliance mechanism. The Commission estimates that these two stand-alone SBSDs will each spend 5 hours per year updating the disclosure language required under paragraph (b)(2) of Rule 18a–10, and that one of these stand-alone SBSDs will file the notice with the Commission required under paragraph (b)(3) of Rule 18a–10, which will impose an estimated burden of 5 minutes per year. Consequnenty, the Commission estimates that the total hour burden under Rule 18a–10 is approximately 11 hours per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by December 16, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 9, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23766 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Small Business Capital Formation Advisory Committee will hold a public meeting on Wednesday, November 13, 2024, via videoconference.

PLACE: The meeting will be conducted by remote means (videoconference) and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 9:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTER TO BE CONSIDERED: The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: October 9, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–23808 Filed 10–10–24; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–441, OMB Control No. 3235–0497]

Proposed Collection; Comment Request; Extension: Rule 15c3–4

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 15c3–4 (17 CFR 240.15c3–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c3–4 requires certain broker-dealers that are registered with the Commission as OTC derivatives dealers, or who compute their net capital charges under Appendix E to Rule 15c3–1 (17 CFR 240.15c3–1) (''ANC firms''), to establish, document, and maintain a system of internal risk management controls. In addition, security-based swap dealers (''SBSDs'') must comply with Rule 15c3–4 as if they were OTC derivatives dealers. The Rule sets forth the basic elements for an OTC derivatives dealer, an ANC firm, or an SBSD to consider and include when establishing, documenting, and reviewing its internal risk management control system, which is designed to, among other things, ensure the integrity of an OTC derivatives dealer's, an ANC firm's, or an SBDS's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the firm's activities and level of risk. The Rule also requires that management of an OTC derivatives dealer, ANC firm, or SBSD must periodically review, in accordance with written procedures, the firm's business activities for consistency with its risk management guidelines.

The staff estimates that the average amount of time a new firm subject to Rule 15c3–4 will spend establishing and documenting its risk management control system is approximately 2,000 hours (666.666667 hours per year when annualized over three years) and that, on average, an existing firm subject to Rule 15c3–4 will spend approximately 200 hours each year to maintain (*e.g.,* reviewing and updating) its risk management control system. Currently, seventeen firms are required to comply with Rule 15c3–4. The staff estimates that approximately six new additional firms may become subject to the requirements of Rule 15c3–4 within the next three years. Thus, the estimated annual burden would be 3,400 hours for the seventeen existing firms currently required to comply with Rule 15c3–4 to maintain their risk management control systems,[1] 4,000 hours for the six new firms to establish and document their risk management control systems,[2] and 1,200 hours for the six new firms to maintain their risk management control systems.[3] Accordingly, the staff estimates the total annual burden associated with Rule 15c3–4 for the 23 respondents (seventeen existing respondents and six new respondents) will be approximately 8,600 hours per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by December 16, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 9, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23764 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

[1] (200 hours × 17 firms) = 3,400.

[2] ((2,000 hours/3 years) × 6 firms) = 4,000.

[3] (200 hours × 6 firms) = 1,200.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35354; File No. 812–15433]

White Oak Secured Asset Lending Fund, Inc., et al.

October 8, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: White Oak Secured Asset Lending Fund, Inc., White Oak Global Advisors, LLC, BAYVK R PD 2 Loan, LLC, White Oak Bespoke Income Ultimate Master Fund, L.P., White Oak Deseret Mutual Fund, L.P., White Oak Fixed Income Fund C, L.P., White Oak Fixed Income SME Fund USD 2019–1, L.P., White Oak Fixed Income Offshore Fund, SCSp, White Oak Impact Fund, SCSp (Master), White Oak NDT Fund, LP, White Oak Partners Fund I, L.P., White Oak Pinnacle Fund, L.P., White Oak Specialized ABL Master Fund, L.P., White Oak Specialized ABL SPV–1, L.P., White Oak Short Term ABL Feeder Fund, SCSp, White Oak Short Term ABL Master Fund, SCSp, White Oak Short-Term ABL Securitisation Company, S.a.r.l., White Oak Summit EU Fund, PLC, White Oak Summit Fund, ILP, White Oak Summit Fund, L.P., White Oak Summit ICAV, White Oak Summit Parallel Fund I, L.P., White Oak Summit Parallel Fund II, L.P., White Oak Summit Peer Fund, L.P., White Oak Summit Revolver Fund EU, LLC, White Oak Summit Revolver Fund, L.P., White Oak Summit Term Fund EU, LLC, White Oak Summit Term Fund, L.P., White Oak WCTPT Evergreen Fund, L.P., White Oak Yield Spectrum (Cayman) Fund, LLC, White Oak 2 ICAV—White Oak Yield Spectrum ICAV, White Oak Yield Spectrum (Luxembourg) Master Fund, SCSp, White Oak Yield Spectrum Fund, L.P., White Oak Yield Spectrum Peer Fund, L.P., White Oak Yield Spectrum Revolver Fund, SCSp, White Oak Yield Spectrum Term Fund, SCSp, White Oak Yield Spectrum (Luxembourg) Master Fund V, SCSp, White Oak Yield Spectrum Master Fund V SCSp and White Oak Yield Spectrum Parallel Fund, L.P.

FILING DATES: The application was filed on February 3, 2023 and amended on June 16, 2023, October 13, 2023, May 7, 2024 and October 7, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will

be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on November 1, 2024 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *ahakkak@whiteoaksf.com, Vadim.avdeychik@cliffordchance.com* and *Clifford.cone@cliffordchance.com*.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, or Thomas Ahmadifar, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' fourth amended and restated application, dated October 7, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html*. You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23679 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, October 17, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: October 10, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–23833 Filed 10–10–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101282; File No. SR–PEARL–2024–46]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

October 8, 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 30, 2024, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings,* at MIAX Pearl's principal office, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to decrease the fee for executions of orders that remove liquidity from the Exchange in securities priced below $1.00 per share from 0.25% to 0.20% of the total dollar value of the transaction.[3]

Proposal To Decrease the Fee for Removing Liquidity in Securities Priced Below $1.00 per Share

Currently, the Exchange assesses a fee of 0.25% of the total dollar value of any transaction in securities priced below $1.00 per share that removes liquidity from the Exchange across all Tapes.[4] The Exchange now proposes to decrease the fee from 0.25% to 0.20% of the total dollar value of any transaction in securities priced below $1.00 per share that removes liquidity from the Exchange across all Tapes. The purpose of the proposed change is for business and competitive reasons.

Specifically, the Exchange proposes to amend Section (1)(a) Standard Rates Table of the Fee Schedule to change the value in the table for Removing Liquidity in Securities below $1.00 from 0.25% to 0.20%. Additionally, the Exchange proposes to amend the Section (1)(b) Liquidity Indicator Codes and Associated Fees, to reflect the proposed change to the Standard Rates Table.

The Exchange provides a table in section (1)(b), Liquidity Indicator Codes and Associated Fees, that provides a list of fees and rebates so that Equity Members[5] may better understand the fee or rebate that is applied to each execution. The liquidity indicator code for each execution is returned on the real-time trade report sent to the Equity Member that submitted the order.

The Exchange now proposes to amend the column titled ''Fee/(Rebate) Securities Priced Below $1.00'' in Section (1)(b) of the Fee Schedule to reflect the proposed decrease to the standard fee assessed for Removing Liquidity (Displayed Orders and Non-Displayed Orders) in securities priced below $1.00 per share from 0.25% to 0.20% for the following liquidity indicator codes: ''RA,'' ''RB,'' ''RC,'' ''RR,'' ''RT,'' ''Ra,'' ''Rb,'' ''Rc,'' ''Rp,'' ''Rr,'' and ''Rt.''

The Exchange believes it is appropriate to decrease the fee from 0.25% to 0.20% of the total dollar value of any transaction in securities priced below $1.00 per share that removes liquidity from the Exchange across all Tapes to further encourage market participants to enter liquidity removing orders on the Exchange, thereby increasing the execution opportunities for the liquidity adding orders resting on the MIAX Pearl Equities Book.[6]

Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on October 1, 2024.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their 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 many venues, including 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 15–16% of the total market share of executed volume of equities trading.[10] 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 less than 2% of the overall market share.[11] 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.''[12]

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 their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Equity Members and market participants.

Proposal To Decrease the Fee for Removing Liquidity in Securities Priced Below $1.00 per Share

The Exchange believes that the proposed change to decrease the standard fee for executions of all orders

[3] The Exchange notes that it recently reduced the fee for removing liquidity in securities priced at or above $1.00. *See* Securities Exchange Act Release No. 101100 (September 19, 2024), 89 FR 78359 (September 25, 2024) (SR–PEARL–2024–41).

[4] *See* Fee Schedule, Section (1)(a). *See also* Fee Schedule, Section (1)(b), Liquidity Indicator Codes RA, RB, RC, RR, RT, Ra, Rb, Rc, Rp, Rr and Rt.

[5] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[6] The term ''MIAX Pearl Equities Book'' shall mean the electronic book of orders in equity securities maintained by the System. *See* Exchange Rule 1901.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] Market share percentage calculated as of August 25, 2024. The Exchange receives and processes data made available through consolidated data feeds.

[11] *Id.*

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

in securities priced below $1.00 per share that remove liquidity from the Exchange is reasonable, equitable, and consistent with the Act as the proposed fee remains lower than, or similar to, the standard fee to remove liquidity in securities priced below $1.00 per share charged by competing equities exchanges.[13] The Exchange further believes that the proposal to decrease the standard fee for executions of all orders in securities priced below $1.00 per share that remove liquidity from the Exchange is equitably allocated and not unfairly discriminatory because it will apply equally to all Equity Members that remove liquidity from the Exchange.

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 Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity 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 proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes will continue to encourage Equity Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal will 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.'' [14]

Intra-Market Competition

The Exchange believes that the proposed changes will continue to incentivize market participants to direct order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, will continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all Equity Members.

Similarly, the proposed decrease to the standard fee for executions of orders that remove volume from the Exchange will continue to apply equally to all Equity Members. As such, the Exchange believes the proposed changes would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen 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 15–16% of the total market share of executed volume of equities trading.[15] 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 in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of orders that remove volume from the Exchange, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes are competitive proposals through which the Exchange is seeking to encourage additional order flow to the Exchange. Such proposed changes to (i) [*sic*] decrease the Removing Liquidity fee is comparable to, and competitive with, rates charged by other exchanges.[16] The proposed change to update the Liquidity Indicator Codes and Associated Fees table is in conjunction with the Exchange's above mentioned proposed change to the standard fee for Removing Liquidity from the Exchange.

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.'' [17] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. circuit stated: ''[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 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' . . . .'' [18] Accordingly, the Exchange

[13] *See* Cboe EDGX Equities Fee Schedule, Standard Rates, *available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/* (charging a standard fee of 0.30% of the dollar value to remove liquidity in securities priced below $1.00 per share); *see also* MEMX Fee Schedule, Transaction Fees (charging a standard fee of 0.28% of the total dollar value to remove liquidity in securities priced below $1.00 per share); *and* NYSE American Equities Price List, Section I.A.2., *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf* (charging a standard fee of 0.25% of the total dollar value of the transaction to remove liquidity in securities priced below $1.00 per share).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

[15] *See supra* note 10.

[16] *See supra* note 13.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release

Continued

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[19] and Rule 19b–4(f)(2) thereunder[20] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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–PEARL–2024–46 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–PEARL–2024–46. 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–PEARL–2024–46 and should be submitted on or before November 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23659 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4.

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35355; File No. 812–15500]

TriplePoint Venture Growth BDC Corp., et al.

October 9, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: TriplePoint Venture Growth BDC Corp.; TriplePoint Private Venture Credit Inc.; TPVG Variable Funding Company LLC; TPVG Investment LLC; TPVC Funding Company LLC; TPVC Investment LLC; TriplePoint Advisers LLC; TriplePoint Capital LLC; TriplePoint Financial LLC; TPF Funding 1 LLC; TPF Funding 2 LLC; TriplePoint Ventures 5 LLC; TPC Credit Partners 3 LLC; TriplePoint Venture Lending Fund, LLC; and TriplePoint Venture Lending SPV, LLC.

FILING DATES: The application was filed on August 22, 2023, and amended on February 7, 2024, and June 26, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on November 4, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: James P. Labe and Sajal K. Srivastava, TriplePoint Advisers LLC, at *jlabe@triplepointcapital.com* and *sks@triplepointcapital.com,* respectively, and Harry S. Pangas, Esq. and Clay Douglas, Esq., Dechert LLP, at *harry.pangas@dechert.com* and *clay.douglas@dechert.com,* respectively.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated June 26, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the

Company name search field, on the SEC's EDGAR system.

The SEC's EDGAR system may be searched at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23761 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101281; File No. SR–SAPPHIRE–2024–30]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

October 8, 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 27, 2024, MIAX Sapphire, LLC (''MIAX Sapphire'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 a proposal to amend the MIAX Sapphire Fee Schedule (the ''Fee Schedule'') to waive transaction rebates/fees applicable to transactions executed during the opening and transactions that uncross the Away Best Bid or Offer (''ABBO'').[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings,* at the Exchange's principal office, 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 this proposed rule change is to amend the Exchange's Fee Schedule to waive transaction rebates/fees applicable to executions that occur as part of the Exchange's Opening Process[4] as described in Rule 503 (''Openings on the Exchange'') or that uncross the ABBO, as described in Rule 515 (''Execution of Orders'').

Under Rule 503, Openings on the Exchange, the Exchange will accept orders for queuing prior to the opening of trading in that series of options.[5] While orders are queued prior to the Opening Process it is not possible to identify the order as either Maker or Taker, therefore the Exchange now proposes to add additional detail to its Fee Schedule by adopting new note (2), to clarify that, the per contract transaction rebates and fees shall be waived for transactions executed during the opening and for transactions that uncross the ABBO.[6] Additionally, the Exchange notes other competing option exchanges do not assess transaction rebates/fees at the open.[7]

Implementation

The proposed change will become effective on October 1, 2024.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposal provides that executions that occur as part of the Exchange's Opening Process will not incur any fees or receive any rebates. The Exchange believes that its proposal to waive transaction rebates/fees that occur as part of the Exchange's Opening Process is reasonable, fair and equitable because it will incentivize Members[11] to send order flow to the Exchange, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that the foregoing is fair and equitable because it provides certainty for Members with respect to execution costs occurring as part of the Exchange's Opening Process. Lastly, the Exchange also believes that the proposed pricing for executions occurring as part of the Opening on the Exchange is nondiscriminatory because it will apply equally to all Members.

The proposal further provides that executions that uncross the ABBO will not be assessed any fees or receive any rebates. The Exchange believes that its proposal to waive transaction rebates/fees that uncross the ABBO is reasonable, fair and equitable because it will incentivize Members to send greater order flow to the Exchange in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchange (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchanges from OPRA. *See* Exchange Rule 100.

[4] ''Opening Process'' shall mean the process for opening or resuming trading pursuant to Exchange Rule 503 and shall include the process for determining the price at which Eligible Interest shall be executed at the open of trading for the day, or the open of trading for a halted option, and the process for executing that Eligible Interest. *See* Exchange Rule 503(a)(1).

[5] *See* Exchange Rule 503(a)(2).

[6] The Exchange notes that its affiliate exchanges, MIAX Pearl Options and MIAX Emerald, have similar language in their fee schedules.

[7] *See* Cboe U.S. Options Fee Schedules, C2 Options, Transaction Fees, Trades at the Open, available online at *https://www.cboe.com/us/options/membership/fee_schedule/ctwo/;* and EDGX Options, Transaction Fees, Fee Codes and Associated Fees, Fee Code ''OO,'' available online at *https://www.cboe.com/us/options/membership/fee_schedule/edgx/.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

this scenario, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that the foregoing is fair and equitable because it provides certainty for Members with respect to execution costs across all trades which uncross the ABBO. Lastly, the Exchange also believes that the proposed pricing for executions occurring in this scenario is nondiscriminatory because it will apply equally to all Members.

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.

Intra-Market Competition

The proposal does not impose an undue burden on intra-market competition as transaction rebates and fees will be waived for transactions executed during the opening and for transactions that uncross the ABBO uniformly for all Members. The Exchange believes its proposal will encourage Members to submit orders to the Exchange which will increase liquidity and benefit all market participants by providing more trading opportunities and better execution prices. Accordingly, the Exchange believes that the proposed changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage order flow, which provides greater volume and liquidity, benefiting all market participants by providing more trading opportunities and better execution prices.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice on where to route their orders for execution. 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. There are currently 18 registered options exchanges competing for order flow. For the month of August 2024, based on publicly-available information, and excluding index-based options, no single exchange exceeded approximately 14–15% of the market share of executed volume of multiply-listed equity and exchange-traded fund (''ETF'') options.[12] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. In such an environment, the Exchange must propose transaction fees and rebates to be competitive with other exchanges and to attract order flow. The Exchange believes that the Exchange's proposal reflects this competitive environment, to the extent this is achieved, all of the Exchange's market participants should benefit from the quality of the Exchange's market.

The Exchange notes that this rule change is being proposed at a time when other options exchanges are offering similar pricing for similar market scenarios.[13] As a result of the competitive environment, Members will have various pricing and execution models to choose from in making determinations on where to enter orders prior to the opening of trading or which may potentially uncross the ABBO. The Exchange notes that it operates in a highly competitive market in which Members can readily direct order flow to competing venues if they deem fee levels to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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,[14] and Rule 19b–4(f)(2) [15] 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 should be approved or disapproved.

[12] *See* ''Market Share, MTD Average'' on the Exchange's website, *available at https://www.miaxglobal.com/.*

[13] *See supra* note 7.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 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–SAPPHIRE–2024–30 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–SAPPHIRE–2024–30. 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–SAPPHIRE–2024–30 and should be submitted on or before November 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23658 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101283; File No. 4–844]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing of Proposed Minor Rule Violation Plan

October 8, 2024.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19d–1(c)(2) thereunder,[2] notice is hereby given that on October 1, 2024, MIAX Sapphire, LLC (''Sapphire'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed minor rule violation plan (''MRVP'') with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act[3] requiring that a self-regulatory organization (''SRO'') promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[4] In accordance with Rule 19d–1(c)(2) under the Act,[5] the Exchange proposes to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

The Exchange proposes to include in its MRVP the procedures and violations currently included in Exchange Rule 1014 (''Imposition of Fines for Minor Rule Violations'').[6] According to the Exchange's proposed MRVP, under Rule 1014, the Exchange may impose a fine (not to exceed $2,500) on any Member, or person associated with or employed by a Member, for any rule violation listed in Rule 1014(d).[7] The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules allegedly violated, the act or omission constituting each such violation, the fine imposed for each violation, and the date by which such determination becomes final or by which such determination must be paid or contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under the Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.

The Exchange proposes that, as set forth in Exchange Rule 1014(d), violations of the following rules would be appropriate for disposition under the MRVP: Rule 307 (Position Limits); Rule 803 (Focus Reports); Rule 804 (Requests for Trade Data); Rule 520 (Order Entry); Rule 605 (Execution of Orders in Appointed Options); Rule 314 (Mandatory Systems Testing); Rule 700 (Exercise of Option Contracts); Rule 309 (Exercise Limits); Rule 310 (Reports Related to Position Limits); Rule 403 (Trading in Restricted Classes); Rule 605 (Market Maker Quotations); Rule 1904 (Failure to Timely File Amendments to Form U4, Form U5, and Form BD); and Rules 1701–1713 (Failure to Comply with the Consolidated Audit Trail Compliance Rule Under Chapter XVII). The Exchange states that it is specifically excluding Rule 1014(d)(4), Conduct and Decorum Policies, from this filing.

Upon the Commission's declaration of effectiveness of the MRVP, the Exchange will provide to the Commission a quarterly report for any actions taken on minor rule violations under the MRVP. The quarterly report will include: the disposition date, the name of the firm/individual, the Exchange's internal enforcement number, the review period, the nature of the violation type, the number of the rule that was violated, the number of instances the violation occurred, and the sanction imposed.

Based on compliance with the above, the Exchange requests that the rule violations designated in Rule 1014(d) be designated as minor rule violations subject to a minor rule violation reporting plan and that the Exchange be relieved of the current reporting requirements regarding such violations. In addition, going forward, to the extent that there are any changes to the rules applicable to the Exchange's MRVP, the Exchange requests that the Commission deem such changes to be modifications to the Exchange's MRVP.

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed MRVP 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 No. 4–844 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 No. 4–844. 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 MRVP that are filed with the Commission, and all written communications relating to the proposed MRVP 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 proposed MRVP also will be available for inspection and copying at the principal office of the Exchange. Do not include

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] 17 CFR 240.19d–1(c)(1).

[4] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[5] 17 CFR 240.19d–1(c)(2).

[6] The Exchange received its grant of registration on July 15, 2024, which included approving the rules that govern the Exchange.

[7] While Rule 1014 allows the Exchange to administer fines up to $5,000, the Exchange is only seeking relief from the reporting requirements of paragraph (c)(1) of Rule 19d–1 for fines administered under Rule 1014(d) that do not exceed $2,500.

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 No. 4–844 and should be submitted on or before November 5, 2024.

II. Date of Effectiveness of Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder,[8] after November 5, 2024, the Commission may, by order, declare the Exchange's proposed MRVP effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed MRVP, File No. 4–844, and to the period of its effectiveness, which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23660 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(d)(1); 17 CFR 240.19d–1(c)(2).

[9] 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101277; File No. 4–698]

Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail Regarding Cost Savings Measures

October 8, 2024.

I. Introduction

On March 27, 2024, and pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 608 of Regulation NMS thereunder,[2] BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., The Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (''the Participants'') filed with the Securities and Exchange Commission (the ''Commission'' or the ''SEC'') proposed amendments to the national market system plan governing the consolidated audit trail (the ''CAT NMS Plan'').[3] These proposed amendments (the ''Proposal'') were designed to implement certain costs saving measures,[4] including: (A) provisions that would change processing, query, and storage requirements for options market maker quotes in listed options; (B) provisions that would permit the Plan Processor [5] to move raw unprocessed data and interim operational copies of CAT Data [6] older than 15 days to what the Participants described as a more cost-effective storage tier; (C) provisions that would permit the Plan Processor to provide an interim CAT-Order-ID [7] to regulatory users on an ''as requested'' basis, rather than on a daily basis; and (D) provisions that would codify and expand exemptive relief recently provided by the Commission related to certain recordkeeping and data retention requirements for industry testing data. The Proposal was published for comment in the **Federal Register** on April 16, 2024.[8]

On July 15, 2024, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[9] to determine whether to disapprove the Proposal or to approve the Proposal with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment (the ''OIP'').[10] The Participants subsequently submitted an amendment to their Proposal on September 20, 2024 (the ''Amendment''), which, among other things, withdrew the proposed amendments that would have permitted the Plan Processor to provide an interim CAT-Order-ID to regulatory users on an ''as requested'' basis, rather than on a daily basis.[11] The Amendment was published for comment in the **Federal Register** on October 7, 2024.[12]

Rule 608(b)(2)(i) of Regulation NMS provides that proceedings, once instituted, shall be concluded within 180 days of the date of the publication of notice of an amendment to an existing national market system plan and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or if the plan

[1] 15 U.S.C 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] In July 2012, the Commission adopted Rule 613 of Regulation NMS, which required the Participants to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain a consolidated audit trail (the ''CAT''). *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012 (''Rule 613 Adopting Release''); 17 CFR 242.613. On November 15, 2016, the Commission approved the CAT NMS Plan. *See* Securities Exchange Act Release No. 78318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order''). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. *See* CAT NMS Plan Approval Order, at 84943–85034.

[4] *See* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated March 27, 2024, *available at https://catnmsplan.com/sites/default/files/2024-03/03.27.24-Proposed-CAT-NMS-Plan-Amendment-Cost-Savings-Amendment.pdf.* MIAX Sapphire, LLC was not a Participant to the CAT NMS Plan when the Proposal was originally filed, but the Participants filed an immediately-effective amendment to the CAT NMS Plan on July 30, 2024 to add MIAX Sapphire, LLC as a Participant. *See* Securities Exchange Act Release No. 100631 (July 31, 2024), 89 FR 64011 (Aug. 6, 2024).

[5] The ''Plan Processor'' is ''the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and Sections 4.3(b)(i) and 6.1, and with regard to the Initial Plan Processor, the Selection Plan, to perform the CAT processing functions required by SEC Rule 613 and set forth in this Agreement.'' *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[6] ''CAT Data'' is ''data derived from Participant Data, Industry Member Data, SIP Data, and such other data as the Operating Committee may designate as 'CAT Data' from time to time.'' *See id.*

[7] The ''CAT-Order-ID'' is ''a unique order identifier or series of unique order identifiers that allows the central repository to efficiently and accurately link all reportable events for an order, and all orders that result from the aggregation or disaggregation of such order.'' *See* 17 CFR 242.613(j)(1); *see also* CAT NMS Plan, *supra* note 3, at Section 1.1 (''CAT-Order-ID' has the same meaning provided in SEC Rule 613(j)(1).'').

[8] *See* Securities Exchange Act Release No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024) (''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-d.htm.*

[9] 17 CFR 242.608(b)(2)(i).

[10] *See* Securities Exchange Act Release No. 100530 (July 15, 2024), 89 FR 58838 (July 19, 2024).

[11] Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated Sept. 20, 2024, *available at https://www.sec.gov/comments/4-698/4698-522995-1501362.pdf.*

[12] *See* Securities Exchange Act Release No. 101225 (Oct. 1, 2024), 89 FR 81120 (Oct. 7, 2024).

participants consent to a longer period.[13] The 180th day after publication of the Notice for the Proposal is October 11, 2024. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposal, as modified by the recently-filed Amendment, so that the Commission has sufficient time to consider the changes set forth in the Amendment and any comments that might be received on the Amendment. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[14] the Commission designates December 12, 2024, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposal, as modified by the Amendment.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23657 Filed 10–11–24; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 242.608(b)(2)(i).

[14] *Id.*

[15] 17 CFR 200.30–3(a)(85).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 16, 2024.

ADDRESSES: Send all comments via email to Shayne Bradshaw, Financial Analyst, Office of Credit Risk Management, 202–996–5370 at *shayne.bradshaw@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Kirwin, Chief, Supervised Lender Oversight Division, Office of Credit Risk Management, *Paul.Kirwin@sba.gov,* or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The 504 Loan Program aims to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns. A Certified Development Company (CDC) is an entity authorized by the Small Business Administration (SBA) to deliver 504 financing to small businesses. 13 CFR 120.830 requires CDCs to submit certain reports to SBA, collectively known as the ''Annual Report''. As the primary regulatory body overseeing CDCs, the SBA conducts due diligence to ensure CDCs comply with the operational and regulatory requirements of the 504 program, thereby ensuring its sustainability. The CDC Annual Report Guide serves the Office of Credit Risk Management, the Office of Financial Assistance, and all SBA District Offices by providing crucial information on the CDCs' financial health, regulatory compliance, and the effectiveness of their assistance to small businesses. This information also aids the SBA in drafting reports to Congress.

The information collection has been adjusted to include the following proposed changes:

1. *Revised Economic Development Report:* Standardized to gather pertinent, measurable data on current period economic development activity. Changes include the removal of certain information collections such as the report on previous year's investment and results, narrative on local economic changes which impact lending, and economic development strategy and projections for the upcoming year.

2. E*nhanced Guidance and Optional Tables:* Added to facilitate the compilation of the Report.

3. *Requirement for Auditor's Engagement Letter:* To be submitted alongside CDC financial statements.

4. *Updated 159 Reporting:* Reflects changes in SOP 50 10 7.1, no longer requiring completed Form 159 submissions with the Annual Report.

5. *Report on Compensation:* removed requirement for submission of Executive Compensation Policy and certain supporting documentation.

6. *Guidance for Program Renewals:* Added instructions for the Accredited Lenders Program (ALP) and Premier Certified Lenders Program (PCLP) renewals.

These updates aim to streamline the information collection process, reduce the administrative burden on CDCs, enhance the utility of the report, and standardize data reporting to improve overall reporting efficiency and oversight.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0074.

Title: Certified Development Company (CDC) Annual Report Guide.

Description of Respondents: Certified Development Companies.

Form Number: SBA Form 1253.

Total Estimated Annual Responses: 195.

Total Estimated Annual Hour Burden: 5,460 (28 Hours on average per CDC).

Curtis B. Rich,

Agency Clearance Officer.

[FR Doc. 2024–23767 Filed 10–11–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20711 and #20712; GEORGIA Disaster Number GA–20013]

Presidential Declaration Amendment of a Major Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4830–DR), dated September 30, 2024.

DATES: Issued on October 3, 2024.

Physical Loan Application Deadline Date: November 29, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 30, 2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

declaration for the State of Georgia, dated September 30, 2024, is hereby amended to include the following areas as adversely affected by the disaster:

Incident: Hurricane Helene.

Incident Period: September 24, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans): Effingham, Elbert, Rabun, Tift.

Contiguous Counties (Economic Injury Loans Only):

Georgia: Habersham, Hart, Madison, Oglethorpe, Towns.

South Carolina: Abbeville, Anderson, Oconee.

North Carolina: Clay, Jackson, Macon.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–23758 Filed 10–11–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20729; IDAHO Disaster Number ID–20011 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Idaho

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Idaho dated October 7, 2024.

DATES: Issued on October 7, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: July 7, 2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

Incident: Wildfires, including the Bench Lake and Wapiti Fires.

Incident Period: July 11, 2024 and continuing.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Custer.

Contiguous Counties:

Idaho: Blaine, Boise, Butte, Elmore, Lemhi, Valley

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 207290.

The State which received an EIDL Declaration is IDAHO.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–23682 Filed 10–11–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20748; OHIO Disaster Number OH–20009 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Ohio

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Ohio dated October 8, 2024.

DATES: Issued on October 8, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: July 8, 2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

Incident: Building Explosion in Downtown Youngstown.

Incident Period: May 28, 2024.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Mahoning.

Contiguous Counties:

Ohio: Columbiana, Portage, Stark, Trumbull.

Pennsylvania: Lawrence, Mercer.

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 207480.

The States which received an EIDL Declaration are Ohio, Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–23713 Filed 10–11–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20703 and #20704; SOUTH CAROLINA Disaster Number SC–20012]

Presidential Declaration Amendment of a Major Disaster for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4829–DR), dated 09/29/2024.

Incident: Hurricane Helene.

Incident Period: 09/25/2024 and continuing.

DATES: Issued on 10/04/2024.

Physical Loan Application Deadline Date: 11/29/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 06/30/2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of South Carolina, dated 09/29/2024, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Abbeville, Richland.

Contiguous Counties (Economic Injury Loans Only): South Carolina: Kershaw, Sumter.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–23759 Filed 10–11–24; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2024–0017]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the States, including tribal agencies and United States (U.S.) territories.

DATES: Submit comments on the proposed matching program no later than November 14, 2024.

The matching program will be applicable on November 14, 2024, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2024–0017 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the Search function to find docket number SSA–2024–0017 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (833) 410–1631.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Cynthia Scott, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 966–1943, or send an email to *Cynthia.Scott@ssa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the matching program is to set forth the terms and conditions governing disclosures of records, information, or data (collectively referred to herein as ''data'') made by SSA to various State agencies and departments, tribal agencies, and U.S. territories (collectively referred to as ''State Agencies'') that administer federally funded benefit programs, including those under various provisions of the Social Security Act (Act), such as section 1137.[1]

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and the States, State Agencies, Tribal agencies, and U.S. territories.

Authority for Conducting the Matching Program: The legal authorities for SSA to disclose data under these matching programs for the specified purposes are:

- Sections 453, 1106(b), and 1137 of the Act (42 U.S.C. 653, 1306(b), and 1320b–7) (income and eligibility verification data);
- 26 U.S.C. 6103(l)(7) and (8) (Federal tax information);
- Sections 202(x)(3)(B)(iv) and 1611(e)(1)(I)(iii) of the Act (42 U.S.C. 402(x)(3)(B)(iv) and 1382(e)(1)(I)(iii)) (prisoner data);
- Section 205(r)(3) of the Act (42 U.S.C. 405(r)(3)) and the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 7213(a)(2) (death data);
- Sections 402, 412, 421, and 435 of Public Law 104–193 (8 U.S.C. 1612, 1622, 1631, and 1645) (quarters of coverage data);
- Section 1902(ee) of the Act (42 U.S.C. 1396a(ee)); Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3 (citizenship data); and
- Routine use exception to the Privacy Act, 5 U.S.C. 552a(b)(3) (data necessary to administer other programs compatible with SSA programs).

Purpose(s): The purpose of the matching program is to set forth the terms and conditions governing disclosures of data made by SSA to various State Agencies that administer federally funded benefit programs, including those under various provisions of the Act, such as section 1137 of the Act (42 U.S.C. 1320b–7). The terms and conditions of the matching agreements ensure that SSA's disclosures and the State Agencies' use of such disclosed data is, in accordance with the requirements of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act (CMPPA), 5 U.S.C. 552a.

Under section 1137 of the Act, States are required to use an income and eligibility verification system to administer specified federally funded benefit programs. To assist the State Agencies in determining entitlement to and eligibility for benefits under those programs, as well as other federally funded benefit programs, SSA verifies the Social Security number (SSN) and discloses certain data about applicants (and in limited circumstances, members of an applicant's household) for state-administered benefits from its Privacy Act systems of records (SOR).

SSA also establishes separate data exchange agreements with the State Agencies who execute a CMPPA Agreement, which describe the data

[1] See 42 U.S.C. 1320b–7.

SSA will disclose for specified federally funded benefit programs.

Categories of Individuals: The individuals whose information is involved in this matching program are those who apply for federally funded, state-administered benefits, as well as current beneficiaries, recipients, and annuitants (and in limited circumstances, members of an applicant's household) under the programs covered by the matching agreement.

Categories of Records: The maximum number of records involved in this matching activity is the number of records maintained in SSA's SORs. Data elements disclosed in the matching governed by the matching agreement are Personally Identifiable Information from SSA's specified SORs, including names, SSNs, addresses, amounts, and other information related to SSA's benefits and earnings information. Specific listings of data elements are available at: *http://www.ssa.gov/dataexchange/.*

System(s) of Records: SSA's SORs used for purposes of the subject data exchanges include:

- 60–0058—Master Files of SSN Holders and SSN Applications;
- 60–0059—Earnings Recording and Self-Employment Income System;
- 60–0090—Master Beneficiary Record;
- 60–0103—Supplemental Security Income Record (SSR) and Special Veterans Benefits (SVB);
- 60–0269—Prisoner Update Processing System (PUPS); and
- 60–0321—Medicare Database (MDB) File.

States will ensure that the Federal tax information contained in SOR 60–0059 (Earnings Recording and Self-Employment Income System) will only be used in accordance with 26 U.S.C. 6103.

[FR Doc. 2024–23690 Filed 10–11–24; 8:45 am]

BILLING CODE P

SUSQUEHANNA RIVER BASIN COMMISSION

Minor Modification Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for previously approved projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2024

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modification, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013–11 and 2015–06, for the time period specified above.

1. Tower City Borough Authority—Well 7, Docket No. 20240624, Porter Township, Schuylkill County, Pa.; modification approval to change the monitoring condition; Approval Date: September 4, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: October 9, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–23735 Filed 10–11–24; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f):

1. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: PA Woodlands Drilling Pad; ABR–201408006.R2; Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 12, 2024.

2. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Phelps Unit #1H; ABR–20090813.R3; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 12, 2024.

3. RENEWAL—Coterra Energy Inc.; Pad ID: BrooksJ P1; ABR–201908007.R1; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 12, 2024.

4. RENEWAL—Coterra Energy Inc.; Pad ID: DiazM P2; ABR–201908001.R1; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 12, 2024.

5. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: McWilliams 1H—2H; ABR–20090607.R3; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 12, 2024.

6. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: KNIGHTS (01 044) L; ABR–20090522.R3; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 12, 2024.

7. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: SHEDDEN (01 026/027) D; ABR–20090507.R3; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 12, 2024.

8. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Bonnie; ABR–20090904.R3; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2024.

9. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Dacheux B Drilling Pad; ABR–201407013.R2; Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2024.

10. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Farr; ABR–20090907.R3; Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2024.

11. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Reibson Drilling Pad; ABR–201407014.R2; Elkland Township, Sullivan County,

Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2024.

12. RENEWAL—Coterra Energy Inc.; Pad ID: ChudleighW P1; ABR–201908005.R1; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 26, 2024.

13. RENEWAL—Coterra Energy Inc.; Pad ID: PowersN P2; ABR–201908008.R1; Middletown Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 26, 2024.

14. RENEWAL—Diversified Production LLC; Pad ID: Hurd; ABR–20090802.R3; Ferguson Township, Clearfield County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 26, 2024.

15. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: THOMAS (01 038) FT; ABR–20090524.R3; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 26, 2024.

16. RENEWAL—SWN Production Company, LLC; Pad ID: PU–BB-Price-Pad; ABR–201908012.R1; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: September 26, 2024.

17. RENEWAL—SWN Production Company, LLC; Pad ID: RU–72–FOLKVARD–PAD; ABR–201908011.R1; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: September 26, 2024.

18. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Hunsinger; ABR–20090905.R3; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 27, 2024.

19. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Martin; ABR–20090906.R3; Granville Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 27, 2024.

20. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Sharer; ABR–20090913.R3; Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 27, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: October 9, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–23734 Filed 10–11–24; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

General Permit Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists General Permits approved by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists General Permits for projects, described below, pursuant to 18 CFR 806.17(c)(4), for the time period specified above.

1. Caernarvon Township Authority—Well 8, General Permit Approval of Coverage No. GP–02–20240908, Caernarvon Township, Berks County, Pa.; emergency/maintenance operations approved up to 0.673 mgd (30-day average); Approval Date: September 12, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: October 9, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–23733 Filed 10–11–24; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

DEPARTMENT OF STATE

DEPARTMENT OF THE INTERIOR

[Docket Number USTR–2024–0019]

Request for Comments on Potential Import Prohibitions on Certain Products From the People's Republic of China Pursuant to the Pelly Amendment

AGENCIES: Office of the United States Trade Representative (USTR); U.S. Department of State (State); U.S. Department of the Interior (Interior).

ACTION: Request for comments.

SUMMARY: Following from the United States' certification of the People's Republic of China (PRC) under the Pelly Amendment, the President is considering various import prohibition options on the basis that PRC nationals are engaging in trade or taking of pangolins that diminishes the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). To inform the President's decision-making, USTR, State, and Interior are seeking public comments concerning whether to impose import prohibitions and what the scope and product coverage of any import prohibitions should be. Neither this notice nor any information that the requesting agencies provide to inform the President's decision constitutes or reflects any final decision.

DATES: Submit comments no later than November 14, 2024.

ADDRESSES: USTR, State, and Interior strongly prefer electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov.* See the submission instructions below. The Docket Number is USTR–2024–0019.

FOR FURTHER INFORMATION CONTACT: For information regarding the Pelly Amendment certification of the PRC, contact Naimah Aziz, Head, Division of Management Authority, International Affairs, U.S. Fish and Wildlife Service, at 703.358.2028, *fwsrfipelly@fws.gov.* For trade-related information, contact Amanda Mayhew, Deputy Assistant U.S. Trade Representative, USTR Environment & Natural Resources, at 202.395.9629, *amanda.b.mayhew@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 3, 2023, the President notified Congress of the Secretary of the Interior's certification, pursuant to section 8(b) of the Fishermen's Protective Act of 1967, as amended (the Pelly Amendment) (22 U.S.C. 1978), that PRC nationals are engaging in trade or taking of all eight species of pangolins that diminishes the effectiveness of CITES. Since 2017, all species of pangolin have been included in Appendix I of CITES, which lists species threatened with extinction that are or may be affected by trade. With limited exceptions, CITES prohibits international trade for primarily commercial purposes in Appendix I-listed species. Despite this prohibition, the PRC remains the largest destination country for pangolin scales. All eight species of pangolins are threatened with extinction primarily due to the ongoing

demand for their body parts, including scales, for medicinal purposes and consumption, according to the International Union for Conservation of Nature (IUCN) Red List of Threatened Species.

In his notification to Congress on November 3, the President reported that, although the PRC has taken some steps to curtail pangolin trafficking, concerns remain about the significant demand for pangolin scales in the PRC and its domestic system, which allows for the legal commercial trade of pangolin scales for medicinal use from national stockpiles. The President further stated that the PRC must do more to close domestic markets for pangolins and pangolin specimens that provide cover for the illegal market (one of the actions that the CITES Parties recently amended Resolution Conf. 17.10 (CoP19) Conservation and Trade in Pangolins to include). Without further actions by the PRC to address these conservation threats to pangolins, the President's notification stated ''it is likely that pangolin populations will continue to decline, bringing the species closer to extinction.'' Given the complexity of this issue, the President determined it appropriate to proceed with additional discussions, a routine process for nations certified under the Pelly Amendment, between the United States and the PRC. The PRC's actions taken to date have been insufficient to lift the certification.

Pursuant to the Pelly Amendment (22 U.S.C. 1978(a)(5)), the President now is considering whether to direct the Secretary of the Treasury to prohibit the importation of certain products from the PRC into the United States. To that end, the President seeks the advice of USTR, State and Interior to evaluate the scope and implications of potential import prohibitions. The President's determination may be informed by public comments received in response to this notice, and any progress made by the PRC in implementing CITES measures.

U.S. authorities will continue to review the facts underlying the certification and engage with the PRC to effect meaningful results in the effort to conserve pangolin populations and eliminate illegal trade in pangolins. Any import prohibitions ultimately imposed by the President would remain in effect until the President determines that they no longer are appropriate or until the Secretary of the Interior, in consultation with the Secretary of State, determines that the reasons for which the Pelly Amendment certification was made no longer prevail and terminates the certification. Neither this notice nor any information that USTR, State and Interior provide to inform the President's decision constitutes or reflects any final decision.

II. Public Comment

USTR, State and Interior invite interested persons to submit comments concerning whether and what import prohibition is appropriate, specifically regarding economic and environmental effects of any such prohibitions, including:

- Whether to prohibit the importation of any product(s) of the PRC pursuant to the certification under the Pelly Amendment that PRC nationals are engaging in trade or taking of pangolins that diminishes the effectiveness of CITES.
- What product(s) to prohibit.
- The degree to which prohibiting the importation of any particular product might have a positive or negative economic or environmental effect.
- Actions other than import prohibitions that would help bring about an end to illegal trade in these imperiled species.

Comments should include sufficient information, such as scientific journal articles or other publications, to allow verification of any scientific or commercial information submitted. Submissions including supporting information will be of greater assistance than submissions merely stating support for, or opposition to, a particular recommended action.

III. Requirements for Submissions

To be assured of consideration, submit your written comments by the November 14, 2024 deadline. All submissions must be in English. USTR, State and Interior strongly encourages submissions via regulations.gov, using Docket Number USTR–2024–0019. USTR will not accept hand-delivered submissions. To make a submission via regulations.gov, enter docket number USTR–2024–0019 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' and click in the 'refine document results' section on the left side of the screen and click on the link entitled 'comment.' *Regulations.gov* allows users to submit comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. USTR prefers that you provide submissions in an in an attached document and note 'see attached' in the 'comment' field on the online submission form.

USTR, State and Interior prefer submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

On the first page of the submission, identify the subject matter of the comment as ''Request for Comments on Potential Import Prohibitions on Certain Products from the People's Republic of China Pursuant to the Pelly Amendment''. File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters, exhibits, annexes or other attachments to electronic submissions. Instead, to the extent possible, please include these in the same file as the submission itself. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments.

You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received your submission. Keep the confirmation for your records.

USTR is not able to provide technical assistance for *Regulations.gov*. For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use *Regulations.gov*' on the bottom of the home page. USTR may not consider submissions that are not made in accordance with these instructions.

If you are unable to submit comments as requested, please contact Amanda Mayhew, Deputy Assistant U.S. Trade Representative, USTR Environment & Natural Resources, at 202.395.9629, *amanda.b.mayhew@ustr.eop.gov,* before transmitting a comment and in advance of the deadline to arrange for an alternative method of transmission.

General information concerning USTR is available at *https://www.ustr.gov.*

IV. Business Confidential Information (BCI) Submissions

If you ask information you submit to be treated as BCI, you must certify that the information is business confidential and you would not customarily release it to the public. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' at the top of that page. Additionally, you must include 'Business Confidential' in the 'type comment' field. Filers of submissions containing BCI also must

submit a public version of their submission that will be placed in the docket for public inspection. The file name of the public version should begin with the character 'P.' The TPSC will post the non-confidential version in the docket and it will be open to public inspection.

V. Public Viewing of Review Submissions

Written submissions will be posted in the docket for public inspection, except properly designated BCI. You can view submissions at *regulations.gov* by entering Docket Number USTR–2024–0019 in the search field on the home page.

Amanda Mayhew,

Deputy Assistant U.S. Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative.

Matthew Strickler,

Deputy Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Scott B. Ticknor,

Deputy Assistant Secretary for Environment, Acting U.S. Department of State.

[FR Doc. 2024–23639 Filed 10–11–24; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the FDOT, is issuing this notice to announce actions taken by FDOT and other Federal Agencies that are final agency actions. These actions relate to the proposed Truck Parking—Central Florida Corridor: Osceola County Site (Financial Management Number 446445–5). The Osceola County Site is located along the south side of County Road (CR) 532 (Osceola Polk Line Road), approximately 3.87 miles east of the Interstate 4 (I–4) interchange with CR 532 within Osceola County. The site will supply 234 truck parking spaces; a centralized restroom building with restroom facilities, vending machines, and an office for security staff. The recommended site will provide needed truck parking facilities to address existing truck parking deficiencies and accommodate future truck parking demand within or near the I–4 corridor. These actions grant licenses, permits, or approvals for the project.

DATES: By this notice, the FHWA, on behalf of FDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before March 14, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The Type 2 Categorical Exclusion and additional project documents can be viewed and downloaded from the project website at: *https://www.cflroads.com/project/446445-5,* or by contacting FDOT Office of Environmental Management, 605 Suwannee Street, MS 37, Tallahassee, Florida 32399, during normal business hours of 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Marshall, P.E., Director, FDOT Office of Environmental Management, FDOT; telephone (850) 414–4316; email: *Jennifer.Marshall@dot.state.fl.us.*

SUPPLEMENTARY INFORMATION: Effective December 14, 2016, and as subsequently renewed on May 26, 2022, the FHWA assigned, and the FDOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that FDOT and other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by FDOT and other Federal Agencies on the project, and the laws under which such actions were taken are described in the Type 2 Categorical Exclusion approved on August 5, 2024, and in other project records for the listed project. The Type 2 Categorical Exclusion and other documents for the listed project are available by contacting FDOT at the address provided above.

The project subject to this notice is:

Project Location: Osceola County Site is a new truck parking facility located approximately 3.87 miles east of the I–4 interchange with County Road (CR) 532 (Osceola Polk Line Road) within Osceola County along the south side of CR 532.

Project Actions: This notice applies to the Type 2 Categorical Exclusion and all other Federal Agency licenses, permits, or approvals for the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. Air: Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. Noise: Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR part 772.

4. Land: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302–200310].

5. Wildlife: Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act (MPPA) [16 U.S.C. 1361–1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976 (MSA), as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat (EFH) requirements [16 U.S.C. 1855(b)(2)].

6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501–312508]; Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

7. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000 d–2000d–1]; American Indian Religious Freedom Act (AIRFA) [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. Wetlands and Water Resources: Clean Water Act (CWA) (section 319, section 401, section 404) [33 U.S.C. 1251–1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].

9. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 8, 2024.

Karen M. Brunelle,

Director, Office of Project Development, Federal Highway Administration, Tallahassee, Florida.

[FR Doc. 2024–23691 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the FDOT, is issuing this notice to announce actions taken by FDOT and other Federal Agencies that are final agency actions. These actions relate to the proposed Truck Parking Central Florida—Westbound Volusia County Site (Financial Management Number 446445–4). The Westbound Volusia County Site 1B is located along Interstate 4 (I–4) Westbound approximately 4.5 miles west of the I–95 interchange with I–4. The site will supply 253 truck parking spaces and a restroom building with restroom facilities, vending machines, and an office for security staff. The recommended site will provide needed truck parking facilities to address existing truck parking deficiencies and accommodate future truck parking demand within or near the I–4 corridor. These actions grant licenses, permits, or approvals for the project.

DATES: By this notice, the FHWA, on behalf of FDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before March 14, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The Type 2 Categorical Exclusion and additional project documents can be viewed and downloaded from the project website at: *https://www.cflroads.com/project/446445-4,* or by contacting FDOT Office of Environmental Management, 605 Suwannee Street, MS 37, Tallahassee, Florida 32399, during normal business hours of 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Marshall, P.E., Director, FDOT Office of Environmental Management, FDOT; telephone (850) 414–4316; email: *Jennifer.Marshall@dot.state.fl.us.*

SUPPLEMENTARY INFORMATION: Effective December 14, 2016, and as subsequently renewed on May 26, 2022, the FHWA assigned, and the FDOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that FDOT and other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139 (l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by FDOT and other Federal Agencies on the project, and the laws under which such actions were taken are described in the Type 2 Categorical Exclusion approved on August 5, 2024, and in other project records for the listed project. The Type 2 Categorical Exclusion and other documents for the listed project are available by contacting FDOT at the address provided above.

The project subject to this notice is:

Project Location: The Westbound Volusia County Site 1B is a new truck parking facility located along I–4 Westbound approximately 4.5 miles west of the I–95 interchange (approximate Milepost (MP) 22.161).

Project Actions: This notice applies to the Type 2 Categorical Exclusion, and all other Federal Agency licenses, permits, or approvals for the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. Air: Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. Noise: Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR part 772.

4. Land: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302–200310].

5. Wildlife: Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act (MPPA) [16 U.S.C. 1361–1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976 (MSA), as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat (EFH) requirements [16 U.S.C. 1855(b)(2)].

6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501–312508]; Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

7. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000 d–2000d–1]; American Indian Religious Freedom Act (AIRFA) [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. Wetlands and Water Resources: Clean Water Act (CWA) (section 319, section 401, section 404) [33 U.S.C. 1251–1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and

133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].

9. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 8, 2024.

Karen M. Brunelle,

Director, Office of Project Development, Federal Highway Administration, Tallahassee, Florida.

[FR Doc. 2024–23692 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the FDOT, is issuing this notice to announce actions taken by FDOT and other Federal Agencies that are final agency actions. These actions relate to the proposed Truck Parking Central Florida Corridor—Eastbound Volusia County Site (Financial Management Number 446445–2). The Eastbound Volusia County Site 1A is located along Interstate 4 (I–4) Eastbound approximately 4.5 miles west of the I–95 interchange with I–4. The site will supply 275 truck parking spaces and a restroom building with restroom facilities, vending machines, and an office for security staff. The recommended site will provide needed truck parking facilities to address existing truck parking deficiencies and accommodate future truck parking demand within or near the I–4 corridor. These actions grant licenses, permits, or approvals for the project.

DATES: By this notice, the FHWA, on behalf of FDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before March 14, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The Type 2 Categorical Exclusion and additional project documents can be viewed and downloaded from the project website at: *https://www.cflroads.com/project/446445-2,* or by contacting FDOT Office of Environmental Management, 605 Suwannee Street, MS 37, Tallahassee, Florida 32399, during normal business hours of 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Marshall, P.E., Director, FDOT Office of Environmental Management, FDOT; telephone (850) 414–4316; email: *Jennifer.Marshall@dot.state.fl.us.*

SUPPLEMENTARY INFORMATION: Effective December 14, 2016, and as subsequently renewed on May 26, 2022, the FHWA assigned, and the FDOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that FDOT and other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139 (l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by FDOT and other Federal Agencies on the project, and the laws under which such actions were taken are described in the Type 2 Categorical Exclusion approved on August 5, 2024, and in other project records for the listed project. The Type 2 Categorical Exclusion and other documents for the listed project are available by contacting FDOT at the address provided above.

The project subject to this notice is:

Project Location: The Eastbound Volusia County Site is a new truck parking facility located along I–4 Eastbound approximately 4.5 miles west of the I–95 interchange (approximate Milepost (MP) 23.112).

Project Actions: This notice applies to the Type 2 Categorical Exclusion, and all other Federal Agency licenses, permits, or approvals for the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Fed-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. Air: Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. Noise: Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR part 772.

4. Land: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302–200310].

5. Wildlife: Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act (MPPA) [16 U.S.C. 1361–1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976 (MSA), as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat (EFH) requirements [16 U.S.C. 1855(b)(2)].

6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501–312508]; Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

7. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000 d–2000d–1]; American Indian Religious Freedom Act (AIRFA) [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. Wetlands and Water Resources: Clean Water Act (CWA) (section 319, section 401, section 404) [33 U.S.C. 1251–1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–

1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].

9. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 8, 2024.

Karen M. Brunelle,

Director, Office of Project Development, Federal Highway Administration, Tallahassee, Florida.

[FR Doc. 2024–23693 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0230]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America, LLC (Daimler)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Daimler Trucks North America, LLC (Daimler) has requested a 5-year exemption for six drivers who hold foreign commercial driver's licenses (CDL) from the requirement to hold a CDL issued by a U.S. State when operating a commercial motor vehicle (CMV). Daimler is requesting an exemption so that these drivers can test-drive Daimler vehicles on U.S. roads to better understand product requirements in real-world environments and verify results. FMCSA requests public comment on the applicant's request for an exemption.

DATES: Comments must be received on or before November 14, 2024.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2024–0230 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *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:* West Building, Ground Floor, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2024–0230) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: If you do not have access to the internet, you may view the docket by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at *https://www.transportation.gov/privacy.* The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver, and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 385–2415; *bernadette.walker@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0230), indicate the specific section of this document to which the comment applies, and provide a reason for your suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.go,* put the docket number ''FMCSA–2024–0230'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will

treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analyses. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Daimler has applied for a 5-year exemption for six drivers from 49 CFR 383.23, which requires that drivers operating CMVs in interstate or intrastate commerce hold CDLs issued by a State. Daimler requests the exemption because these drivers are not residents of a U.S. State, and therefore cannot meet the residency requirement for a CDL and are eligible only for non-domiciled CDLs. The Daimler drivers are Christopher Kappes, Andreas Munch, Franz-Alexander Baumgartner, Fabian Schab, Malte Kleindick, and Lucas Jung. These drivers all hold valid German CDLs. Daimler asserts in its exemption request that the requirements for a German CDL ensure that the same level of safety is met or exceeded as if these drivers had a CDL issued by a U.S. State.

The requested exemption would allow these six drivers to operate CMVs in interstate commerce to support Daimler field tests for developing and optimizing the control software that governs the high-voltage functions of an electric vehicle's powertrain. According to Daimler, these drivers will perform safety testing and validation that is crucial for powertrain controllers in electric trucks, ensuring they can handle high-voltage functions safely and maintain system performance under diverse driving conditions. In all cases, they will be accompanied by a holder of a CDL issued by a State who is familiar with the routes to be traveled. Daimler adds that if this exemption is not granted, future vehicle development and launch of electric trucks could be hindered as these six individuals play a crucial role in directing company resources to the development of new and advanced powertrain solutions.

A copy of Daimler's application for exemption is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Daimler's application for an exemption from the requirement in 49 CFR 383.23. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–23653 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0013]

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 August 5, 2024, FRA published a notice providing a 60-day period for public comment on the ICR. FRA received no substantive comments in response to the notice.

DATES: Interested persons are invited to submit comments on or before November 14, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *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 August 5, 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 63468. FRA has received no substantive 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 comments 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: Report of Railroad Trespasser Form.

OMB Control Number: 2130–0635.

Abstract: Trespassing on railroad rights-of-way and other railroad property is the leading cause of fatalities attributable to railroad operations in the United States. To address this serious issue, the railroad industry, governments (Federal, State, and local), and other interested parties must know more about the individuals who trespass and causes. With such knowledge, specific educational programs, materials, and messages regarding the hazards and consequences of trespassing on railroad property can be developed and effectively distributed. Due to the lack of available root cause data, FRA collects data from law enforcement agencies to develop general descriptions of the causes of trespassing. This allows FRA and other interested parties, such as Operation Lifesaver, to target audiences with appropriate education and enforcement campaigns to reduce the resulting annual number of injuries and fatalities.

Completion and submission of form FRA F 6180.178, Report of Railroad Trespasser Form, is required for law enforcement agency grantees as a condition of FRA's Railroad Trespassing Enforcement Grant Program. Grantees complete the form for each railroad trespasser incident in their jurisdiction, describing the trespasser's ethnicity, gender, and age to the best of their ability. For law enforcement agencies that do not receive FRA's Railroad Trespassing Enforcement grants, completion and submission of this form is voluntary.

FRA provides an electronic option where the respondents can respond via a web-based form. The web-based form also helps FRA maintain the data collected in a more useful and uniform manner, as the dropdown boxes facilitate more standardized responses.

Type of Request: Extension without change (with changes in estimates) of a currently approved information collection.

Affected Public: Public authorities.

Form(s): FRA F 6180.178.

Respondent Universe: Law enforcement agencies.

Frequency of Submission: Monthly.

Total Estimated Annual Responses: 2,600.

Total Estimated Annual Burden: 350 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $21,196.

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. 2024–23707 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 97]

Railroad Safety Advisory Committee; Organizations Eligible To Submit Names for Appointment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Request for public comments.

SUMMARY: The Federal Railroad Administration (FRA) seeks public comment on potential changes to the list of organizations that are eligible to submit the names of individuals for appointment as Committee members to the Railroad Safety Advisory Committee (RSAC), a Federal Advisory Committee that provides advice and recommendations to FRA on railroad safety matters through a consensus process.

DATES: Interested persons must submit any comments to FRA by November 14, 2024.

FOR FURTHER INFORMATION CONTACT: Comments should be submitted to Kenton Kilgore, RSAC Designated Federal Officer/RSAC Coordinator, FRA Office of Railroad Safety, at *kenton.kilgore@dot.gov.,* who can also be reached at (202) 365–3724.

SUPPLEMENTARY INFORMATION: This Notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. ch. 10). RSAC is a Federal Advisory Committee established by the U.S. Secretary of Transportation in accordance with the Federal Advisory Committee Act to provide information, advice, and recommendations to the FRA Administrator on matters relating to railroad safety. RSAC is composed of 51 voting representatives from 26 member organizations, representing various rail industry perspectives. The diversity of RSAC ensures the requisite range of views and expertise necessary to discharge its responsibilities.

Membership selection will be based on materials submitted and in a manner that ensures equal opportunity for all people consistent with all Federal anti-discrimination laws that prohibit discrimination on the basis of race, color, religion, sex, gender identity, sexual orientation, national origin, disability or age. Membership solicitation will be undertaken in a manner that encourages participation by members of underrepresented and underserved communities in accordance with Executive Order 13985.

This Notice seeks comments concerning future changes to the list of organizations that are eligible to submit the names of individuals for appointment as Committee members. A list of current organizations represented on the RSAC is available online at *https://rsac.fra.dot.gov/organizations.* FRA is specifically interested in comments concerning changes to or maintenance of the current composition of organizations eligible to nominate individual members to ensure: (1) diversity of the requisite range of views and expertise necessary for RSAC to discharge its responsibilities; (2) fairly balanced RSAC membership to reflect points of view representative of the railroad community, including those of railroad owners, manufacturers,

suppliers, labor groups, State government groups, and public associations; and (3) participation by members of underrepresented and underserved communities. FRA will consider these comments in deciding on a potential future amendment to the RSAC charter.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2024–23704 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Project—Carteret Ferry Terminal, Borough of Carteret, Middlesex County, New Jersey

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) regarding the Carteret Ferry Terminal project, Borough of Carteret, Middlesex County, New Jersey. The purpose of this notice is to publicly announce FTA's environmental decisions on the subject project, and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before March 14, 2025.

FOR FURTHER INFORMATION CONTACT: Kathryn Loster, Assistant Chief Counsel, Office of Chief Counsel, (312) 705–1269, or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions subject to 23 U.S.C. 139(l) by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project files for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA (42 U.S.C. 4321–4375), section 4(f) requirements (49 U.S.C. 303), section 106 of the National Historic Preservation Act (54 U.S.C. 306108), Endangered Species Act (16 U.S.C. 1531), Clean Water Act (33 U.S.C. 1251), the Uniform Relocation and Real Property Acquisition Policies Act (42 U.S.C. 4601), and the Clean Air Act (42 U.S.C. 7401–7671q). This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice follow:

Project name and location: Carteret Ferry Terminal (Project), Borough of Carteret, Middlesex County, New Jersey.

Project sponsor: Borough of Carteret, Middlesex County, New Jersey.

Project description: The Project involves the construction of a new three-story 12,500 square foot per floor commuter ferry terminal facility, including landside and waterside facilities, along the Borough's Arthur Kill waterfront. The Project also includes floating docks for two (2) 80-foot ferries each accommodating 149 passengers, floating wave attenuators, and gangways. The Project will serve the Borough's commuter ferry service with regularly scheduled routes to Manhattan, NY.

Final agency actions: Section 106 no historic properties effected determination, dated January 23, 2024; Finding of No Significant Impact, dated September 25, 2024.

Supporting documentation: Carteret Ferry Terminal Environmental Assessment (EA), dated September 25, 2024. The FONSI and associated documents can be viewed and downloaded from: *https://www.carteret.net/carteretferryterminalenvironmentalassessment/.*

Authority: 23 U.S.C. 139(l)(1).

Megan Blum,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2024–23717 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0134]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Brisote II (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 14, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0134 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0134 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0134, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Brisote II is:

Intended Commercial Use of Vessel: Requester intends to offer passenger sailing charters.

Geographic Region Including Base of Operations: Florida. Base of Operations: Miami, Florida.

Vessel Length and Type: 41.4′ Sailboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0134 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0134 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–23642 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0135]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Maitai (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 14, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0135 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Search MARAD–2024–0135 and follow the instructions for submitting comments.
- *Mail or Hand Delivery*: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0135, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Maitai is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: Puerto Rico. Base of Operations: San Juan, Puerto Rico.

Vessel Length and Type: 42′ Trawler.

The complete application is available for review identified in the DOT docket as MARAD 2024–0135 at *https://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0135 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–23643 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0132]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Smack (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 14, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0132 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0132 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0132, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Smack is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: Maine, New Hampshire, Massachusetts, Delaware, Maryland, Virginia, Florida. Base of Operations: Annapolis, Maryland.

Vessel Length and Type: 49.1′ Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0132 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0132 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–23640 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0133]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Kinetic (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 14, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0133 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0133 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0133, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Kinetic is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: California. Base of Operations: Long Beach, California.

Vessel Length and Type: 89.5′ Motor Yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0133 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and

MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0133 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–23641 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0055]

Pipeline Safety: Request for Special Permit; TC Energy for Gas Transmission Northwest LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comment on a request for a special permit received from TC Energy on behalf of Gas Transmission Northwest LLC (GTN). The special permit request is seeking relief from compliance with certain requirements in the federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by November 14, 2024.

ADDRESSES: Comments should reference the docket number for this specific special permit request and may be submitted in the following ways:

- *E-Gov Website: https://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *https://www.Regulations.gov.*

Note: There is a privacy statement published on *https://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes, or edits to *https://www.Regulations.gov.*

Confidential Business Information: 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 notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not

specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Zaid Obeidi by telephone at 202–366–5267, or by email at *zaid.obeidi@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from GTN dated March 27, 2024, seeking a waiver from the federal pipeline safety regulations in 49 CFR 192.611 and 192.619, where gas transmission pipeline segments have undergone changes from Class 2 to Class 3 locations. The special permit request is for two segments of GTN's 36-inch diameter Mainline A natural gas transmission pipeline, approximately 2.075 miles (10,954 feet) in length, in Idaho. This special permit request, if granted, would allow GTN to operate the two segments at the current operating pressure of 911 pounds per square inch gauge by implementing enhanced integrity management procedures in lieu of confirming or revising the maximum allowable operating pressure of the affected segments when there is a class location change under 49 CFR 192.611.

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the above described GTN pipeline segments are available for review and public comment in Docket No. PHMSA–2024–0055. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please submit comments on any potential safety, environmental, and other relevant considerations implicated by the special permit request. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–23765 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–2019–0098]

Lithium Battery Air Safety Advisory Committee; Notice of Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Lithium Battery Air Safety Advisory Committee (Committee).

DATES: The meeting will be held on November 7, 2024, from 9:00 a.m. to 5:00 p.m. EDT. Requests to attend the meeting must be sent by October 23, 2024, to the point of contact identified in the **FOR FURTHER INFORMATION CONTACT** section. Persons requesting to speak during the meeting must submit a written copy of their remarks to DOT by October 23, 2024. Requests to submit written materials to be reviewed during the meeting must be received no later than October 23, 2024.

ADDRESSES: The meeting will be held virtually. Details to access the virtual meeting will be posted on the Committee website located at: https://www.phmsa.dot.gov/hazmat/rulemakings/lithium-battery-safety-advisory-committee. The E-Gov website is located at *https://www.regulations.gov.* Mailed written comments intended for the Committee should be sent to Docket Management Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Steven Webb or Aaron Wiener, PHMSA, U.S. Department of Transportation. Telephone: 202–366–8553. Email: *lithiumbatteryFACA@dot.gov.* Any committee-related request should be sent to the email address listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Committee was created under the Federal Advisory Committee Act (FACA, 5 U.S.C. app. 2), in accordance with section 333(d) of the FAA Reauthorization Act of 2018 (Pub. L. 115–254).

II. Agenda

The meeting agenda will address the following duties of the Committee as specifically outlined in section 333(d) of the FAA Reauthorization Act of 2018:

(a) Facilitate communication among manufacturers of lithium batteries and products containing lithium batteries, air carriers, and the federal government.

(b) Discuss the effectiveness and the economic and social impacts of lithium battery transportation regulations.

(c) Provide the Secretary of Transportation with information regarding new technologies and transportation safety practices.

(d) Provide a forum to discuss Departmental activities related to lithium battery transportation safety.

(e) Advise and recommend activities to improve the global enforcement of U.S. regulations and the International Civil Aviation Organization (ICAO) Technical Instructions relevant to air transportation of lithium batteries, and the effectiveness of those regulations.

(f) Provide a forum for feedback on potential positions to be taken by the U.S. at international forums.

(g) Guide activities to increase awareness of relevant requirements.

(h) Review methods to decrease the risk posed by undeclared hazardous materials.

A final agenda will be posted on the Committee website at least 15 days in advance of the meeting.

III. Public Participation

The meeting will be open to the public. DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section no later than October 23, 2024. To accommodate as many speakers as possible, time for each commenter may be limited. There will be five minutes allotted for oral comments from members of the public joining the meeting. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, PHMSA may conduct a lottery to determine the speakers. Speakers must submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to Committee members no later than October 23, 2024. 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. Copies of the meeting minutes and committee presentations will be available on the Committee website. Presentations will also be posted on the E-Gov website in docket number [PHMSA–2019–0098], within 30 days following the meeting.

Written Comments: Persons who wish to submit written comments on the meetings may submit them to docket [PHMSA–2019–0098] in the following ways:

1. *E-Gov website:* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

2. *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Instructions: Identify the docket number [PHMSA–2019–0098] at the beginning of your comments. Note that all comments received will be posted without change to the E-Gov website, including any personal information provided. 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.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477), or view the Privacy Notice on the E-Gov website before submitting comments.

Docket: For docket access or to read background documents or comments, go to the E-Gov website at any time or visit the DOT dockets facility listed in the ''**ADDRESSES**'' category, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on [PHMSA–2019–0098].'' The docket clerk will date stamp the postcard prior to returning it to you via U.S. mail.

Privacy Act Statement

DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to the E-Gov website, as described in the system of records notice (DOT/ALL–14 FDMS).

Issued in Washington, DC, on October 9, 2024.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2024–23739 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Appraisal Management Companies

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to its information collection titled, ''Appraisal Management Companies.''

DATES: Comments must be received by December 16, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0324, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0324'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0324'' or ''Appraisal Management Companies.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC

is publishing notice of the renewal/revision of this collection.

Title: Appraisal Management Companies.

OMB Control No.: 1557–0324.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: This information collection comprises recordkeeping and disclosure requirements under regulations issued by the OCC, jointly with the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Federal Home Finance Agency, that implement the minimum requirements in section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to be applied by States in the registration and supervision of appraisal management companies (AMCs). The regulations also implement the requirement in section 1473 of the Dodd-Frank Act for States to report to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council the information required by the ASC to administer the new national registry of appraisal management companies (AMC National Registry or Registry). The information collection requirements are established in 12 CFR part 34 of the OCC's codified regulations. There is no change in the methodology or substance of this information collection. The decrease in total estimated annual burden from 2,455 in 2021 to 1,991 currently is due to a change in the estimated number or respondents.

Estimated Burden:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 1557–0324)

Information Collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Written Notice of Appraiser Removal from Network or Panel, 12 CFR 34.212(b) (Mandatory).	Disclosure (On occasion)	8,481	1	00:05	707
2. Develop and Maintain a State Licensing Program, 12 CFR 34.213(a) and (b) (Mandatory).	Recordkeeping (On occasion)	1	1	40:00	40
3. AMC Disclosure Requirements (State regulated AMCs), 12 CFR 34.214 (Mandatory).	Disclosure (On occasion)	1,206	1	01:00	1,206
4. AMC Disclosure Requirements (Federally-regulated AMCs), 12 CFR 34.215(c) (Mandatory).	Disclosure (On occasion)	38	1	01:00	38
Total Annual Burden (Hours):					*1,991*

Estimated Total Annual Burden: 1,991 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2024–23781 Filed 10–11–24; 8:45 am]

BILLING CODE 4810–33–P

UNIFIED CARRIER REGISTRATION PLAN

Board of Directors; Request for Nomination

AGENCY: Unified Carrier Registration Plan.

ACTION: Notice.

SUMMARY: The Unified Carrier Registration (UCR) Plan Board of Directors (Board) is requesting nominations of qualified individuals for possible appointment by the FMCSA to one of the Board's motor carrier industry positions. Each nominee must be a representative of ''a motor carrier that falls within the smallest fleet fee bracket.'' The term for this position will begin immediately upon appointment and expire on May 31, 2027.

DATES: Nominations of or expressions of interest by qualified individuals, along with accompanying resumes, must be received on or before November 14, 2024.

ADDRESSES: Nominations of or expressions of interest by qualified individuals may be received by any of the following methods—internet, regular mail, courier, or hand-delivery.

Mail, Courier, or Hand-Delivery: Unified Carrier Registration Plan, Attention: Matt Mantione, 529 14th Street NW, Suite 1280, Washington, DC 20045, internet: *mmantione@plan.ucr.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov*.

SUPPLEMENTARY INFORMATION:

Background: Congress established the UCR plan and agreement in section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59,119 Stat. 1144, August 10, 2005], codified at 49 U.S.C. 14504a. The UCR Plan is defined at 49 U.S.C. 14504a(a)(9) as the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the UCR Agreement, under which motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies involved in interstate transportation must register and pay certain fees.

Section 14504a(d)(1)(B) directed the Secretary of Transportation to establish a UCR Plan Board of Directors made up of 15 members from FMCSA, State Governments, and the motor carrier industry. The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). The Board is responsible for issuing the rules and regulations that govern the UCR Agreement and making recommendations to the Secretary of Transportation regarding any

adjustments to the fees assessed against carriers, leasing companies, brokers, and freight forwarders under the UCR Agreement.

Section 14504a(d)(1)(B) provides that the Board must consist of directors from the following groups:

Federal Motor Carrier Safety Administration: One director must be selected from each of the FMCSA service areas (as defined by FMCSA on January 1, 2005) from among the chief administrative officers of the State agencies responsible for administering the UCR Agreement.

State Agencies: The five directors selected to represent State agencies must be from among the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement.

Motor Carrier Industry: Five directors must be from the motor carrier industry.

At least one of the five motor carrier industry directors must be from ''a national trade association representing the general motor carrier of property industry'' and one of them must represent ''a motor carrier that falls within the smallest fleet fee bracket.''

U.S. Department of Transportation (the Department): One individual, either the FMCSA Deputy Administrator or such other Presidential appointee from the Department appointed by the Secretary, represents the Department.

The Board is soliciting nominations of or expressions of interest by qualified individuals who are interested in being considered by the FMCSA for appointment to the Board as a representative of ''a motor carrier that falls within the smallest fleet fee bracket.'' The Board previously published a notice in the **Federal Register**, soliciting nominations or expressions of interest for all five industry positions, on Wednesday, March 27, 2024. (89 FR 21419). However, no qualified individuals submitted nominations or expressions of interest for the position held by a representative of a motor carrier that falls within the smallest fleet fee bracket. For this reason, the UCR Plan Board of Directors is again requesting nominations of or expressions of interest from individuals representing a motor carrier that falls within the smallest fleet fee bracket. The successful nominee's term will take effect immediately upon appointment and expire on May 31, 2027.

All nominations of or expressions of interest for the director position described above must be submitted on or before November 14, 2024. Nominations or expressions of interest should indicate that the individual nominated or interested meets the statutory requirements specified in 49 U.S.C. 14504a(d)(1)(B). All applications must include a current resume.

As the authority to appoint individuals to the Board lies with Secretary of Transportation and has been delegated to FMCSA, the Board will forward all nominations or expressions of interest to FMCSA for consideration. The UCR Plan Board may, but is not required to, recommend to FMCSA the appointment of individuals from among the nominations or expressions of interest received. If the Board does make such recommendation(s), it will do so after consideration during an open meeting in compliance with the Government in the Sunshine Act that includes such recommendation(s) as part of the subject matter of the meeting.

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2024–23771 Filed 10–11–24; 8:45 am]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0717]

Agency Information Collection Activity: Child Care Provider Information—For the Child Care Subsidy Program (VA Form 0730b); Withdrawal

AGENCY: Human Resources and Administration/Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice; withdrawal.

SUMMARY: On Friday, September 13, 2024, The Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP), VA, published a notice in the **Federal Register** announcing an opportunity for public comment on the proposed collection Child Care Provider Information—For the Child Care Subsidy Program (VA Form 0730B). This notice was published in error; therefore, this document corrects that error by withdrawing this FR notice, document number 2024–20802.

DATES: As of October 9, 2024, the FR notice published at 89, FR 75059 on Friday, September 13, 2024, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 461–8900 or email *maribel.aponte@va.gov.*

SUPPLEMENTARY INFORMATION: FR Doc. 2024–20802, published on Friday, September 13, 2024 (89 FR 75059), is withdrawn by this notice.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–23699 Filed 10–11–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Defense

32 CFR Part 170

Cybersecurity Maturity Model Certification (CMMC) Program; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 170

[Docket ID: DoD–2023–OS–0063]

RIN 0790–AL49

Cybersecurity Maturity Model Certification (CMMC) Program

AGENCY: Office of the Department of Defense Chief Information Officer (CIO), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: With this final rule, DoD establishes the Cybersecurity Maturity Model Certification (CMMC) Program in order to verify contractors have implemented required security measures necessary to safeguard Federal Contract Information (FCI) and Controlled Unclassified Information (CUI). The mechanisms discussed in this rule will allow the Department to confirm a defense contractor or subcontractor has implemented the security requirements for a specified CMMC level and is maintaining that status (meaning level and assessment type) across the contract period of performance. This rule will be updated as needed, using the appropriate rulemaking process, to address evolving cybersecurity standards, requirements, threats, and other relevant changes.

DATES: This rule is effective December 16, 2024. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of December 16, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Knight, Office of the DoD CIO at *osd.pentagon.dod-cio.mbx.cmmc-inquiries@mail.mil* or 202–770–9100.

SUPPLEMENTARY INFORMATION:

History of the Program

The beginnings of CMMC start with the November 2010, Executive Order (E.O.) 13556,[1] *Controlled Unclassified Information.* The intent of this Order was to ''establish an open and uniform program for managing [unclassified] information that requires safeguarding or dissemination controls.'' Prior to this E.O., more than 100 different markings for this information existed across the executive branch. This ad hoc, agency-specific approach created inefficiency and confusion, led to a patchwork system that failed to adequately safeguard information requiring protection, and unnecessarily restricted information-sharing.

As a result, the E.O. established the CUI Program to standardize the way the executive branch handles information requiring safeguarding or dissemination controls (excluding information that is classified under E.O. 13526, Classified National Security Information [2] or any predecessor or successor order; or the Atomic Energy Act of 1954,[3] as amended).

In 2019, DoD announced the development of CMMC in order to move away from a ''self-attestation'' model of security. It was first conceived by the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)) to secure the Defense Industrial Base (DIB) sector against evolving cybersecurity threats. In September 2020, DoD published the 48 CFR CMMC interim final rule, *Defense Federal Acquisition Regulation Supplement (DFARS): Assessing Contractor Implementation of Cybersecurity Requirements* (DFARS Case 2019–D041 85 FR 48513, September 9, 2020),[4] which implemented the DoD's vision for the initial CMMC Program and outlined the basic features of the framework (tiered model of practices and processes, required assessments, and implementation through contracts) to protect FCI and CUI. The 48 CFR CMMC interim final rule became effective on 30 November 2020, establishing a five-year phase-in period. In response to approximately 750 public comments on the 48 CFR CMMC interim final rule, in March 2021, the Department initiated an internal review of CMMC's implementation.

In November 2021, the Department announced the revised CMMC Program, an updated program structure and requirements designed to achieve the primary goals of the internal review:

- Safeguard sensitive information to enable and protect the warfighter
- Enforce DIB cybersecurity standards to meet evolving threats
- Ensure accountability while minimizing barriers to compliance with DoD requirements
- Perpetuate a collaborative culture of cybersecurity and cyber resilience
- Maintain public trust through high professional and ethical standards

The revised CMMC Program has three key features:

- *Tiered Model:* CMMC requires companies entrusted with Federal contract information and controlled unclassified information to implement cybersecurity standards at progressively advanced levels, depending on the type and sensitivity of the information. The program also describes the process for requiring protection of information flowed down to subcontractors.
- *Assessment Requirement:* CMMC assessments allow the Department to verify the implementation of clear cybersecurity standards.
- *Phased Implementation:* Once CMMC rules become effective, certain DoD contractors handling FCI and CUI will be required to achieve a particular CMMC level as a condition of contract award. CMMC requirements will be implemented using a 4-phase implementation plan over a three-year period.

Current Status of the CMMC Program

Separate from this rulemaking, DoD has a proposed acquisition rule (48 CFR part 204 CMMC Acquisition rule) to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address procurement related considerations and requirements related to this program rule (32 CFR part 170 CMMC Program rule). The 48 CFR part 204 CMMC Acquisition rule also partially implements a section of the National Defense Authorization Act for Fiscal Year 2020 directing the Secretary of Defense to develop a consistent, comprehensive framework to enhance cybersecurity for the U.S. defense industrial base.[5] The 48 CFR part 204 CMMC Acquisition rule, when finalized, will allow DoD to require a specific CMMC level in a solicitation or contract. When CMMC requirements are applied to a solicitation, Contracting officers will not make award, exercise an option, or extend the period of performance on a contract, if the offeror or contractor does not have the passing results of a current certification assessment or self-assessment for the required CMMC level, and an affirmation of continuous compliance with the security requirements in the Supplier Performance Risk System (SPRS) [6] for all information systems that process, store, or transmit FCI or CUI during contract performance. Furthermore, the appropriate CMMC certification requirements will flow down to subcontractors at all tiers when

[1] *www.federalregister.gov/citation/75-FR-68675* (November 4, 2010).

[2] *www.federalregister.gov/citation/75-FR-707* (December 29, 2009).

[3] *www.govinfo.gov/link/uscode/42/2011, et seq.*

[4] *www.federalregister.gov/documents/2020/09/29/2020-21123/defense-federal-acquisition-regulation-supplement-assessing-contractor-implementation-of.*

[5] *www.federalregister.gov/documents/2024/08/15/2024-18110/defense-federal-acquisition-regulation-supplement-assessing-contractor-implementation-of.*

[6] *www.sprs.csd.disa.mil/* under OMB control number 0750–0004.

the subcontractor processes, stores, or transmits FCI or CUI. It should be noted the Department may include CMMC requirements on contracts awarded prior to 48 CFR part 204 CMMC Acquisition rule becoming effective, but doing so will require bilateral contract modification after negotiations.

To date, the DoD has relied on offeror representation that the security requirements of National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171, ''*Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations*'' have been met, as described by 48 CFR 252.204–7008. In some instances, the DoD has verified contractor implementation of NIST SP 800–171 through assessment by the Defense Contract Management Agency (DCMA) Defense Industrial Base Cybersecurity Assessment Center (DIBCAC). As part of this responsibility, DCMA DIBCAC assesses DIB companies to ensure they are meeting contractually required cybersecurity standards and to ensure contractors have the ability to protect CUI for government contracts they are awarded. DCMA DIBCAC conducts NIST SP 800–171 assessments in support of 48 CFR 252.204–7012 (DFARS clause 252.204–7012), *Safeguarding Covered Defense Information and Cyber Incident Reporting,*[7] and 48 CFR 252.204–7020 (DFARS clause 252.204–7020), *NIST SP 800–171 DoD Assessment Requirements.*[8] The DCMA DIBCAC prioritization process is designed to adjust as DoD's cyber priorities evolve based on ongoing threats. DCMA DIBCAC collects and analyzes data on DoD contractors to include:

- Mission critical programs, technologies, and infrastructure and the contractors (prime or lower tier) that support DoD capabilities.
- Cyber threats, vulnerabilities, or incidents.
- DoD Leadership requests.

To date, DCMA DIBCAC has assessed 357 entities including DoD's major prime contractors. In accordance with NIST SP 800–171, titled ''*Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations,*'' Revision 2, February 2020 (includes updates as of January 28, 2021) (NIST SP 800–171 R2), contractors must describe in a System Security Plan (SSP)[9] how the security requirements are met or how the organizations plan to meet the requirements and address known and anticipated threats. In the event companies cannot establish full compliance, they must develop plans of action that describe how unimplemented security requirements will be met and how any planned mitigations will be implemented. Although an explicit time limit for mitigation is not specified in NIST SP 800–171 R2, contractors that fail to reasonably comply with applicable requirements may be subject to standard contractual remedies. The CMMC Program's assessment phase-in plan, as described in § 170.3, does not preclude entities from immediately seeking a CMMC certification assessment prior to the 48 CFR part 204 CMMC Acquisition rule being finalized and the clause being added to new or existing DoD contracts.

The Department estimates 8350 medium and large entities will be required to meet CMMC Level 2 C3PAO assessment requirements as a condition of contract award. CMMC Level 2 requirements will apply to all contractors that process, store, or transmit CUI, and will provide DoD with a means to assess that CUI safeguarding requirements prescribed in 32 CFR part 2002 have been met. DoD estimates 135 CMMC Third-Party Assessment Organization (C3PAO)-led certification assessments will be completed in the first year, 673 C3PAO certification assessments in year 2, 2,252 C3PAO certification assessments in year 3, and 4,452 C3PAO certification assessments in year four.

Any DoD component can request DCMA DIBCAC to initiate an assessment and these requests will take priority in the assessment scheduling process. Once identified for assessment, DCMA DIBCAC determines the assessment date and notifies the company to begin the pre-assessment process. Typically, planning and scheduling takes place 3 to 6 months in advance of a DCMA DIBCAC assessment to allow DCMA DIBCAC and the DIB company time to prepare, however, DoD's identified priorities may expedite the execution of an assessment. As discussed in more detail in the regulatory text, assessment results are reported to DoD, including key stakeholders via SPRS and made available to the DIB company. Please see the DCMA DIBCAC website at *www.dcma.mil/DIBCAC/* that includes links to the pre-assessment documents; a publicly releasable version of the assessment database; FAQs; an informational video; a link to Procurement Integrated Enterprise Environment (PIEE), the primary enterprise procure-to-pay application for the DoD; a link to SPRS where assessment scores are posted; and links to other reference materials.

As discussed in more detail later in the regulatory text, all requirements that are scored as NOT MET are identified in a Plan of Action and Milestones (POA&M) to meet the CMMC requirement. Organizations Seeking Assessment (OSAs) satisfy the CMMC requirements needed for contract award by successfully meeting all 110 security requirements of NIST SP 800–171 R2 or by receiving a Conditional CMMC Status when achieving the minimum passing score of 80 percent and only including permittable NOT MET requirements as described in § 170.21 on the POA&M. All requirements that were scored ''NOT MET'' and placed on the POA&M must be remedied within 180 days of receiving their Conditional CMMC Status. Proper implementation of these requirements must be verified by a second assessment, called a POA&M closeout assessment. If the POA&M closeout assessment finds that all requirements have been met, then the OSA will achieve a CMMC Status of Final Level 2 (Self) or Final Level 2 (C3PAO) as applicable. However, if the POA&M closeout assessment does not validate all requirements have been met by the end of the 180 days, then the CMMC Status of Conditional Level 2 (Self) or Conditional Level 2 (C3PAO) will expire and at this point, standard contractual remedies will apply for any current contract.

DoD has created a series of guidance documents to assist organizations in better understanding the CMMC Program and the assessment process and scope for each CMMC level. These guidance documents are available on the DoD CMMC website at *https://dodcio.defense.gov/CMMC/Documentation/* and on the DoD Open Government website at *https://open.defense.gov/Regulatory-Program/Guidance-Documents/*. The CMMC Program has also been incorporated in the Department's 2024 Defense Industrial Base Cybersecurity Strategy.[10] The strategy requires the Department to coordinate and collaborate across components to identify and close gaps

[7] *www.acquisition.gov/dfars/252.204-7012-safeguarding-covered-defense-information-and-cyber-incident-reporting.*

[8] *www.acquisition.gov/dfars/252.204-7020-nist-sp-800-171dod-assessment-requirements.*

[9] Required since November 2016, NIST SP 800–171 R2 security requirement 3.12.4 states organizations must ''develop, document, and periodically update system security plans that describe system boundaries, system environments of operation, how security requirements are implemented, and the relationships with or connections to other systems.''

[10] *https://media.defense.gov/2024/Mar/28/2003424523/-1/-1/1/DOD_DOB_CS_STRATEGY_DSD_SIGNED_20240325.PDF.*

in protecting DoD networks, supply chains, and other critical resources. Other prongs of the Department's cybersecurity strategy are described in the Department's National Industrial Security Program Operating Manual (NISPOM) which address implementation of the Security Executive Agent Directive (SEAD) 3 [11] procedures for the protection and reproduction of classified information; controlled unclassified information (CUI); National Interest Determination (NID) requirements for cleared contractors operating under a Special Security Agreement for Foreign Ownership, Control, or Influence; and eligibility determinations for personnel security clearance processes and requirements.[12]

Overview of Revised CMMC Program

Current Requirements for Defense Contractors and Subcontractors

Currently, Federal contracts (including defense contracts) involving the transfer of FCI to a non-Government organization follow the requirements specified in 48 CFR 52.204–21 (Federal Acquisition Regulation (FAR) clause 52.204–21), *Basic Safeguarding of Covered Contractor Information Systems.*[13] FAR clause 52.204–21 requires compliance with 15 security requirements, FAR clause 52.204–21 (b)(1), items (i) through (xv). These requirements are the minimum necessary for any entity wishing to receive FCI from the US Government (USG).

Defense contracts involving the development or transfer of CUI to a non-Government organization require applicable requirements of DFARS clause 252.204–7012.[14] This clause requires defense contractors to provide adequate security on all covered contractor information systems by implementing the 110 security requirements specified in NIST SP 800–171. This clause includes additional requirements; for example, defense contractors must confirm that any Cloud Service Providers (CSPs) used by the contractor to handle CUI meet Federal Risk and Authorization Management Program (FedRAMP) Moderate Baseline or the equivalent requirements. It also requires defense contractors to flow down all the requirements to their subcontractors who process, store, or transmit CUI. The CMMC Program currently does not include any requirements for contractors operating systems on behalf of the DoD.

To comply with DFARS clause 252.204–7012, contractors are required to develop a SSP [15] detailing the policies and procedures their organization has in place to comply with NIST SP 800–171. The SSP serves as a foundational document for the required NIST SP 800–171 self-assessment. To comply with 48 CFR 252.204–7019 (DFARS provision 252.204–7019) and DFARS clause 252.204–7020, self-assessment scores must be submitted.[16] The highest score is 110, meaning all 110 NIST SP 800–171 security requirements have been fully implemented. If a contractor's Supplier Performance Risk System (SPRS) score is less than 110, indicating security gaps exist, then the contractor must create a plan of action [17] identifying security tasks that still need to be accomplished. In essence, an SSP describes the cybersecurity plan the contractor has in place to protect CUI. The SSP needs to address each NIST SP 800–171 security requirement and explain how the requirement is implemented. This can be through policy, technology, or a combination of both.

In November 2020, the DoD released its 48 CFR CMMC interim final rule, the *Defense Federal Acquisition Regulation Supplement: Assessing Contractor Implementation of Cybersecurity Requirements* [18] (DFARS Case 2019–D041, 85 FR 61505, November 30, 2020). The goal of this rule was to increase compliance with its cybersecurity regulations and improve security throughout the DIB. This rule introduced one new provision and two new clauses—DFARS provision 252.204–7019, DFARS clause 252.204–7020, and 48 CFR 252.204–7021 (DFARS clause 252.204–7021).

- DFARS provision 252.204–7019 complements DFARS clause 252.204–7012 by requiring contractors to have a NIST SP 800–171 assessment (basic, medium, or high) according to NIST SP 800–171 DoD Assessment Methodology.[19] Assessment scores must be reported to the Department via SPRS. SPRS scores must be submitted by the time of contract award and not be more than three years old.
- DFARS clause 252.204–7020 notifies contractors that DoD reserves the right to conduct a higher-level assessment of contractors' cybersecurity compliance, and contractors must give DoD assessors full access to their facilities, systems, and personnel. Further, DFARS clause 252.204–7020 complements DFARS clause 252.204–7012's flow down requirements by holding contractors responsible for confirming their subcontractors have SPRS scores on file prior to awarding them contracts.
- DFARS clause 252.204–7021 paves the way for rollout of the CMMC Program. Once CMMC is implemented, the required CMMC Level and assessment type will be specified in the solicitation and resulting contract. Contractors handling FCI or CUI will be required to meet the CMMC requirement specified in the contract. DFARS clause 252.204–7021 also stipulates contractors will be responsible for flowing down the CMMC requirements to their subcontractors.

CFR Part 170 Additional Requirements for Defense Contractors and Subcontractors Discussed in This Final Rule

When this 32 CFR part 170 CMMC Program rule and the complementary 48 CFR part 204 CMMC Acquisition rule are finalized and following a phased implementation plan, solicitations and resulting defense contracts involving the processing, storing, or transmitting of FCI or CUI on a non-Federal system will, unless waived, have a CMMC level and assessment type requirement that a contractor must meet to be eligible for a contract award. The four phases of the implementation plan add CMMC level requirements incrementally, starting in Phase 1 with self-assessments, and ending in Phase 4, which represents full implementation of program requirements. The DoD elected to base the phase-in plan on the level and type of assessment to provide time to train the necessary number of assessors, and to allow companies time to understand and implement CMMC requirements. Details of each phase are addressed in

[11] *www.govinfo.gov/content/pkg/FR-2020-12-21/pdf/2020-27698.pdf*).

[12] *www.dcsa.mil/Industrial-Security/National-Industrial-Security-Program-Oversight/32-CFR-Part-117-NISPOM-Rule/.*

[13] *www.acquisition.gov/far/52.204-21.*

[14] *www.acquisition.gov/dfars/252.204-7012-safeguarding-covered-defense-information-and-cyber-incident-reporting.*

[15] Required since November 2016, NIST SP 800–171 R2 security requirement 3.12.4 states organizations must ''develop, document, and periodically update system security plans that describe system boundaries, system environments of operation, how security requirements are implemented, and the relationships with or connections to other systems.''

[16] *www.sprs.csd.disa.mil/* under OMB control number 0750–0004.

[17] The plan of action requirement described under DFARS clause 252.204–7020 is different from a Plan of Action and Milestones (POA&M) requirement in CMMC as plans of action do not require milestones.

[18] *www.federalregister.gov/documents/2020/09/29/2020-21123/defense-federal-acquisition-regulation-supplement-assessing-contractor-implementation-of.*

[19] *www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf.*

§ 170.3(e). In Phases 2 and 3, DoD will implement CMMC Level 2 and Level 3 certification requirements, respectively. At full implementation (Phase 4), DoD will include CMMC requirements in all applicable DoD contracts and option periods on contracts awarded after the beginning of Phase 4.

Table 1 defines the requirements for each CMMC level and assessment type.

TABLE 1—CMMC LEVEL AND ASSESSMENT REQUIREMENTS

CMMC status	Source & number of security reqts.	Assessment reqts.	Plan of action & milestones (POA&M) reqts.	Affirmation reqts.
Level 1 (Self) ...	• 15 required by FAR clause 52.204–21.	• Conducted by Organization Seeking Assessment (OSA) annually. • Results entered into SPRS (or its successor capability).	• Not permitted	• After each assessment. • Entered into SPRS.
Level 2 (Self) ...	• 110 NIST SP 800–171 R2 required by DFARS clause 252.204–7012.	• Conducted by OSA every 3 years ..... • Results entered into SPRS (or its successor capability). • CMMC Status will be valid for three years from the CMMC Status Date as defined in § 170.4.	• Permitted as defined in § 170.21(a)(2) and must be closed out within 180 days. • Final CMMC Status will be valid for three years from the Conditional CMMC Status Date.	• After each assessment and annually thereafter. • Assessment will lapse upon failure to annually affirm. • Entered into SPRS (or its successor capability).
Level 2 (C3PAO).	• 110 NIST SP 800–171 R2 required by DFARS clause 252.204–7012.	• Conducted by C3PAO every 3 years ..... • Results entered into CMMC Enterprise Mission Assurance Support Service (eMASS) (or its successor capability). • CMMC Status will be valid for three years from the CMMC Status Date as defined in § 170.4.	• Permitted as defined in § 170.21(a)(2) and must be closed out within 180 days. • Final CMMC Status will be valid for three years from the Conditional CMMC Status Date.	• After each assessment and annually thereafter. • Assessment will lapse upon failure to annually affirm. • Entered into SPRS (or its successor capability).
Level 3 (DIBCAC).	• 110 NIST SP 800–171 R2 required by DFARS clause 252.204–7012. • 24 selected from NIST SP 800–172 Feb2021, as detailed in table 1 to § 170.14(c)(4).	• Pre-requisite CMMC Status of Level 2 (C3PAO) for the same CMMC Assessment Scope, for each Level 3 certification assessment. • Conducted by Defense Contract Management Agency (DCMA) Defense Industrial Base Cybersecurity Assessment Center (DIBCAC) every 3 years. • Results entered into CMMC eMASS (or its successor capability). • CMMC Status will be valid for three years from the CMMC Status Date as defined in § 170.4.	• Permitted as defined in § 170.21(a)(3) and must be closed out within 180 days. • Final CMMC Status will be valid for three years from the Conditional CMMC Status Date.	• After each assessment and annually thereafter. • Assessment will lapse upon failure to annually affirm. • Level 2 (C3PAO) affirmation must also continue to be completed annually. • Entered into SPRS (or its successor capability).

Program Walkthrough—Contractor Perspective

This section will provide a simplified walkthrough of the CMMC Program from the perspective of an Organization Seeking Assessment (OSA) seeking to comply with program requirements.

CMMC Level Selection

An OSA will select the CMMC level it desires to attain. Once the CMMC Program is implemented, a DoD solicitation will specify the minimum CMMC Status required to be eligible for award. One of four CMMC Statuses will be specified:

• Level 1 (Self) is a self-assessment to secure FCI processed, stored, or transmitted in the course of fulfilling the contract. The OSA must comply with the 15 security requirements set by FAR clause 52.204–21. All 15 requirements must be met in full—no exceptions are allowed.

• Level 2 (Self) is a self-assessment to secure CUI processed, stored, or transmitted in the course of fulfilling the contract. The OSA must comply with the 110 Level 2 security requirements derived from NIST SP 800–171 R2.

• Level 2 (C3PAO) differs from Level 2 (Self) in the method of verifying compliance. OSAs must hire a C3PAO to conduct an assessment of the OSA's compliance with the 110 security requirements of NIST SP 800–171 R2. OSAs can shop for C3PAOs on the CMMC Accreditation Body (AB) Marketplace.

• Level 3 (DIBCAC) is a government assessment of 24 additional requirements derived from NIST SP 800–172, titled "*Enhanced Security Requirements for Protecting Controlled Unclassified Information: A Supplement to NIST Special Publication 800–171,*" February 2021 (NIST SP 800–172 Feb2021). The OSA must ensure that they have already achieved a CMMC Status of Final Level 2 (C3PAO) before seeking CMMC Status of Final Level 3 (DIBCAC). Once this is done, an OSA should then initiate a Level 3 certification assessment by emailing a request to Defense Contract Management Agency (DCMA) Defense Industrial Base Cybersecurity Assessment Center (DIBCAC) point of contact found at *www.dcma.mil/DIBCAC*, being sure to include the Level 2 (C3PAO) certification unique identifier in the email.

Scoping

In order to achieve a specified CMMC Status, OSAs must first identify which information systems, including systems or services provided by External Service Providers (ESPs), will process, store, or transmit FCI, for Level 1 (Self), and CUI for all other CMMC Statuses. These information systems constitute the scope of the assessment.

Within these information systems, for Level 2 and Level 3 the assets should be further broken down into asset categories: Contractor Risk Managed Assets (Level 2), Security Protection Assets (Level 2 and 3), and Specialized Assets (Level 2 and 3). For Level 1 all assets, with the exclusion of Specialized Assets, are simply identified as either in-scope or out-of-scope based on whether they process, store, or transmit FCI. Definitions and treatment of these categories as they relate to assessment scoping, treatment of ESPs, and treatment of assets which cannot be secured due to their inherent design, can be found at § 170.19.

Assessment and Affirmation

a. OSAs that meet all 15 Level 1 requirements have achieved CMMC Status of Final Level 1 (Self). The OSA

must submit an affirmation of compliance with FAR clause 52.204–21 requirements in SPRS. At this point, OSAs have satisfied the CMMC requirements needed for award of contracts requiring a CMMC Status of Final Level 1 (Self). To maintain a CMMC Status of Final Level 1 (Self), this entire process must be repeated in full on an annual basis, including both self-assessment and affirmation.

b. For Level 2 assessments, if all 110 requirements are satisfied, the assessment score will be 110 and the OSA will have achieved a CMMC Status of Final Level 2 (Self) or Final Level 2 (C3PAO) as applicable and is eligible for contract award as long as all other contractual requirements are met.

Not all requirements must immediately be MET to be eligible for contract award. If the minimum score is achieved on the assessment (equal to 80% of the maximum score) and certain critical requirements are met, OSAs will achieve a CMMC Status of Conditional Level 2 (Self) or Conditional Level 2 (C3PAO) as applicable. All NOT MET requirements must be noted in an assessment Plan of Action and Milestones (POA&M). At this point the OSA will have satisfied the CMMC requirements needed for contract award OSAs must have met all 110 security requirements of NIST SP 800–171 R2 within 180 days of receiving their Conditional CMMC Status, which must be verified with a second assessment, called a POA&M closeout assessment. If the POA&M closeout assessment finds that all requirements have been met, then the OSA will achieve a CMMC Status of Final Level 2 (Self) or Final Level 2 (C3PAO) as applicable. However, if a POA&M closeout assessment does not find that all requirements have been met by the end of 180 days, then the CMMC Status of Conditional Level 2 (Self) or Conditional Level 2 (C3PAO) will expire. At this point, standard contractual remedies will apply.

The OSA should submit an affirmation into SPRS after achieving a CMMC Status of Conditional Level 2 (Self) or CMMC Status of Conditional Level 2 (C3PAO) as applicable. OSAs should submit an affirmation once a CMMC Status of Final Level 2 (Self) or Final Level 2 (C3PAO) as applicable is achieved. Being eligible for contracts subject to CMMC Level 2 (Self) also indicates eligibility for contracts subject to Level 1 (Self), and being eligible for contracts subject to CMMC Level 2 (C3PAO) also indicates eligibility for contracts subject to Level 1 (Self) and Level 2 (Self), assuming all other contractual requirements are met. OSAs must reaffirm in SPRS their compliance with CMMC Level 2 requirements annually but need only conduct a new assessment every three years. These deadlines are based on the CMMC Status Date of the Conditional Status if a POA&M was required or the Final Status if the assessment resulted in a score of 110. CMMC Status date is not based on the date of a POA&M closeout assessment.

c. For Level 3 assessments, OSAs should note that asset categories are assessed against security requirements differently than they are at Level 2. In particular, Contractor Risk Managed Assets identified in a Level 2 scope are treated as CUI Assets if they reside within a Level 3 scope. Definitions and treatment of these assets at Level 3 as they relate to scoping of the assessment, in addition to treatment of ESPs, are described in § 170.19(d).

During the course of assessment, DCMA DIBCAC will focus on assessing compliance with all 24 selected requirements derived from NIST SP 800–172 Feb2021, but limited checks may be performed on the 110 requirements from NIST SP 800–171 R2. If DCMA DIBCAC identifies that all 24 requirements from NIST SP 800–172 Feb2021 are satisfied, the OSA will have achieved a CMMC Status of Final Level 3 (DIBCAC) and is eligible for contract award as long as all other contractual requirements are met. Not all requirements must immediately be MET to be eligible for contract award. If the minimum score is achieved on the assessment (equal to 80% of the maximum score of 24) and certain critical requirements are met, OSAs will achieve a CMMC Status of Conditional Level 3 (DIBCAC), and all NOT MET requirements must be noted in a POA&M. At this point the OSA will have satisfied the CMMC requirements needed for contract award.

OSAs must have met all 24 selected security requirements of NIST SP 800–172 Feb2021 within 180 days of receiving their Conditional CMMC Status, which must be verified with a POA&M closeout assessment by DCMA DIBCAC. If the POA&M closeout assessment finds that all requirements have been met, then the OSA will achieve a CMMC Status of Final Level 3 (DIBCAC). However, if a POA&M closeout assessment does not find that all requirements have been met by the end of 180 days, then the CMMC Status of Conditional Level 3 (DIBCAC) will expire. At this point, standard contractual remedies will apply.

The OSA should submit an affirmation into SPRS after achieving a CMMC Status of Conditional Level 3 (DIBCAC) if applicable and once a CMMC Status of Final Level 3 (DIBCAC) is achieved. Being eligible for contracts subject to CMMC Level 3 (DIBCAC) also indicates eligibility for contracts subject to Level 1 (Self), Level 2 (Self), and Level 2 (C3PAO), assuming all other contractual requirements are met. To maintain CMMC Level 3 (DIBCAC) status, an OSA must undergo both a Level 2 certification assessment *and* a Level 3 certification assessment every three years and separately affirm compliance with Level 2 and Level 3 requirements in SPRS annually. These deadlines are based on the CMMC Status Date of the Conditional certification if applicable or the CMMC Status Date of the Final determination. CMMC Status Date is not based on the date of a POA&M closeout assessment.

Flow-Down

If the OSA employs subcontractors to fulfill the contract, those subcontractors must also have a minimum CMMC Status as shown in table 2.

TABLE 2—MINIMUM FLOW-DOWN REQUIREMENTS

Prime contractor requirement	Minimum subcontractor requirement If the subcontractor will process, store, or transmit	
	FCI	CUI
Level 1 (Self)	Level 1 (Self)	N/A.
Level 2 (Self)	Level 1 (Self)	Level 2 (Self).
Level 2 (C3PAO)	Level 1 (Self)	Level 2 (C3PAO).
Level 3 (DIBCAC)	Level 1 (Self)	Level 2 (C3PAO).

Summary of Provisions Contained in This Rule

Section 170.1 Purpose

Section 170.1 addresses the purpose of this rule. It describes the CMMC Program and establishes policy for requiring the protection of FCI and CUI that is processed, stored, or transmitted on defense contractor and subcontractor information systems. The security standards utilized in the CMMC Program are from the FAR clause 52.204–21; DFARS clause 252.204–7012 that implements NIST SP 800–171 R2; and selected requirements from the NIST SP 800–172 Feb2021, as applicable. The purpose of the CMMC Program is for contractors and subcontractors to demonstrate that FCI and CUI being processed, stored, or transmitted is adequately safeguarded through the methodology provided in the rule.

Section 170.2 Incorporation by Reference

Section 170.2 addresses the standards and guidelines that are incorporated by reference. The Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51 approves any materials that are incorporated by reference. Materials that are incorporated by reference in this rule are reasonably available. Information on how to access the documents is detailed in § 170.2. Materials that are incorporated by reference in this rule are from the NIST (see § 170.2(a)), the Committee on National Security Systems (see § 170.2(b)), and the International Organization for Standardization/ International Electrotechnical Commission (ISO/IEC) (see § 170.2(c)) which may require payment of a fee.

Note: While the ISO/IEC standards are issued jointly, they are available from the ISO Secretariat (see § 170.2(c)).

The *American National Standards Institute (ANSI)* IBR Portal provides access to standards that have been incorporated by reference in the U.S. Code of Federal Regulations at *https://ibr.ansi.org*. These standards incorporated by the U.S. government in rulemakings are offered at no cost in ''read only'' format and are presented for online reading. There are no print or download options. All users will be required to install the *FileOpen plug-in* and accept an online end user license agreement prior to accessing any standards.

The materials that are incorporated by reference are summarized below.

(a) Federal Information Processing Standard (FIPS) Publication (PUB) 200 (FIPS PUB 200), titled ''Minimum Security Requirements for Federal Information and Information Systems,'' is the second of two security standards mandated by the Federal Information Security Management Act (FISMA). It specifies minimum security requirements for information and information systems supporting the executive agencies of the Federal government and a risk-based process for selecting the security controls necessary to satisfy the minimum-security requirements. This standard promotes the development, implementation, and operation of more secure information systems within the Federal Government by establishing minimum levels of due diligence for information security and facilitating a more consistent, comparable, and repeatable approach for selecting and specifying security controls for information systems that meet minimum security requirements. This document is incorporated by reference as a source for definitions.

(b) FIPS PUB 201–3, titled ''Personal Identity Verification (PIV) of Federal Employees and Contractors,'' establishes a standard for a PIV system that meets the control and security objectives of Homeland Security Presidential Directive-12. It is based on secure and reliable forms of identity credentials issued by the Federal Government to its employees and contractors. These credentials are used by mechanisms that authenticate individuals who require access to federally controlled facilities, information systems, and applications. This Standard addresses requirements for initial identity proofing, infrastructure to support interoperability of identity credentials, and accreditation of organizations and processes issuing PIV credentials. This document is incorporated by reference as a source for definitions.

(c) NIST SP 800–37, titled ''Risk Management Framework for Information Systems and Organizations: A System Life Cycle Approach for Security and Privacy,'' Revision 2 (NIST SP 800–37 R2), describes the Risk Management Framework (RMF) and provides guidelines for applying the RMF to information systems and organizations. The RMF provides a disciplined, structured, and flexible process for managing security and privacy risk that includes information security categorization; control selection, implementation, and assessment; system and common control authorizations; and continuous monitoring. The RMF includes activities to prepare organizations to execute the framework at appropriate risk management levels. The RMF also promotes near real-time risk management and ongoing information system and common control authorization through the implementation of continuous monitoring processes; provides senior leaders and executives with the necessary information to make efficient, cost-effective, risk management decisions about the systems supporting their missions and business functions; and incorporates security and privacy into the system development life cycle. Executing the RMF tasks links essential risk management processes at the system level to risk management processes at the organization level. In addition, it establishes responsibility and accountability for the controls implemented within an organization's information systems and inherited by those systems. This document is incorporated by reference as a source for definitions.

(d) NIST SP 800–39, titled ''Managing Information Security Risk: Organization, Mission, and Information System View,'' March 2011 (NIST SP 800–39 Mar2011), provides guidance for an integrated, organization-wide program for managing information security risk to organizational operations (*i.e.,* mission, functions, image, and reputation), organizational assets, individuals, other organizations, and the Nation resulting from the operation and use of Federal information systems. NIST SP 800–39 Mar2011 provides a structured, yet flexible approach for managing risk that is intentionally broad-based, with the specific details of assessing, responding to, and monitoring risk on an ongoing basis provided by other supporting NIST security standards and guidelines. The guidance provided in this publication is not intended to replace or subsume other risk-related activities, programs, processes, or approaches that organizations have implemented or intend to implement addressing areas of risk management covered by other legislation, directives, policies, programmatic initiatives, or mission/ business requirements. Rather, the risk management guidance described herein is complementary to and should be used as part of a more comprehensive Enterprise Risk Management (ERM) program. This document is incorporated by reference as a source for definitions.

(e) NIST SP 800–53, titled ''Security and Privacy Controls for Information Systems and Organizations,'' Revision 5 (NIST SP 800–53 R5), provides a catalog of security and privacy controls for information systems and organizations to protect organizational operations and assets, individuals, other organizations,

and the Nation from a diverse set of threats and risks, including hostile attacks, human errors, natural disasters, structural failures, foreign intelligence entities, and privacy risks. The controls are flexible and customizable and implemented as part of an organization-wide process to manage risk. The controls address diverse requirements derived from mission and business needs, laws, executive orders, directives, regulations, policies, standards, and guidelines. Finally, the consolidated control catalog addresses security and privacy from a functionality perspective (*i.e.,* the strength of functions and mechanisms provided by the controls) and from an assurance perspective (*i.e.,* the measure of confidence in the security or privacy capability provided by the controls). Addressing functionality and assurance helps to ensure that information technology products and the systems that rely on those products are sufficiently trustworthy. This document is incorporated by reference as a source for definitions.

(f) NIST SP 800–82r3, titled ''Guide to Operational Technology (OT) Security,'' September 2023 (NIST SP 800–82r3), provides guidance on how to secure ICS, including Supervisory Control and Data Acquisition (SCADA) systems, Distributed Control Systems (DCS), and other control system configurations such as Programmable Logic Controllers (PLC), while addressing their unique performance, reliability, and safety requirements. The document provides an overview of ICS and typical system topologies, identifies typical threats and vulnerabilities to these systems, and provides recommended security countermeasures to mitigate the associated risks. This document is incorporated by reference as a source for definitions.

(g) NIST SP 800–115, titled ''Technical Guide to Information Security Testing and Assessment,'' September 2008 (NIST SP 800–115 Sept2008), assists organizations in planning and conducting technical information security tests and examinations, analyzing findings, and developing mitigation strategies. The guide provides practical recommendations for designing, implementing, and maintaining technical information security test and examination processes and procedures. These can be used for several purposes, such as finding vulnerabilities in a system or network and verifying compliance with a policy or other requirements. The guide is not intended to present a comprehensive information security testing and examination program but rather an overview of key elements of technical security testing and examination, with an emphasis on specific technical techniques, the benefits and limitations of each, and recommendations for their use. This document is incorporated by reference as a source for definitions.

(h) NIST SP 800–160, Volume 2, titled ''Developing Cyber-Resilient Systems: A Systems Security Engineering Approach,'' Revision 1, December 2021 (NIST SP 800–160 V2R1), focuses on cyber resiliency engineering—an emerging specialty systems engineering discipline applied in conjunction with systems security engineering and resilience engineering to develop survivable, trustworthy secure systems. Cyber resiliency engineering intends to architect, design, develop, implement, maintain, and sustain the trustworthiness of systems with the capability to anticipate, withstand, recover from, and adapt to adverse conditions, stresses, attacks, or compromises that use or are enabled by cyber resources. From a risk management perspective, cyber resiliency is intended to help reduce the mission, business, organizational, enterprise, or sector risk of depending on cyber resources. This document is incorporated by reference as a source for definitions.

(i) NIST SP 800–171, titled ''Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations,'' Revision 2, February 2020 (includes updates as of January 28, 2021) (NIST SP 800–171 R2), provides agencies with recommended security requirements for protecting the confidentiality of CUI when the information is resident in nonfederal systems and organizations; when the nonfederal organization is not collecting or maintaining information on behalf of a Federal agency or using or operating a system on behalf of an agency; and where there are no specific safeguarding requirements for protecting the confidentiality of CUI prescribed by the authorizing law, regulation, or governmentwide policy for the CUI category listed in the CUI Registry. The requirements apply to all components of nonfederal systems and organizations that process, store, and/or transmit CUI, or that provide protection for such components. The security requirements are intended for use by Federal agencies in contractual vehicles or other agreements established between those agencies and nonfederal organizations. This document is incorporated by reference as a foundational source for definitions and security requirements.

(j) NIST SP 800–171A, titled ''Assessing Security Requirements for Controlled Unclassified Information,'' June 2018 (NIST SP 800–171A Jun2018), provides Federal and non-Federal organizations with assessment procedures and a methodology that can be employed to conduct assessments of the CUI security requirements in NIST SP 800–171 R2. The assessment procedures are flexible and can be customized to the needs of the organizations and the assessors conducting the assessments. Security assessments can be conducted as self-assessments; independent, third-party assessments; or government-sponsored assessments and can be applied with various degrees of rigor, based on customer-defined depth and coverage attributes. The findings and evidence produced during the security assessments can facilitate risk-based decisions by organizations related to the CUI requirements. This document is incorporated by reference as a foundational source for definitions and assessment.

(k) NIST SP 800–172, titled ''Enhanced Security Requirements for Protecting Controlled Unclassified Information: A Supplement to NIST Special Publication 800–171,'' February 2021 (NIST SP 800–172 Feb2021), provides Federal agencies with recommended enhanced security requirements for protecting the confidentiality of CUI: (1) when the information is resident in nonfederal systems and organizations; (2) when the nonfederal organization is not collecting or maintaining information on behalf of a Federal agency or using or operating a system on behalf of an agency; and (3) where there are no specific safeguarding requirements for protecting the confidentiality of CUI prescribed by the authorizing law, regulation, or government-wide policy for the CUI category listed in the CUI Registry. The enhanced requirements apply only to components of nonfederal systems that process, store, or transmit CUI or that provide security protection for such components when the designated CUI is associated with a critical program or high value asset. The enhanced requirements supplement the basic and derived security requirements in NIST SP 800–171 R2 and are intended for use by Federal agencies in contractual vehicles or other agreements established between those agencies and nonfederal organizations. This document is incorporated by reference as a foundational source for security requirements.

(l) NIST SP 800–172A, titled ''Assessing Enhanced Security

Requirements for Controlled Unclassified Information,'' March 2022 (NIST SP 800–172A Mar2022), provides Federal agencies and nonfederal organizations with assessment procedures that can be used to carry out assessments of the requirements in NIST SP 800–172 Feb2021. The assessment procedures are flexible and can be tailored to the needs of organizations and assessors. Assessments can be conducted as (1) self-assessments; (2) independent, third-party assessments; or (3) government-sponsored assessments. The assessments can be conducted with varying degrees of rigor based on customer-defined depth and coverage attributes. The findings and evidence produced during the assessments can be used to facilitate risk-based decisions by organizations related to the CUI enhanced security requirements. This document is incorporated by reference as a foundational source for definitions and assessment.

(m) ISO/IEC 17011:2017(E), titled ''Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies,'' Second edition, November 2017 (ISO/IEC 17011:2017(E)), specifies requirements for the competence, consistent operation and impartiality of accreditation bodies assessing and accrediting conformity assessment bodies. This document is incorporated by reference as a source for requirements on the CMMC Ecosystem.

(n) ISO/IEC 17020:2012(E), titled ''Conformity assessment—Requirement for the operation of various types of bodies performing inspection,'' Second edition, March 1, 2012 (ISO/IEC 17020:2012(E)), specifies requirements for the competence of bodies performing inspection and for the impartiality and consistency of their inspection activities. It applies to inspection bodies of type A, B or C, as defined in ISO/IEC 17020:2012(E), and it applies to any stage of inspection.'' This document is incorporated by reference as a source for requirements on the CMMC Ecosystem.

(o) ISO/IEC 17024:2012(E), titled ''Conformity assessment—General requirements for bodies operating certification of persons,'' Second edition, July 1, 2012 (ISO/IEC 17024:2012(E)), contains principles and requirements for a body certifying persons against specific requirements and includes the development and maintenance of a certification scheme for persons.'' This document is incorporated by reference as a source for requirements on the CMMC Ecosystem.

Section 170.3 Applicability

Section 170.3 identifies entities to which the rule applies and how the Department intends to implement the rule. The rule applies to defense contractors and subcontractors that will process, store, or transmit FCI or CUI in performance of a DoD contract, and private-sector businesses or other entities that are specified in Subpart C. This rule does not apply to Federal information systems operated by contractors and subcontractors in support of the Government. CMMC Program requirements apply to DoD solicitations and contracts requiring defense contractors and subcontractors to process, store, or transmit FCI or CUI. Exceptions to the applicability of this rule are addressed in § 170.3(c)(1) and (2). Department Program Managers or requiring activities will determine which CMMC Level and assessment type will apply to a contract or procurement. Applicability of the required CMMC Level and assessment type to subcontractors is addressed in § 170.23.

Section 170.3 addresses the four-phased implementation plan of the CMMC Program requirements in solicitations and contracts. Phase 1 begins on the effective date of this CMMC 32 CFR part 170 CMMC Program rule or the complementary 48 CFR part 204 CMMC Acquisition rule, whichever occurs later. More information regarding Phase 1 can be found in § 170.3(e)(1). Phase 2 begins one calendar year after the start date of Phase 1. More information regarding Phase 2 can be found in § 170.3(e)(2). Phase 3 begins one calendar year after the start date of Phase 2. More information regarding Phase 3 can be found in § 170.3(e)(3). Phase 4, or full implementation, begins one calendar year after the start date of Phase 3. More information regarding Phase 4 can be found in § 170.3(e)(4).

Section 170.4 Acronyms and Definitions

Section 170.4 includes acronyms and definitions used in the rule text and can be used as a reference while reading the text and tables. CMMC introduces new terms and associated definitions, and customizes definitions for existing terms, as applied to the CMMC Program. CMMC-custom terms and definitions are clearly marked to distinguish from terms sourced externally. CMMC also utilizes terms created by other authoritative sources, including NIST. Terms from other authoritative sources are also listed in § 170.4 and are properly sourced.

The Department developed the following CMMC-custom terms to enhance understanding of the requirements and elements of the CMMC Program:

- Accreditation
- Accreditation Body
- Affirming Official
- Assessment
  - Level 1 self-assessment
  - Level 2 self-assessment
  - Level 2 certification assessment
  - Level 3 certification assessment
  - POA&M closeout self-assessment
  - POA&M closeout certification assessment
- Assessment Findings Report
- Assessment Team
- Asset Categories
- Authorized
- Cloud Service Provider
- CMMC Assessment and Certification Ecosystem
- CMMC Assessment Scope
- CMMC Assessor and Instructor Certification Organization (CAICO)
- CMMC instantiation of eMASS
- CMMC Status
  - Final Level 1 (Self)
  - Conditional Level 2 (Self)
  - Final Level 2 (Self)
  - Conditional Level 2 (C3PAO)
  - Final Level 2 (C3PAO)
  - Conditional Level 3 (DIBCAC)
  - Final Level 3 (DIBCAC)
- CMMC Status Date
- CMMC Third-Party Assessment Organization (C3PAO)
- Contractor Risk Managed Assets
- Controlled Unclassified Information (CUI) Assets
- Enduring Exception
- External Service Provider (ESP)
- Operational plan of action
- Organization-defined
- Organization Seeking Assessment (OSA)
- Organization Seeking Certification (OSC)
- Out-of-Scope Assets
- Periodically
- Process, store, or transmit
- Restricted Information Systems
- Security Protection Assets
- Security Protection Data
- Specialized Assets
- Temporary Deficiency
- Test Equipment.

Section 170.5 Policy

Section 170.5 addresses the policy underlying the rule. The protection of FCI and CUI on defense contractor information systems is crucial to the continuity of the missions and functions of the DoD. To that end, this rule requires that contractors and subcontractors implement the specified security requirements for the applicable

CMMC Level. For CMMC Level 3, the selected security requirements are defined in NIST SP 800–172 Feb2021 with the applicable DoD Organization-Defined Parameters (ODPs) defined in table 1 to § 170.14(c)(4).

Program Managers and requiring activities identify the applicable CMMC Level and assessment type. Factors used to determine which CMMC Level and assessment type will be applied are included but not limited to the list found in § 170.5(b)(1–5). CMMC Program requirements will flow down to subcontractors, as applicable (see § 170.23). A DoD Service Acquisition Executive or a Component Acquisition Executive may elect to waive inclusion of CMMC Program requirements in a solicitation or contract.

Section 170.5 addresses that the CMMC Program does not alter the requirements imposed on contractors and subcontractors in FAR clause 52.204–21, DFARS clause 252.204–7012, or any other applicable safeguarding of information requirement. The CMMC Program verifies implementation of security requirements in FAR clause 52.204–21, NIST SP 800–171 R2, and selected security requirements in NIST SP 800–172 Feb2021, as applicable.

Section 170.6 CMMC PMO

Section 170.6 addresses the CMMC Program Management Office (PMO) functions that are performed within the Department of Defense Chief Information Officer (DoD CIO).

Section 170.7 DCMA DIBCAC

Section 170.7 addresses how DCMA DIBCAC will support the CMMC Program by conducting CMMC Level 2 certification assessments of the Accreditation Body and C3PAOs; conducting CMMC Level 3 certification assessments for OSCs; and recording results, issuing certificates, tracking appeals, and retaining records as required.

Section 170.8 Accreditation Body

Section 170.8 addresses the roles and responsibilities of the Accreditation Body, as well as requirements that the Accreditation Body must meet. The Accreditation Body must be US-based and be and remain a member in good standing with the Inter-American Accreditation Cooperation (IAAC) and become an International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) signatory, with a signatory status scope of ISO/IEC 17020:2012(E) and be compliant with ISO/IEC 17011:2017(E) [20]. There is only one Accreditation Body for the DoD CMMC Program at any given time, and its primary mission is to authorize and accredit the C3PAOs. The Accreditation Body authorizes and accredits C3PAOs in accordance with the requirements in section 170.8(b).

The Accreditation Body also oversees the CAICO to ensure compliance with ISO/IEC 17024:2012(E) [21] and to ensure all training products, instruction, and testing materials are of high quality.

Section 170.8 addresses specific requirements for the Accreditation Body with regards to national security background checks, foreign ownership, reporting, information protection, and appeals. The Accreditation Body will also develop policies for Conflict of Interest (CoI), Code of Professional Conduct (CoPC), and Ethics that comply with all ISO/IEC 17011:2017(E) and DoD requirements. These policies will apply to the Accreditation Body as well as to all other individuals, entities, and groups within the CMMC Ecosystem. The information systems used by the Accreditation Body to process CMMC information have to meet all of the security requirements for CMMC Level 2 and will be assessed by DCMA's Defense Industrial Base Cybersecurity Assessment Center (DIBCAC).

Section 170.9 CMMC Third-Party Assessment Organizations (C3PAOs)

Section 170.9 addresses the roles, responsibilities, and requirements for C3PAOs, which are the organizations that perform CMMC Level 2 certification assessments for OSCs. The C3PAOs will submit assessment data into the CMMC instantiation of government owned and operated system called eMASS,[22] a CMMC instance of the Enterprise Mission Assurance Support Service. C3PAOs issue Certificates of CMMC Status, in accordance with the requirements in § 170.17 of this part.

Section 170.9 addresses detailed requirements for C3PAOs with regards to national security background checks, foreign ownership, reporting, records management, information protection, quality assurance, and appeals. The information systems used by C3PAOs to process Level 2 certification assessment information have to meet all of the security requirements for CMMC Level 2 and will be assessed by DCMA DIBCAC. C3PAOs need to comply with ISO/IEC 17020:2012(E), as well as with the Accreditation Body's policies for CoI, CoPC, and Ethics.

Prior to a C3PAO being compliant with ISO/IEC 17020:2012(E), the C3PAO may be authorized but not accredited. After a C3PAO is compliant with ISO/IEC 17020:2012(E), the C3PAO may be accredited.

Section 170.10 CMMC Assessor and Instructor Certification Organization (CAICO)

Section 170.10 addresses the roles, responsibilities, and requirements for the CAICO, the organization that trains, tests, designates Provisional Instructors (PIs), and certifies CMMC Certified Professionals (CCPs), CMMC Certified Assessors (CCAs), CMMC Certified Instructors (CCIs). There is only one CAICO for the DoD CMMC Program at any given time. The CAICO must comply with ISO/IEC 17024:2012(E), as well as with the Accreditation Body's policies for CoI, CoPC, and Ethics. Section 170.10 addresses detailed requirements for the CAICO with regards to certification examinations, quality assurance, appeals, records management, reporting, separation of duties, and information protection.

Section 170.11 CMMC Certified Assessor (CCA)

Section 170.11 addresses the roles and responsibilities of a CMMC Certified Assessor (CCA) who conduct Level 2 certification assessments. In order to be a CCA, a candidate must first be a CCP, must adhere to the requirements set forth in § 170.10, § 170.8(b)(17), and complete a Tier 3 background investigation or equivalent. The required cybersecurity experience for different CCA roles is addressed in § 170.11(b)(6) and (10). Section 170.11 addresses CCA requirements with respect to security breaches; completion of a Tier 3 background investigation or equivalent; reporting; sharing assessment information; and permitted use of C3PAO equipment, devices, and services.

Section 170.12 CMMC Instructor

Section 170.12 addresses the roles and responsibilities of a CMMC Provisional Instructor (PI) and CMMC Certified Instructor (CCI) to teach CMMC assessor candidates. Candidate PIs and CCIs are trained and tested per the requirements set forth in § 170.12(c). Section 170.12(c) also provides candidate PIs and CCIs with the requirements to obtain and maintain designation or certification (as applicable), compliance with Accreditation Body policies, work activity exclusions, confidentiality

[20] *www.iso.org/standard/67198.html.*

[21] *www.iso.org/standard/52993.html.*

[22] This system is accessible only to authorized users.

expectations, non-disclosure clause, non-public training related information, forbidden consulting services, and reporting requirements.

Section 170.13 CMMC Certified Professional (CCP)

Section 170.13 addresses the roles and responsibilities of a CMMC Certified Professional (CCP) required to provide advice, consulting, and recommendations to clients. The CAICO trains and tests candidate CCPs per the requirements set forth in § 170.13(b) with CCP certification issued upon successful completion. A CCP can participate on CMMC Level 2 certification assessments with CCA oversight, however CCAs are responsible for making final assessment determinations for a CMMC Status of Conditional or Final Level 2 (C3PAO). A list of CCP requirements is provided for obtaining and maintaining certification, compliance with Accreditation Body policies, completion of a Tier 3 background investigation or equivalent, sharing assessment specific information, and reporting requirements.

Section 170.14 CMMC Model

Section 170.14 addresses the structure, security requirement contents, organization, sourcing, and numbering of the security requirements that comprise the CMMC Model. It also provides an overview of the assessment process. The CMMC Model consists of three (3) levels, each containing security requirements taken directly from existing regulations and guidelines. Firstly, § 170.14(2) defines CMMC Level 1 as the 15 security requirements listed in the FAR clause 52.204–21(b)(1). Secondly, § 170.14(3) defines CMMC Level 2 as the 110 security requirements from the NIST SP 800–171 R2. Lastly, § 170.14(4) defines CMMC Level 3 as 24 selected security requirements from the NIST SP 800–172 Feb2021.

The CMMC security requirements are organized into domains following the approach taken in NIST SP 800–171 R2. The numbering of the CMMC security requirements, addressed in § 170.14(c)(1), is of the form DD.L#-REQ where the 'DD' is the two-letter domain abbreviation, the 'L#' is the CMMC Level, and the 'REQ' is based directly on the numbering in the source. Assessment criteria for these security requirements, as described in § 170.14(d), is based on security requirement assessment guidance provided in NIST SP 800–171A Jun2018 and NIST SP 800–172A Mar2022.

Section 170.15 CMMC Level 1 Self-Assessment and Affirmation Requirements

Section 170.15 addresses how an OSA will achieve and maintain compliance with the CMMC Status of Level 1 (Self). The OSA must successfully implement the security requirements listed in § 170.14(c)(2) within their Level 1 CMMC Assessment Scope as described in § 170.19(b). Successful implementation requires meeting all objectives defined in NIST SP 800–171A Jun2018 for the corresponding CMMC Level 1 security requirements as outlined in the mapping table 1 to § 170.15(c)(1)(i).

After implementation, the OSA must perform a Level 1 self-assessment to verify the implementation and score themselves using the scoring methodology provided in § 170.24. All objectives must be met in order for a security requirement to be considered fully implemented; no security requirements may be placed on a POA&M for Level 1. The OSA must then input their results into SPRS as described in § 170.15(a)(1)(i) and submit an affirmation as described in § 170.22.

In order to be eligible for a contract with a requirement for the CMMC Status of Level 1 (Self), the OSA must have achieved a CMMC Status of Final Level 1 (Self) and have submitted an affirmation. These activities must be completed annually.

Section 170.16 CMMC Level 2 Self-Assessment and Affirmation Requirements

Section 170.16 addresses how an OSA will achieve and maintain compliance with the CMMC Status of Level 2 (Self). The OSA must successfully implement the security requirements listed in § 170.14(c)(3) within its Level 2 CMMC Assessment Scope as described in § 170.19(c). Successful implementation requires meeting all objectives defined in NIST SP 800–171A Jun2018 for the corresponding CMMC Level 2 security requirements. Requirements for ESPs and CSPs that process, store, transmit CUI are provided in § 170.16(c)(2) and (3).

After implementation, the OSA must perform a Level 2 self-assessment to verify the implementation and score themselves using the scoring methodology provided in § 170.24. All objectives must be met in order for a security requirement to be considered fully implemented; in some cases, if not all objectives are met, some security requirements may be placed on a POA&M as provided for in § 170.21. If the minimum score has been achieved and some security requirements are in a POA&M, the OSA has achieved the CMMC Status of Conditional Level 2 (Self); if all requirements are MET as defined in § 170.24(b), the OSA has achieved a CMMC Status of Final Level 2 (Self). For Conditional Level 2 (Self), a POA&M closeout must be conducted within 180 days as described in § 170.21(b) or the Conditional Level 2 (Self) CMMC Status will expire.

After a Level 2 self-assessment, as well as after a POA&M closeout, the OSA must input their results into SPRS as described in § 170.16(a)(1)(i) and submit an affirmation as described in § 170.22.

In order to be eligible for a contract with a requirement for the CMMC Status of Level 2 (Self), the OSA must have achieved the CMMC Status of either Conditional Level 2 (Self) or Final Level 2 (Self) and have submitted an affirmation. The Level 2 self-assessment must be completed every three years and the affirmation must be completed annually following the Final CMMC Status Date.

Section 170.17 CMMC Level 2 Certification Assessment and Affirmation Requirements

Section 170.17 addresses how an OSC will achieve and maintain compliance with the CMMC Status of Level 2 (C3PAO). The OSC must successfully implement the security requirements listed in § 170.14(c)(3) within its Level 2 CMMC Assessment Scope as described in § 170.19(c). Successful implementation requires meeting all objectives defined in NIST SP 800–171A Jun2018 for the corresponding CMMC Level 2 security requirements. Requirements for ESPs and CSPs that process, store, transmit CUI are provided in § 170.17(c)(5) and (6).

After implementation, the OSC must hire a C3PAO to perform an assessment to verify the implementation. The C3PAO will score the OSC using the scoring methodology provided in § 170.24. All objectives must be met in order for a security requirement to be considered fully implemented; in some cases, if not all objectives are met, some security requirements may be placed on a POA&M as defined in § 170.21. If the minimum score has been achieved and some security requirements are in a POA&M, the OSC has achieved the CMMC Status of Conditional Level 2 (C3PAO); if all requirements are MET as defined in § 170.24(b), the OSC has achieved the CMMC Status of Final Level 2 (C3PAO). For Conditional Level 2 (C3PAO), a POA&M closeout must be conducted within 180 days as described

in § 170.21(b) or the Conditional Level 2 (C3PAO) CMMC Status will expire.

After a Level 2 certification assessment, as well as after a POA&M closeout, the C3PAO will input the OSC's results into the CMMC instantiation of eMASS as described in § 170.17(a)(1)(i). After a Level 2 certification assessment, as well as after a POA&M closeout, the OSC must submit an affirmation as described in § 170.22.

In order to be eligible for a contract with a requirement for the CMMC Status of Level 2 (C3PAO), the OSC must have achieved the CMMC Status of either Conditional Level 2 (C3PAO) or Final Level 2 (C3PAO) and have submitted an affirmation. The Level 2 certification assessment must be completed every three years and the affirmation must be completed annually following the Final CMMC Status Date.

Section 170.18 CMMC Level 3 Certification Assessment and Affirmation Requirements

Section 170.18 addresses how an OSC will achieve and maintain compliance with the CMMC Status of Level 3 (DIBCAC). The OSC must have achieved the CMMC Status of Final Level 2 (C3PAO) for information systems within the Level 3 CMMC Assessment Scope as a prerequisite to undergo a Level 3 certification assessment. The OSC must successfully

implement the security requirements listed in § 170.14(c)(4) and table 1 to § 170.14(c)(4) within its Level 3 CMMC Assessment Scope as described in § 170.19(d). Successful implementation requires meeting all objectives defined in NIST SP 800–172A Mar2022 for the corresponding CMMC Level 3 security requirements. Requirements for ESPs and CSPs that process, store, transmit CUI are provided in § 170.18(c)(5) and (6).

After implementation, the OSC must contact DCMA DIBCAC to perform an assessment to verify the implementation. DCMA DIBCAC will score the OSC using the scoring methodology provided in § 170.24. All objectives must be met in order for a security requirement to be considered fully implemented; in some cases, if not all objectives are met, some security requirements may be placed on a POA&M as defined in § 170.21. If the minimum score has been achieved and some security requirements are in a POA&M, the OSC has achieved the CMMC Status of Conditional Level 3 (DIBCAC); if all requirements are MET as defined in § 170.24(b), the OSC has achieved the CMMC Status of Final Level 3 (DIBCAC). For Conditional Level 3 (DIBCAC), a POA&M closeout must be conducted within 180 days as described in § 170.21(b) or the Conditional Level 3 (DIBCAC) CMMC Status will expire.

After a Level 3 certification assessment, as well as after a POA&M closeout, DCMA DIBCAC will input the OSC's results into the CMMC instantiation of eMASS as described in § 170.18(a)(1)(i). After a Level 3 certification assessment, as well as after a POA&M closeout, the OSC must submit an affirmation as described in § 170.22.

In order to be eligible for a contract with a requirement for the CMMC Status of Level 3 (DIBCAC), the OSC must have achieved the CMMC Status of either Conditional Level 3 (DIBCAC) or Final Level 3 (DIBCAC) and have submitted an affirmation. The Level 3 certification assessment must be completed every three years and the affirmation must be completed annually following the Final CMMC Status Date.

Section 170.19 CMMC Scoping

Section 170.19 addresses the requirements for the scoping of each CMMC Level and determines which assets are included in a given assessment and the degree to which each is assessed. The CMMC Assessment Scope is specified prior to any CMMC assessment, based on the CMMC Level being assessed. The Level 2 CMMC Assessment Scope may also be affected by any intent to achieve a CMMC Level 3 Certification Assessment, as detailed in § 170.19(e).

Scoping for CMMC Level 1, as detailed in § 170.19(b), consists of all assets that process, store, or transmit FCI. These assets are fully assessed against the applicable CMMC security requirements identified in § 170.14(c)(2) and following the procedures in § 170.15(c). All other assets are out-of-scope and are not considered in the assessment.

Scoping for CMMC Level 2, as detailed in § 170.19(c), consists of all assets that process, store, or transmit CUI, and all assets that provide security protections for these assets. These assets are fully assessed against the applicable CMMC security requirements identified in § 170.14(c)(3) and following the Level 2 self-assessment procedures in § 170.16(c) or the Level 2 certification assessment procedures in § 170.17(c). In addition, Contractor Risk Managed Assets, which are assets that can, but are not intended to, process, store, or transmit CUI because of security policy, procedures, and practices in place, are documented and are subject to a limited check that may result in the identification of a deficiency, as addressed in table 3 to § 170.19(c)(1). Finally, Specialized Assets, which are assets that can process, store, or transmit CUI but are unable to be fully secured, including: Internet of Things (IoT) devices, Industrial Internet of Things (IIoT) devices, Operational Technology (OT), Government Furnished Equipment (GFE), Restricted Information Systems, and Test Equipment, are documented but are not assessed against other CMMC security requirements, as addressed in table 3 to § 170.19(c)(1). All other assets are out-of-scope and are not considered in the assessment.

Scoping for CMMC Level 3, as detailed in § 170.19(d), consists of all assets that can (whether intended to or not) or do process, store, or transmit CUI, and all assets that provide security protections for these assets. The CMMC Level 3 Assessment Scope also includes all Specialized Assets but allows an intermediary device to provide the capability for the Specialized Asset to meet one or more CMMC security requirements, as needed. These assets (or the applicable intermediary device, in the case of Specialized Assets) are fully assessed against the applicable CMMC security requirements identified in § 170.14(c)(4) and following the procedures in § 170.18(c). All other assets are out-of-scope and are not considered in the assessment.

If an OSA utilizes an ESP, including a Cloud Service Provider (CSP), that does not process, store, or transmit CUI, the ESP does not require its own CMMC assessment. The services provided by the ESP are assessed as part of the OSC's assessment as Security Protection Assets.

Section 170.20 Standards Acceptance

Section 170.20 addresses how OSCs that, prior to the effective date of this rule, have achieved a perfect score on a DCMA DIBCAC High Assessment with the same scope as a Level 2 CMMC Assessment Scope, will be given a CMMC Status of Level 2 (C3PAO).

Section 170.21 Plan of Action and Milestones Requirements

Section 170.21 addresses rules for having a POA&M for the purposes of a CMMC assessment and satisfying contract eligibility requirements for CMMC. All POA&Ms must be closed within 180 days of the Conditional CMMC Status Date. To satisfy CMMC Level 1 requirements, a POA&M is not allowed. To satisfy CMMC Level 2 requirements, a POA&M is allowed. Section 170.21 details the overall minimum score that must be achieved

and identifies the Level 2 security requirements that cannot have a POA&M and must be fully met at the time of the assessment. To satisfy CMMC Level 3 requirements, a POA&M is allowed. Section 170.21 details the overall minimum score that must be achieved and identifies the Level 3 security requirements that cannot have a POA&M and must be fully met at the time of the assessment. Section 170.21 also established rules for closing POA&Ms.

Section 170.22 Affirmation

Section 170.22 addresses that the OSA's Affirming Official must affirm, in SPRS, compliance with the CMMC Status: upon completion of any self-assessment, certification assessment, or POA&M closeout assessment (as applicable), and annually following a Final CMMC Status Date.

Section 170.23 Application to Subcontractors

Section 170.23 addresses flow down of CMMC requirements from the prime contractor to the subcontractors in the supply chain. Prime contractors shall comply and shall require subcontractor compliance throughout the supply chain at all tiers with the applicable CMMC Level for each subcontract as addressed in § 170.23(a).

Section 170.24 CMMC Scoring Methodology

Section 170.24 addresses the assessment finding types MET, NOT MET, and NOT APPLICABLE (N/A) in the context of CMMC assessments, and the CMMC Scoring Methodology used to measure the implementation status of security requirements for CMMC Level 2 and CMMC Level 3. Scoring is not calculated for CMMC Level 1 since all requirements must be MET at the time of assessment.

For CMMC Level 2, the maximum score is the total number of Level 2 security requirements and is the starting value for assessment scoring. Any security requirement that has one or more NOT MET objectives reduces the current score by the value of the specific security requirement. Values for each CMMC Level 2 requirement are enumerated in § 170.24(c)(2)(i)(B).

For CMMC Level 3, the maximum score is the total number of Level 3 security requirements and is the starting value for assessment scoring. Any security requirement that has one or more NOT MET objectives reduces the current score by the value of the specific security requirement. CMMC Level 3 does not use varying values; the value for each requirement is one (1), as described in § 170.24(c)(3).

Appendix A to Part 170: Guidance

Appendix A lists the guidance documents that are available to support defense contractors and the CMMC Ecosystem in the implementation and assessment of CMMC requirements.

Discussion of Public Comments and Resulting Changes

The Department of Defense published the proposed rule, on December 26, 2023 (88 FR 89058). Approximately 361 public submissions were received in response to the publication. Some comments were beyond the scope of the CMMC Program and are described but not addressed in this final rule. The majority of comments received were relevant and are summarized in the discussion and analysis section here. Additional comments were received in response to the CMMC supplemental documents published concurrently with the rule; the discussion and analysis of those comments is located at *www.regulations.gov*. Some comments received lacked relevance to the rule's content, which is limited to specific CMMC program requirements codified in the 32 CFR part 170 CMMC Program rule, responses for those comments are not provided.

Any contractual requirements related to the CMMC Program rule will be implemented in the DFARS, as needed, which may result in revisions to the DFARS clause 252.204–7021, CMMC Requirements. DoD will address comments regarding the DFARS clause 252.204–7021 in a separate 48 CFR part 204CMMC Acquisition rulemaking.

1. Extension of the Public Comment Period

Comment: DoD received requests from industry associations for an extension of the 60-day public comment period on the CMMC Proposed Rule that the Office of the Federal Register published on 26 December 2023. The length of extensions requested ranged from 30–60 days. Commenters argued that the proposed rule was initially published following a holiday, or more time was needed for associations to fully review member comments about the CMMC Proposed Rule prior to submitting. In addition, they argued that other rules pertaining to cyber incident reporting obligations and security of Federal Information Systems had also been published for public comment, which created a need for additional review time.

Response: The DoD CIO denied requests for an extension of the 60-day public comment period. The DoD provided regular communication to the public through the DoD CMMC website and updates in the semiannual Unified Agenda in preparation for publication of the CMMC Proposed Rule to initiate the 60-day public comment period. The Department has an urgent need to improve DIB cybersecurity by further enforcing compliance with security requirements that were to be implemented by the DIB ''as soon as possible but not later than December 2017.''

2. The CUI Program

a. CUI Program Guidance

Comment: Many comments were submitted related to the NARA CUI policies or the DoD CUI Program, and while relevant for understanding CMMC requirements, those are separate policies or programs beyond the scope of the CMMC program or this rule. However, several comments recommended that the CMMC rule be revised to address them.

Twenty-two comments requested the government provide more guidance, preferably within RFPs or contracts, to better identify what will be considered CUI for that contract, and how it should be appropriately marked. One comment specifically noted a need for contractual instructions on whether data created in performance of a contract rises to the level of CUI. Another person asked when is does information created or possessed by a contractor become CUI. One comment asked whether digital or physical items derived from CUI are treated as CUI while another asked what specific information qualifies as CUI for OT and IoT assets. Another comment asked whether FCI and or CUI created or provided under a non-DoD agency contract, but which is also used in support of a DoD contract, would be subject to the applicable CMMC level requirement. Another comment noted that DoD focuses too narrowly on data security aspects of major system acquisition and largely fails to address securing data generated by operational and/or maintenance operations, such as invoices and bills of lading for operational support purchases.

One comment stated there was a need for CUI policy guidance for the entire Federal Government. Another comment inferred, incorrectly, that the CMMC Accreditation Body makes determinations about what is and what is not CUI and stated that the Government should make those determinations. Another comment stated that to better address the needs of contractors tasked with safeguarding

CUI, NARA should initiate a public comment period to reevaluate its CUI Registry. The comment also noted that NARA should identify when a CUI designation automatically applies to contractor-created information and revise the CUI Registry to stipulate that a specific basis in statute (or a contract) is required for information to be considered CUI. Another comment recommended a study be conducted on protections for systems and data at Confidential and higher classification levels and should assess whether NARA's CUI protection requirements (32 CFR part 2002) have yielded any real benefits in protecting critical data. Another comment stated that the CUI program is a costly proposition whose security value is questionable given data can still be compromised, even over systems with a CMMC assessment. The comment stated that if data is to be controlled for Critical Items, then the existing system used for CONFIDENTIAL information should suffice. Finally, another comment suggested that CUI information should be under the control of the Federal Government and access granted only to appropriately trained, and qualified contractors through a portal.

Response: Neither the CUI program (established in E.O. 13556) nor the safeguarding requirements codified in its implementing directives are changed by virtue of the compliance assessment framework established by this rule.

CMMC requirements apply to prime contractors and subcontractors throughout the supply chain at all tiers that will process, store, or transmit any FCI or CUI on contractor information systems in the performance of the DoD contract or subcontract, irrespective of the origin of the information.

The executive branch's CUI Program is codified in 32 CFR part 2002 and establishes policy for designating, handling, and decontrolling information that qualifies as CUI. The definition of CUI and general requirements for its safeguarding are included in 32 CFR 2002.4 and 2002.14, respectively. 32 CFR 2002.14(h)(2) specifically requires agencies to use NIST SP 800–171 when establishing security requirements to protect CUI's confidentiality on non-Federal information systems. At the time of award, the DoD may have no visibility into whether the awardee will choose to further disseminate DoD's CUI, but DFARS clause 252.204–7012 and DFARS clause 252.204–7021 require the prime contractor to flow down the information security requirement to any subcontractor with which the CUI will be shared. Decisions regarding which DoD information must be shared to support completion of subcontractor tasks is between the prime contractor and the subcontractors. The DoD encourages prime contractors to work with subcontractors to lessen the burden of flowing down CUI. The DoD declines to adopt alternatives such as policy-based solutions that lack a rigorous assessment component or require sharing CUI only through DoD-hosted secure platforms. Suggested alternatives to implementing NIST SP 800–171 and identifying what data is CUI are beyond the scope of the CMMC Program and this rule.

b. FCI and CUI Definitions

Comment: Five comments stated that what DoD considers CUI is not well defined. Another comment stated that companies should be provided a reference list of what the DoD considers CUI. Another recommended DoD use existing mechanisms like the DD Form 254 architecture to clearly define the scope of CUI on a contract-by-contract basis. Seven comments recommended the CMMC rule mandate a Security Classification Guide (SCG) or similar document.

Nine comments stated there was too much confusion and ambiguity regarding FCI and CUI and that the government needed to provide clear and standardized FCI and CUI definitions that are tailored to the specific requirements of the CMMC rule. One comment recommended rule edits to address this perceived ambiguity. One comment requested clarification and examples of differences between CUI Basic and Specialized CUI.

Response: Federal Contract Information is defined in FAR clause 52.204–21, which also provides the security requirements applicable for basic safeguarding of such information. The DoD has no authority to modify definitions established in the FAR for application to all executive branch agencies. This rule makes no change to the definition or handling of CUI.

c. Marking Requirements

Comment: Twenty-three comments expressed concern with or requested clarification regarding CUI marking. Twelve comments specifically noted concern with CUI markings being applied to too many documents, in part because CUI was an ambiguous concept. They requested the DoD encourage personnel to mark documents as CUI only when appropriate and provide better guidance for managing flow-down clauses. Another comment noted that many small businesses are currently subject to NIST SP 800–171 requirements through DFARS contract clause flow-down and cannot say with certainty that they have CUI in their possession. The comment further noted that small businesses regularly receive mismarked data. One comment stated there is an increased use of automatic CUI marking on DoD communications, seemingly without regard to content. One comment stated that the rule fails to outline a mechanism for reporting government mishandling, and that contractors should use a reporting system to minimize their own risk and liability. One comment requested the rule be edited to prevent Program Managers or requesting activities from assigning a CMMC Level 3 requirement unless they have high confidence that 80+ percent of CUI and/or FCI under the relevant contract has complete CUI markings. Another comment stated that the Federal government should develop a marking schema to communicate information safeguarding requirements, while yet another stated that DoD must publish a training module for contracting officers so that they are properly classifying documents prior to finalization of this rule.

One comment stated CUI across the DoD is diverse and what may be CUI for one system may not be for another. The comment then questioned how this proposed rule and SPRS would accommodate these facts without assuming and mandating that all defense contractor information systems meet the same architecture, security, and cybersecurity standards.

Response: The CMMC Program will not provide CUI guidance materials to industry as it is outside the scope of this CMMC rule. Relevant information regarding what to do when there are questions regarding appropriate marking of CUI may be found at 32 CFR 2002.50—Challenges to designation of information as CUI. The DoD declined to incorporate suggested edits to the CMMC Level 3 requirements regarding confidence in proper CUI and/or FCI markings.

The DoD's role as data owner is documented in the CUI Program implementing policies and the requirements of 32 CFR part 2002. DoDI 5200.48, states: The authorized holder of a document or material is responsible for determining, at the time of creation, whether information in a document or material falls into a CUI category. If so, the authorized holder is responsible for applying CUI markings and dissemination instructions accordingly. DoD Manual 5200.01 outlines DoD's Information Security Program and includes Volume 2, Marking of Information. The DoD declines to incorporate by reference those

documents describing the Department's data governance role because the content is beyond the scope of CMMC requirements. The DoD issued policy guidance to its program managers regarding programmatic indicators to consider when selecting CMMC requirements. Program managers have a vested interested in knowing whether a contractor can comply with these existing requirements to adequately safeguard CUI.

The DoD elected not to make any recommended edits to the CMMC Program related to FCI or CUI marking requirements or provide clarifying examples of the differences between Basic CUI and Specified CUI, as these are beyond the scope of this rule. Mishandling of information by the government is beyond the scope of this rule. DCMA DIBCAC processes, stores, and transmits all data on DoD-approved networks. DoD's adherence to NARA's CUI Program policies is beyond the scope of this rule.

d. Applicability and Governance of CUI Requirements

Comment: In addition, one utilities sector representative submitted a lengthy analysis of data types often generated by electric or other utilities, with regulatory references and rationale for why such data would not likely be subject to DoD's CUI safeguarding requirements or CMMC compliance assessments. Such rationale included the fact that some Government-Private CUI categories, such as DoD Critical Infrastructure Information, require explicit designation in that category which (according to the commenter) has not occurred in the electricity subsector. One contractor requested that CMMC clarify requirements around U.S. persons and foreign dissemination of CUI for both contractors, subcontractors' employees, and contingent workers. Two comments suggested it would be appropriate to reference data governance in § 170.1 and the DoD's role as the data owner of FCI and CUI across the ecosystem. Another comment stated the classification efforts must themselves be audited.

Response: The quantity of FCI and CUI a defense contractor possesses, including copies of the same material, is irrelevant to the CMMC assessment required. All copies of FCI or CUI related to the DoD contract must be safeguarded. The CMMC Program is not intended to validate compliance with cybersecurity requirements of non-DoD agencies' contracts. The requirements for sharing of CUI with non-US persons is beyond the scope of this rule.

The CMMC program provides a mechanism to assess contractor compliance with applicable security requirements for the safeguarding of FCI or CUI. CMMC program requirements make no change to existing policies for information security requirements implemented by DoD. Policies for CUI and creation of program documentation, to include Security Classification Guides, are separate from this rule. Discussion in this rule regarding DoD programs providing CUI training and the implementation of E.O. 13556 are beyond the scope of this rule.

CMMC program requirements are applicable when DoD requires processing, storing, or transmitting of either FCI or CUI on a non-Federal contractor owned information system in the performance of a contract between DoD and the contractor. The DoD does not manage nor is it involved in data exchanges between contractors and subcontractors.

3. Other DoD Policies and Programs

Many comments dealt with DoD policies and programs that, while relevant for understanding CMMC requirements, are still entirely separate programs or policies that are not within the scope of the CMMC program. However, several commenters recommended that the rule be revised to address them. Key topics among such comments include:

a. Adaptive Acquisition Framework

Comment: One commenter misunderstood CMMC program purpose and thought the requirements applied to systems and capabilities acquired or developed for DoD's use, using formal policies of the Defense Acquisition System. Based on this misinterpretation, this commenter made dozens of recommendations related to integration of CMMC assessment and program requirements with other existing DoD acquisition frameworks and suggested relying on the assessors that complete TRAs, in place of implementing the CMMC program. One of their comments also proposed establishing a single responsible office for CUI and SCRM, hosting CUI material within a single, separate secure and existing cloud-based data warehouse and including hardware and software approving authorities as part of the proposed rule for GFE. The commentor also stated the role of the Office of Small Business Programs (OSBP) needs to flow down to the Small Business Administration military service offices. The commentor also asked how to reconcile CMMC against the DoDI 8582.01 requirement stating a DoD Component should not specify the content and format of plans of action that address deficiencies or specifying the parameters of security controls.

This commenter also recommended creation of a MIL-Standard in lieu of aligning cybersecurity requirements to existing NIST standards, and linkage of CMMC requirements to procedures related to Approval to Operate (which applies to DoD systems. This commenter suggested that the CMMC PMO be made responsible to provide system scans to check for Software Bills of Material as part of DoD's response to Executive Order 14028 regarding Supply Chain Risk Management. The commenter further requested a DoD-level working group outline how DoD program offices might identify which components are mission or safety critical or which associated production processes should be identified as CTI. That commenter recommended this rule be held in abeyance until AT&L [sic] has reviewed and provided their insight into the impacts of CMMC on existing DoD acquisition documentation and deliverables. Yet another comment recommended that ''this proposed DFARS ruling'' be vetted through ''AT&L, ASD and OUSD'' [sic] as a minimum to determine if changes would be required in the Program Protection Improvement Plan and System Security Plan. Lastly, this commenter recommended the DoD engage with NDIA and ISO/IEC to develop alternate standards for securing data and supply chains.

Response: CMMC Program requirements apply to contractor-owned information systems that process, store, or transmit FCI and CUI and do not apply to systems developed or acquired for DoD through the formal Defense Acquisition System (DAS). Therefore, integrating the CMMC assessment process and internal DAS processes (including technical reviews prior to RFP development) is not appropriate and is beyond the scope of this rule. Note that CMMC applicability is broader than just the Major Defense Acquisition Programs.

DoD's organizational alignment of responsibilities (between OSBP and SBA military offices) for assisting small businesses or establishing new offices within OSD is beyond the scope of this rule. Due to national security concerns, DoD declines the recommendation to further delay implementation of the CMMC Program. Each passing day in delay of implementing the security requirements for safeguarding DoD FCI and CUI increases the risk for exfiltration of non-public information on unsecured nonfederal systems that

may result in the loss of DoD's technological advantages in its warfighting capabilities and programs.

Discussions regarding acquisition strategies and frameworks are beyond the scope of this CMMC rule. The CMMC Program does not alleviate or supersede any existing requirements of the Adaptive Acquisition Framework, nor does it alter any statutory or regulatory requirement for acquisition program documentation or deliverables. Note that CMMC Program requirements do not apply to systems delivered to DoD. DoD Instructions for required acquisition program documentation are beyond the scope of this rule. CMMC assessment certifications are not integrated into System Security Plans (SSPs).

The role of System Engineering and associated processes within the DoD acquisition process is beyond the scope of this rule. ITRA assessments provide a view of program technical risk and are not well-suited to the assessment of contractor owned information systems against standards for safeguarding CUI. CMMC Program requirements do not clash with Program Office responsibilities, but instead provide Program Manager's with a mechanism for validating that contractors are compliant with the rules for protecting DoD CUI.

b. FedRAMP Program and FedRAMP Equivalency

Comment: Many commenters took issue with the requirements for FedRAMP Moderate Equivalency, as referenced in DFARS clause 252.204–7012 and defined in a separate DoD policy memo. Some merely highlighted discrepancies or highlighted concerns about their ability to meet the FedRAMP Moderate Equivalency requirements. Others recommended revisions to that policy, or to the DFARS clause 252.204–7012 clause, or both. Some recommended the FedRAMP Moderate Equivalency policy memo be incorporated into the DFARS clause 252.204–7012 clause. Other suggestions ranged from eliminating equivalency to meet requirements, allowing 3PAO attestation to equivalency, requiring all FedRAMP Moderate Equivalency candidates to be assessed by the same C3PAO or allowing equivalency to be established through other industry certifications or third-party security assessments, *i.e.,* SOC, ISO/IEC 27001. One commenter requested that applications hosted on a FedRAMP Moderate environment only need to meet the CMMC level of the data the application will process. Another suggested that all Cloud Service Providers be required to meet the same CMMC requirement as the OSCs they support. One commenter recommended expanding the scope of CMMC Program to include assessing other security requirements in DFARS clause 252.204–7012, to include the use of FedRAMP Moderate cloud environment. Comments also expressed that it is unreasonable to expect any cloud provider to share security documentation with a customer or C3PAO since they limit dissemination of this information due to operational security needs. Another commenter noted that the proposed rule does not cover all types of information that contractors may handle, such as classified information, export-controlled information, or proprietary information and they recommended the DoD clarify applicability of the CMMC program for these types of information.

Response: Although some commercially based Cloud Service Offerings (CSOs) may experience limitations in trying to support the Defense Industrial Base with the FedRAMP Moderate equivalent requirement, the DoD is not willing to assume all the risk of non-FedRAMP Moderate Equivalent CSOs when the CSO is used to process, store, or transmit CUI. If the offering does not process, store, or transmit CUI, then FedRAMP certification is not required. Although the DoD considered acceptance of the ISO/IEC 27001 certification, it chose the NIST cybersecurity requirement to meet FedRAMP Moderate baseline equivalency standard to stay aligned with the FedRAMP Moderate baseline which is based on NIST standards versus ISO/IEC standards.

The rule was updated to require FedRAMP moderate or FedRAMP moderate equivalency in accordance with DoD Policy. CMMC Program Requirements make no change to existing policies for information security requirements implemented by DoD. Comments related to applications hosted on a FedRAMP Moderate environment are outside the scope of this rule.

The requirements for CSPs that process, store, or transmit CUI are set by DFARS clause 252.204–7012 and the DoD CIO policy memo on FedRAMP Moderate equivalency. These requirements are beyond the scope of this rule. ESPs that are not CSPs will be required to meet the CMMC requirements and be assessed as part of the scope of an acquiring OSA. ESPs that are not a CSP may voluntarily request a C3PAO assessment if they decide it would be to their advantage.

c. Other DoD Programs and Policies

Comment: One commenter expressed dissatisfaction with results obtained from previously submitted FOIA requests related to development of the CMMC program.

Two commenters asked if there was a mechanism to update FAR clause 52.204–21 to address evolving threats and recommended the Department specifically identify the frequency and identify accountable parties to review and update FAR security requirements. Another commenter cited responses visible on the DoD CIO's Frequently Asked Questions (FAQ) website and criticized both the utility of the information (given that does not constitute formal policy) and the frequency with which the information is updated. Similarly, one commenter asked for more frequent updates to FAQs on the DoD Procurement Toolbox URL.

One commenter asserted that the Federal Government sometimes contracts for support to perform sensitive tasks and permits access to ''highly classified'' information that should only be accessed by Federal employees.

One commenter requested NIST develop a simplified inspection standard for organizations with less than 20 employees.

One commenter asked about the transfer of CMMC Program oversight from OUSD(A&S) to DoD CIO.

A comment cited the utility of free cybersecurity related services that DoD agencies offer, such as security alerts and vulnerability scanning, and encouraged expansion of those programs.

One person suggested that DoD's Zero-Trust approach would provide a higher level of security for CUI data than the CMMC program.

One commenter stated the Department should develop clear, flexible guidelines and alternative pathways for global companies to achieve CMMC compliance without relying on enclave architectures and recommended that this approach rely on Zero Trust principals.

One comment noted that under FAR clause 52.204–21, FCI does not include simple transactional information (STI) and asked if certain data would be considered STI and therefore not subject to CMMC.

One comment stated that conflicting regulatory guidance exists between the content of E.O. 15028, NIST SP 800–218, NIST SP 800–171 R2, and NIST SP 800–171 Revision 3.

Response: One comment lacked clarity and failed to clearly articulate

any relevance to the content of this rule, so no response can be provided.

SPRS will be used for reporting CMMC Status of all contractors, regardless of which service issued the contract. Publication of this rule follows completion of OMB's formal rulemaking process, which includes both DoD internal coordination (including the USD(A&S) and USD(R&E)) and Interagency coordination.

CMMC is consistent with Section 3.4 of DoDI 8582.01, Validation and Compliance. CMMC does not specify the content and format of plans of action beyond what is specified in NIST SP 800–171 R2, which is required under DoDI 8582.01.

Clinger Cohen Act requirements, which apply to DoD's IT investments, are not relevant to CMMC Program requirements, which apply to contractor-owned information systems. The classification marking of existing DoD documentation is beyond the scope of this rule, as is engagement with INCOSE and ISO/IEC certification organizations.

Executive Orders state mandatory requirements for the Executive Branch and have the effect of law. E.O. 14028—''Improving the Nation's Cybersecurity'' (issued May 12, 2021) requires agencies to enhance cybersecurity and software supply chain integrity. NIST SP 800–171 R2 and NIST SP 800–218 are guidelines, not regulations. NIST SP 800–171 Revision 3 is not currently applicable to this rule.

Recommendations to add or modify requirements specified in NIST documentation should be submitted in response to NIST requests for public comment on the applicable guidelines. Federal and DoD requirements for delivery of software bills of material of secure software development are beyond the scope of this rule, which is limited to the assessment of compliance with requirements for adequate protection of FCI and CUI. Federal Contract Information is defined in FAR clause 52.204–21, which also provides the security requirements applicable for basic safeguarding of such information. The Department has no authority to modify definitions established in the FAR for application to all executive branch agencies. Any data that meets the definition of FCI, is subject to CMMC Level 1. It is beyond the scope of the CMMC rule to render decisions on specific elements of data.

The OUSD(A&S) was not replaced by the DoD CIO, rather, CMMC Program management oversight has been realigned from the OUSD(A&S) to the Office of the DoD CIO for better integration with the Department's other DIB cybersecurity related initiatives. Comments pertaining to DoD's organizational structure are not relevant to the content of this rule. DoD's processing of FOIA requests is also not within the scope of this rule. The DoD declines to respond to speculative or editorial comments about private citizens or outside entities, all of which are beyond the scope of this rule. Likewise, the DoD will not comment here on other DoD cybersecurity related programs, such as Zero Trust.

Some comments expressed appreciation for cybersecurity related services that DoD provides free of charge, including protected DNS, vulnerability scanning, and security alerts, but these programs are outside the CMMC program. The government cannot comment on specific implementation or documentation choices of an OSA. Comments on alternate risk mitigation strategies such as product monitoring or software testing are not within the scope of this rule text.

d. DoD Policies Supporting CMMC Implementation

Comment: Some comments addressed the DoD's internal policies and training efforts to prepare the Government workforce for CMMC program implementation. For example, some commenters opined that the rule's focus on contactor responsibilities misses the true risk that lies further up obscure supply chains. Another commenter recommended DoD work with contractors in each sector to provide clear guidance on the types of data that the Department would consider CTI. One commenter requested DoD acknowledge that human factors influence DIB cybersecurity while another stated DoD should provide uniform web-based training at no cost to ensure applicable training requirements are satisfactorily met. Another asked whether DoD PMs would receive CMMC related training prior to implementation. Another comment asked whether specific risk mitigating approaches, such as product monitoring or software testing might suffice to manage supply chain risk considering lack of visibility into the origins of 3rd and 4th tier components.

One commenter perceived the CMMC requirement for Program Managers to identify the level of assessment requirement appropriate for a solicitation as removing the contract award decision from the USD(A&S). One commenter stated more information about procedures for implementing CMMC into government-wide contracts is needed. Another commenter expressed a need to use a basic contract that is unclassified, and any CUI would be contained in a separate appendix to allow sub-contractors to plan with their Prime to access the information on the Prime's network and avoid requirements for their own CMMC certification.

Another comment recommended revisions to describe that medium assurance certificates for incident reporting are a DFARS clause 252.204–7012 requirement, independent of CMMC program requirements.

Two commenters criticized the DFARS clause 252.204–7020 requirement to allow ''full access'' to contractor facilities, systems, and personnel for the purposes of DIBCAC assessment, or for damage assessment following incident, and recommended that the CMMC program not include or rely on this authority.

Another commenter recommended that, prior to issuing a final rule on CMMC, DoD work with other relevant agencies to integrate and harmonize the numerous regulatory changes that impact contractors' capacity to safeguard data and systems. One commenter suggested rule publication be delayed until DoD articulates the benefit expected from contractor compliance with the rule.

Response: All recommendations to revise other Government-wide or DoD policies and programs are beyond the scope of the CMMC rule.

CMMC Program Requirements make no change to existing policies for information security requirements implemented by DoD. Policies for CUI and creation of program documentation, to include Security Classification Guides and FedRAMP equivalency are separate from this rule. Relevant policies include DoDI 5200.48 ''Controlled Unclassified Information'' and DoD Manual 5200.45 ''Instructions for Developing Security Classification Guides'' for example.[23] Some comments received lacked relevance to the rule's content, which is limited to specific CMMC program requirements. Changes to FAR and DFARS requirements are beyond the scope of this rule, as are the contents and updating of DoD's FAQ and Procurement Toolbox web pages.

CMMC program requirements do not result in any change to which DoD organization makes the contract award. Recommendations to adopt standard DoD contracting procedures (*i.e.,* to exclude CUI information in the basic award) are not within the scope of this rule, which outlines program requirements. The DoD limits the

[23] DoD Issuances (*www.esd.whs.mil/DD/DoD-Issuances*).

burden of CMMC compliance by requiring annual affirmations rather than annual assessments. Affirmations required for the CMMC program indicate that a DoD contractor has achieved and intends to maintain compliance with the applicable DoD information security requirements.

The CMMC program is designed only to validate implementation of the information security standards in FAR clause 52.204–21, NIST SP 800–171 R2, and a selected subset of NIST SP 800–172 Feb2021. This rule does not address the other DFARS clause 252.204–7012 requirements for cyber incident reporting. The CMMC assessment framework will not alter, alleviate, or replace the cyber incident reporting aspects of DFARS clause 252.204–7012, which will remain effective where applicable. Classified information is managed differently from CUI, and different safeguarding regulations apply to these different categories of information (each of which are defined in 32 CFR part 2002). CMMC Program requirements are aligned to the requirements for safeguarding of CUI and are unrelated to the requirements for safeguarding classified information. ''Export Controlled'' is a category of CUI. To the extent that a company generates information it considers proprietary, but which is explicitly excluded from the definition of CUI (see 32 CFR part 2002), no CMMC requirements would apply.

As the CMMC program requirements make no change to existing policies for information security requirements implemented by DoD, dialogues with industry to identify CUI is outside the scope of this 32 CFR part 170 CMMC Program rule. Several existing requirements directly address the human factors of cybersecurity, particularly those in the Awareness and Training, Personnel Security, and Physical Protection domains. Additional training and education on the topics of CUI safeguarding requirements, cybersecurity hygiene, and other useful topics may be found at:

www.archives.gov/cui/training.html
https://securityawareness.usalearning.gov/
https://business.defense.gov/Resources/Be-Cyber-Smart/

OSAs may develop their own policies to validate completion of training. Developing and providing cyber security awareness training is not within the scope of the CMMC Program. DoD program managers will receive training.

In support of 32 CFR part 170 CMMC Program final rule, DoD issued guidance to reiterate the most appropriate information safeguarding requirements for DoD information and the associated CMMC assessment requirement for any given solicitation. Irrespective of CMMC Program assessment requirements, when CUI is processed, stored, or transmitted on contractor owned information systems, those systems are subject to the security requirements of NIST SP 800–171, due to the applicability of DFARS clause 252.204–7012. Program Managers have a vested interested in knowing whether a contractor can comply with these existing requirements to adequately safeguard DoD CUI.

Applicability of and compliance with DFARS clause 252.204–7020 is beyond the scope of the CMMC Program. Implementation of the CMMC Program does not require or rely upon DFARS clause 252.204–7020. The existing assessments described in DFARS clause 252.204–7020 are entirely different than those described in this rule. This rule contains no cyber incident reporting requirements. Concerns related to a CISA rule pertaining to cyber incident reporting are beyond the scope of this rule and should have been submitted instead to the relevant docket for that rule. The DoD has declined the recommendation to address certificate requirements for the cyber incident reporting requirements of DFARS clause 252.204–7012 in this rule. The DoD is unable to comment on, balance with, or modify contractual or regulatory requirements to comply with any other agency's future requirements.

The preamble of this rule articulates how contractor compliance with CMMC will contribute to counteracting the cyber security threat. Implementation of the CMMC Program will help protect DoD's FCI and CUI that is processed, stored, and transmitted on non-Federal information systems of defense contractors and subcontractors. Adequately securing that information as required, down to the smallest, most vulnerable innovative companies, helps mitigate the security risks that result from the significant loss of FCI and CUI, including intellectual property and proprietary data. Hence the implementation of the DoD CMMC Program is vital, practical, and in the public interest. Working with NIST and other regulatory authorities to align standards is beyond the scope of this rule.

4. DFARS Requirements

Comment: Two commenters recommended the DoD fully implement CMMC requirements to standardize contract requirements to avoid proliferation of unique contract clauses across the Department. One comment suggested the rule should state explicitly that CMMC requirements do not apply to other agencies and advise DoD contractors to seek legal guidance before complying with CMMC requirements if other agency requirements also apply.

In addition, several commenters thought the 32 CFR part 170 CMMC Program rule requirements lacked sufficient information about the associated 48 CFR part 204 CMMC Acquisition rule requirements to implement them. One person erroneously identified the DFARS clause 252.204–7021 as part of the 32 CFR part 170 CMMC Program rule, and one person asked what additional rulemaking is needed to implement CMMC requirements. Another person recommended close coordination and synchronization between the two rules. One comment recommended the contract clauses be simplified to be ''stand alone'', rather than requiring cognizance of the 32 CFR part 170 CMMC Program rule content.

One commenter asked whether contractors must meet CMMC requirements during the solicitation phase, or to view RFPs that contain CUI. Another asked how DoD plans to integrate CMMC requirements into DoD's Adaptive Acquisition Framework. One contractor disagreed with CMMC's pre-award approach, and worried it could create a need to become compliant in anticipation of future solicitations. This commenter posited that any information designated as CUI after contract award will create a ''chicken and egg'' dilemma for CMMC compliance. Other comments asked whether conditional certifications would be weighted differently than final certifications in the proposal evaluation and award process and suggested that DoD provide 6 months advance notice for all solicitations containing a CMMC requirement.

Some comments urged the DoD to describe how DoD will identify CUI in solicitations and when CUI markings should apply in CSP or ESP scenarios. They also requested modification of DoD contracting procedures to provide criteria for identifying CUI information in each contract award along with the corresponding CMMC assessment level. One commenter inquired about the difference between implementing security requirements and assessing compliance. Some comments pertained to other DFARS contractual requirements, rather than CMMC requirements. For example, some recommended changing DFARS clause 252.204–7012 to remove the definition

of Covered Defense Information and to deviate from a requirement to comply with the NIST SP 800–171 version current at the time of solicitation. In addition, they asked about cost allowability for time and materials or cost type contracts. Some comments posited that costs for reassessment or recertification should be explicitly identified as reimbursable in the 48 CFR part 204 CMMC Acquisition rule, while one similar comment suggested that CMMC level 3 certification costs should be allowable when CMMC level 3 requirements are initially implemented.

One comment addressed cyber incident reporting timelines for cloud service providers and recommended that the DoD's FedRAMP moderate equivalency policy be revised to align with DFARS clause 252.204–7012 timelines. Another asked whether the rule inadvertently omitted requirements to assess compliance with DFARS clause 252.204–7012 cyber incident requirements.

Other commenters asked for the CMMC contract clause verbiage, as was subsequently published in the related 48 CFR part 204 CMMC Acquisition rule. For example, some people asked whether CMMC requirements would be levied in ID/IQ contract awards versus task order awards, and GSA schedules. They asserted that adding CMMC clauses in GSA schedules might inadvertently allow contracting officers to include them in non-DoD issued task orders. Another opined that ID/IQ contracting procedures might necessitate changing the CMMC level needed for the base contract after its initial award, based on the needs of a task order. One commenter incorrectly inferred that a single Program Manager would make the CMMC level and type determination for every task order issued against an ID/IQ. In addition, two comments suggested that the DoD communicate with every current DoD contractor to identify which CMMC level would apply to their existing contracts.

One company identified their specific DoD contract and asked whether it would be cancelled absent CMMC compliance. Another asked whether a current DFARS clause 252.204–7020 self-assessment score could be submitted to meet a CMMC level 2 self-assessment requirement. They also recommended elimination of the DFARS clause 252.204–7020 requirements when CMMC is implemented.

One commenter speculated about whether DoD's CMMC contract clauses can be applied to DoD contractors that also make and sell the same product to other US Government agencies. They noted that export licenses do not restrict companies from providing product data to other parties and posited that this might conflict with CMMC requirements. One person asked about the potential for conflicts between CMMC clauses and the Berry amendment and suggested that Berry amendment compliance take precedence over CMMC clauses.

Response: Some comments received lacked relevance to the rule's content, which is limited to specific CMMC program requirements. Changes to FAR and DFARS requirements are out of scope of the 32 CFR part 170 CMMC Program rule, as contractual changes would occur under the 48 CFR part 204 CMMC Acquisition rule. This rule does not discuss the Berry Amendment. The rule does not address recovery of assessment costs because it does not make any change to 48 CFR 31.201–2.

This 32 CFR part 170 CMMC Program rule is not an acquisition regulation, however, a CMMC Conditional Certification meets the CMMC program certification requirements. Any comments related to contract requirements should be directed to the related 48 CFR part 204 CMMC Acquisition rule.

CMMC requirements apply to contracts that include FAR clause 52.204–21 or DFARS clause 252.204–7012 and result in processing, storing, or transmitting of FCI or CUI on a contractor owned information system. The CMMC program is not a verification program for compliance with all requirements of DFARS clause 252.204–7012, rather, its purpose is to ensure compliance with FAR clause 52.204–21, NIST SP 800–171 R2, and NIST 800–172 Feb2021 when applicable. The DoD does not provide detailed instruction on how to implement specific solutions to meet security requirements identified in the FAR clause or applicable NIST requirements, which is determined by the OSA. Any deviation from or change to the DFARS clause 252.204–7012 clause is beyond the scope of this rule.

Each of the teams responsible for developing these two CMMC rules has reviewed both documents.

There are no CMMC requirements for reviewing FCI or CUI solicitation material. Recommendations to adopt standard contracting procedures for award of DoD contracts (*i.e.,* to exclude CUI information in the basic award) are out the scope of this 32 CFR part 170 CMMC Program rule. In support of the 32 CFR part 170 CMMC Program final rule, DoD issued policy guidance to its program managers and acquisition workforce to identify the appropriate CMMC requirement in solicitations and contracts. The CMMC assessment level required does not change based on acquisition lifecycle phase and is based on whether FCI and CUI are processed, stored, or transmitted on contractor owned information systems used in the performance of a contract.

Discussion of DoD's willingness to provide advance notice of CMMC requirements or to remove the PM's discretion to include the CMMC level that best suits program requirements is a 48 CFR part 204 CMMC Acquisition rule matter and outside the scope of this rule. The CMMC Level will be identified in the solicitation. Once attained, a CMMC self-assessment or certification can be used in support of any number of proposals and solicitations.

5. Litigation and False Claims

Comment: Some commenters expressed concern that CMMC implementation would result in increased litigation by DIB companies or pursuit of False Claims Act penalties by DoD against DIB companies. One commenter erroneously believed that Mexico would participate in oversight of the CMMC ecosystem, and that ''a flood of litigation'' may result from DIB companies losing contracts due to non-compliance with CMMC requirements. One commenter suggested that DoD should absolve contractors from False Claims Act prosecution when differences are found between C3PAO assessment results and a previously submitted contractor self-assessment, due to potentially valid reasons for the differing outcomes. Another suggested that DoD establish protections from regulatory and legal liability related to cyber incidents when the affected contractor has complied with relevant CMMC Program requirements.

Response: The DoD lacks the authority to change the False Claims Act, which is a Federal law that imposes liability persons and companies who defraud or knowingly submit false claims to the government. Comments related to Safe Harbor provisions are outside the scope of this rule.

Comments about potential industry litigation are also beyond the scope of the final rule and the recommendations provided were not appropriate for inclusion in this rule. Nothing in the rule prevents frivolous private lawsuits, but the rule does provide that the CMMC AB maintain an appeals process. The DoD has faithfully followed the formal rulemaking process, to include completion of the public comment period. Implementation of the CMMC program will be carried out objectively and in accordance with the tenets of the

final rule. No foreign actors have any role in DoD's administration of the program.

6. DoD Metrics

Comment: Several commenters inquired about the types of metrics the DoD plans to use to monitor progress toward the DIB cybersecurity objectives that the CMMC program was designed to meet. One asked whether DoD's metrics would include testing, and another recommended they capture changes in the population of DoD contractors caused by cost impacts of CMMC implementation. Others referenced a December 2021 GAO Report that critiqued DoD's earlier attempts to implement the CMMC program. Specifically, they cited the GAO's finding that, at that time, DoD had not defined how it would analyze data to measure performance.

A comment recommended the DoD identify responses to other GAO findings, which dealt with improvements to communications with industry and metrics for program management. Another comment asked whether management alignment within OSD, budget, and staffing of the CMMC program office are adequate.

Two comments asked how many current contract awardees had received notification or identification of CUI to be provided in performance of their contracts, and asked which CMMC level would theoretically apply to those contracts. Another asked the DoD to provide DIBCAC assessment results data as a more relevant justification for the CMMC program than the 2019 DoDIG report on DIB Cybersecurity.

Response: DoD's response to the referenced GAO and DoD IG reports are beyond the scope of this rule. Likewise, the DoD does not comment on analysis methods supporting the DoD IG's conclusions. Publishing DIBCAC assessments results is also beyond the scope of this rule, as are CMMC Program effectiveness metrics and return on investment calculations. The DoD is establishing CMMC assessment requirements as part of a comprehensive effort to verify that underlying information security requirements are met, as required, for all contractor owned information systems that process, store, or transmit CUI or FCI in the performance of a DoD Contract. DoD's calculation of ROI for the security controls that CMMC will assess, and cost elasticity of the DIB are also beyond the scope of this rule.

7. Phased Implementation of the Program

Comment: Many comments asked for additional explanation of DoD's expected start and progression through phases of the CMMC implementation plan. Several asked that the phase-in plan be extended. One commenter asked whether contracts that would otherwise be associated with CMMC Level 3 would include a CMMC Level 2 requirement if issued prior to Phase 4 of the plan. Another misread the phase-in plan to mean that self-assessments would no longer be permitted at Full Implementation. One comment asked if the USG would be revisiting acquisition timelines to add more time for due diligence to ensure all entities meet CMMC requirements or have a POA&M in place.

Some commenters observed that DoD's intended dates for CMMC implementation, as published in an earlier 48 CFR CMMC interim final rule, are unachievable and must be changed via another CMMC DFARS rule. Some commenters were confused by the differences between the dates of implementation phases in the rule, and the seven years described in cost estimates as necessary to complete implementation. Another commenter asked why the rule only applies to DoD.

Some commenters suggested changes to prioritize different kinds of contracts, programs, or companies earlier or later in the implementation plan, rather than basing the phase-in on assessment type. For example, one suggested capping the number of contracts with CMMC requirements each year. Another suggested phasing in by increasing the numerical assessment score required for compliance, with additional time permitted for POA&M close-out beyond the current limit of 180 days. Another suggested reversing the phase-in to begin with CMMC Level 3. Several commenters requested extension of the phase-in plan to allow more time. One speculated that ''tens of thousands'' of contractors would require certification in less than 18 months. One commenter suggested the DoD modify the timing of implementation for CMMC levels 2 and 3, and that DoD consider allowing sufficient time to develop a robust CMMC ecosystem and demonstrate the CMMC model before full implementation.

Flexibility in the implementation plan that allows Program Managers and requiring activities to include CMMC requirements earlier in the plan than will be mandated by policy also generated questions and comments. Some commenters asked whether this could result in the DoD applying CMMC requirements to previously awarded contracts or asked that the rule specify they will apply only to new contracts. Another asked about opportunities to renegotiate the contract ceiling price if CMMC assessments are required for option period exercise. One commenter asked that the rule be revised to exclude these flexibilities to result in an ''on/off'' approach to implementation.

Another commenter asked what mechanisms the DoD would have to change the pace of implementation or monitor the contracts that include CMMC requirements.

Response: The DoD lacks the authority to implement CMMC as a Federal-wide program. The 48 CFR part 204 CMMC Acquisition rule for CMMC will be updated to align with this 32 CFR part 170 CMMC Program rule and will modify DFARS clause 252.204–7021. CMMC Phase 1 implementation will commence when both the 32 CFR part 170 CMMC Program rule and the 48 CFR part 204 CMMC Acquisition rule are in effect. Some commenters may have overlooked that § 170.3(e) states Phase 1 begins on the effective date of this 32 CFR part 170 CMMC Program rule or the complementary 48 CFR part 204 CMMC Acquisition rule, whichever occurs later. The implementation plan describes when CMMC level requirements will appear in solicitations, it does not define a timeframe by which all contractors must be certified. During the first phases of the plan, a majority of CMMC requirements will be for self-assessment.

In response to public comments, the DoD has updated the rule to extend Phase 1 by 6 months, with appropriate adjustments to later phases. DoD is not conducting Pilots in the updated CMMC implementation plan. The phased implementation plan described in § 170.3(e) is intended to address ramp-up issues, provide time to train the necessary number of assessors, and allow companies the time needed to understand and implement CMMC requirements. DoD has updated the rule to add an additional six months to the Phase 1 timeline. Phase 2 will start one calendar year after the start of Phase 1.

The DoD's objective timeline to begin implementing the CMMC requirements has been, and remains, FY2025. The implementation period will consist of four (4) phases, 1 through 4, and is intended to address any CMMC assessment ramp-up issues, provide the time needed to train the necessary number of assessors, and to allow companies time to understand and implement CMMC requirements. It is estimated that full implementation of

CMMC by all defense contractors will occur over seven years, given the number of DoD solicitations contractors respond to and are awarded each year.

The four phases add CMMC level requirements incrementally, starting in Phase 1 with Level 1 and Level 2 Self-assessments, and ending with Phase 4 for Full Implementation, as addressed in § 170.3(e)(4). By Phase 3, all CMMC Levels 1, 2, and 3 will be included in some DoD solicitations and contracts, but Level 3 requirements may be identified for implementation as option period requirements rather than for initial contract award. In Phase 4, DoD will include CMMC requirements in all applicable DoD contracts and option periods on contracts awarded after the beginning of Phase 4. As addressed in § 170.18(a), receipt of a CMMC Level 2 Final CMMC Status for information systems within the Level 3 CMMC Assessment Scope is a prerequisite for a CMMC Level 3 certification assessment.

CMMC self-assessment requirements build on the existing DFARS clause 252.204–7020 requirement for basic safeguarding of CUI. CMMC Level 3 requires advanced implementation, and the phase-in period provides additional time for OSC to achieve the higher standard. In phase 4, which is full implementation, CMMC requirements must apply to new contracts and option year awards. The DoD may choose to negotiate modifications adding CMMC requirements to contracts awarded prior to CMMC implementation, as needed. No changes to this rule are needed to reflect existing contract administration processes. Questions on specific contracting matters, including contract costs and funding, are outside of the scope of this rule.

With the implementation of the final 32 CFR part 170 CMMC Program rule and 48 CFR part 204 CMMC Acquisition rule, prospective DoD contractors and subcontractors should be actively preparing for DoD contract opportunities that will include CMMC Program requirements when performance will require the contractor or subcontractor to process, store, or transmit FCI or CUI. The respective phases of the implementation plan provide adequate time to complete CMMC requirements and DoD program requirements and timelines will dictate the programs that may warrant CMMC Level 3 requirements during the phased implementation of CMMC.

DoD considered many alternatives before deciding upon the current CMMC implementation plan. The phased implementation plan is based on CMMC assessment level and type, which DoD believes to be a fair approach for all prospective offerors. Defining the phase-in based on contract type, company size standard, or other potential bases could lead to unfair advantage. Program Managers will have discretion to include CMMC Status requirements or rely upon existing DFARS clause 252.204–7012 requirements, in accordance with DoD policy. The DoD will monitor the Program Managers' exercise of this discretion to ensure a smooth phase-in period. The decision to rely upon CMMC self-assessment in lieu of certification assessment is a Government risk-based decision based upon the nature of the effort to be performed and CUI to be shared. Note that section § 170.20 Standards acceptance states OSCs that completed a DCMA DIBCAC High Assessment with a score of 110 and aligned with CMMC Level 2 Scoping, will receive Final CMMC Status for a Level 2 certification assessment.

As noted by one commenter, self-assessments against NIST SP 800–171 are already required, and verifying compliance with applicable security requirements is necessary for the protection of DoD CUI. For all CMMC independent assessments (*i.e.,* Level 2 or 3), DoD policy guides Program Managers in appropriately including these requirements in DoD solicitations. DoD systems that support the procurement process can identify the number of contracts issued that include any specific clause. Such metrics for the CMMC Program are not within the scope of this rule.

The seven-year timespan reflects the DoD's estimate for all defense contractors to achieve CMMC compliance. The implementation plan ramps up CMMC assessment requirements over 4 phases, such that the ecosystem will reach maximum capacity by year four. One commenter referenced the response to a specific comment to the 2020 CMMC rule. Those earlier questions about the 2020 rule publication are no longer relevant due to changes made in the more recent 2023 rule publication. DoD estimates acknowledge that contractors with existing contracts may not receive another contract award or even submit another proposal immediately.

The DoD has developed CMMC to increase consistency of implementation of NIST SP 800–171 R2 and NIST SP 800–172 Feb2021. Specifically, this rule provides extensive information on scoring methodology, in an effort to improve self-assessments. The use of independent C3PAOs further enforces consistency for those companies that need to meet a CMMC Level 2 certification requirement. The DoD has considered the suggestions and declines to modify the phase-in periods based on total score required, or other criteria, which would not provide the desired improvements in DIB cybersecurity.

The DoD notes the commenter's concern that self-assessments go away after Phase 4. Requirements from earlier phases continue as each additional phase is implemented. When applicable, self-assessments will still be allowed, as appropriate, in Phase 4. This rule describes flow down requirements to subcontractors. This rule makes no change to 48 CFR 252.204–7008.

8. Commercially Available Off-the-Shelf (COTS) Procurements

Comment: One comment suggested the definition of COTS should be more explicitly defined or the model outlined in § 170.2 should encompass COTS products. Two comments questioned the exemption of CMMC requirements for contracts or subcontracts exclusively for commercial off-the-shelf (COTS) items. Others questioned applicability of CMMC requirements to COTS procurements and/or purchases at or below the micro-purchase threshold. Finally, one commenter questioned the validity of a COTS exclusion, stating that no COTS components are exempt from DoD's certification requirements from DISA or NSA.

Response: The term Commercially available off-the-shelf (COTS) is defined in FAR part 2.101. Some comments pertained to content of the 48 CFR part 204 CMMC Acquisition rule, including applicability of CMMC clauses to COTS procurements and/or those below the micro-purchase threshold. Such comments are not within the scope of this CMMC 32 CFR part 170 CMMC Program rule, which outlines program requirements and not acquisition procedures. CMMC requirements do not apply to contracts and subcontracts that are exclusively for the delivery of COTS products to a DoD buyer. The exemption does not apply to a contractor's use of COTS products within its information systems that process, store, or transmit CUI. CMMC assessments are conducted on contractor owned information systems to ascertain compliance with the designated FAR, DFARS, and NIST requirements.

9. Specific Product Recommendations

Comment: One managed service provider expressed concern that the specific tools they use to provide services might be considered Security Protection Assets or generate Security Protection Data in the context of CMMC assessment requirements, which might

result in clients electing to use their own tools and products in lieu of the managed service provider. This commenter attached a list of more than a dozen commercial product and tools they use as examples associated with this concern. One commenter used their public comment submission to submit materials marketing services their company can provide, while another commenter suggested the rule direct readers to a website listing all software, tools, and applications deemed ''safe and cost effective'' by virtue of CMMC assessment.

Another commenter asserted that all companies need access to cybersecurity solutions from DHS/CISA and grants to assist them in buying Zero Trust technologies to protect CUI. Similarly, some commenters recommended various other cybersecurity tools, programs, or technologies that could be used to meet CMMC security requirement and provide threat intelligence to DIB companies. Such recommendations included portals used in conjunction with perimeter and privileged access management systems. One commenter proposed delaying implementation of the CMMC rule until all DoD contractors' system architectures could be analyzed for possible implementation of Virtual Machines, or Blockchain for secure data transmission, or hosting of all CUI on DoD hosted platforms.

Response: The government cannot comment on specific products or vendors, including marketing materials submitted via public comment. However, companies that act as ESPs should note this rule does not require CMMC assessment or certification of ESPs that do not process, store, or transmit CUI. Services provided by an ESP are in the OSA's assessment scope.

Comments pertaining to solutions available from other Federal agencies or expressing a desire for grants to obtain Zero Trust solutions or other cybersecurity solutions are also beyond the scope of the CMMC rule. A wide range of technologies may be used to implement CMMC requirements. DoD will not comment on specific OSA technology choices. The Department declines the recommendation to review the system architectures of all DoD contractors. The DoD did not modify the rule to identify a repository of ''safe and cost effective'' software, applications, and tools because a CMMC assessment does not evaluate commercial products or services for those characteristics and the government does not provide product endorsements.

10. Applicability

a. Systems Operated on Behalf of DoD and National Security Systems

Comment: The DoD received questions about whether CMMC requirements apply to information systems that are designated as National Security Systems, Defense Business Systems, or systems operated on the DoD's behalf. In concert with those questions, one person recommended adding NIST SP 800–53 R5 requirements to the rule for such systems. The commenter further recommended expanding applicability of the rule to include contractor-owned systems that directly affect DoD NSS. Two commenters recommend edits to clarify that CMMC requirements do not apply to NSS or to government systems operated by contractors on the DoD's behalf.

One commenter asked if a Cloud Service Provider that stores CUI would have to be at Impact Level 4 in accordance with the DISA Cloud Computing Security Requirements Guide.

Response: The CMMC assessment requirements apply in conjunction with FAR clause 52.204–21 and DFARS clause 252.204–7012 requirements and provide a mechanism for verifying compliance with the security requirements for safeguarding FCI or CUI (*e.g.,* NIST SP 800–171) levied by those clauses.

The CMMC Program does not alter any additional security requirements that may be applicable to contractor-owned information systems that may also meet the criteria for designation as NSS.

There is no conflict between the CMMC rule and the DISA Cloud SRG, which applies to contractor information systems that are part of Information Technology (IT) services or systems operated on behalf of the Government. The CMMC rule does not apply to those systems (§ 170.3(b)). The DoD declines to modify the rule because the applicability section already states this rule applies to contractor-owned information systems.

b. Infrastructure Entities

Comment: Many commenters had concerns about CMMC's potential impact to the energy and electric industries, internet Service Providers (ISPs) and small, disadvantaged businesses looking to contract with the DoD, especially given dependencies on appropriate marking of Controlled Unclassified Information (CUI).

Another commenter referenced Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' and requested information on CMMC impact to and potential exemptions for Native American and small disadvantaged contractors. Another commenter stated that some small businesses may stop providing cost estimating services to Federal agencies due to ''threatened penalties'' under CMMC requirements.

One commenter recommended adding the definition of the defense industrial base (DIB), and referenced the Cybersecurity and Infrastructure Security Agency definition, which explicitly excludes commercial infrastructure providers from their definition of the Defense Industrial Base Sector. One commenter stated the lack of clarity around requirements for electric cooperatives under the CMMC framework is causing concern about unanticipated cost impacts for these smaller entities. The commenter requested that DoD provide contractors the ability to recover unanticipated costs incurred to achieve CMMC certification.

Another commenter asked about potential CMMC exemptions for telecommunications providers, specifically for end user encryption. The commenter stated the DoD needs to impose CUI encryption requirements on the relevant contractors and not telecommunications network providers, who have no control over whether a user encrypts information it sends over those networks. The commenter also noted that definitions of ''common carrier'' vary across Federal Government and suggested the DoD should create a blanket exemption for contracts involving commercial communications networks that are not ''purpose-built'' to transmit sensitive government data. Another commenter suggested the CMMC Rule should further clarify that encryption must be configured such that the common carrier does not have access to the decryption key(s).

Several commenters requested clarity around CUI, citing general confusion among industry about which CUI is subject to the CMMC Program. Some commenters interpreted the rule as proposing to apply to all CUI information, rather than just information handled by the contractor ''in support of a defense contract'' and asserted that this would be an expansion beyond the current DFARS clause 252.204–7012 requirements. They further suggested this broad definition could result in companies applying costly controls to all apparent CUI, regardless of its association with DoD, to avoid penalties under the False Claims Act. They recommended clearly

stating that CUI provided to contractors by non-DoD agencies should be subject to the requirements of those agencies and not the CMMC Program.

A commenter said the electric industry will experience increased costs as electric utilities comb through vast amounts of data across the electric grid to determine all potential CUI, even if that CUI is not specifically subject to a DoD contract. One commenter stated that guidance DoD has provided for electric utilities to identify CUI in the past is insufficient and suggested that use of Security Classifications Guides could help by minimizing the need for CMMC compliance. In addition, they speculated that inclusion of CMMC requirements could create requirements after award which might require adjustments to contract price. Another commenter stated energy companies servicing military customers must develop governance programs around data protection years in advance, with significant investments. The commenter is concerned that CMMC requires these companies to make these large investments prior to knowing if a proposed contract may contain CUI and without adequate guidance about what data is considered CUI.

Response: This rule has no disproportionate impact on Native American-owned businesses. Once identified as a requirement, the CMMC Level will apply uniformly to all prospective competitors. DoD must enforce safeguarding requirements uniformly across the Defense Industrial Base for all contractors and subcontractors who process, store, or transmit CUI. The value of information (and impact of its loss) does not diminish when the information moves to DoD contractors and DoD subcontractors, regardless of their status as Native American or small disadvantaged businesses.

The CMMC Program rule does not include ''threatened penalties.'' If a requirement of a DoD contract is not met, then standard contractual and other remedies applicable to that contract may apply.

CMMC Program requirements make no change to existing policies for information security requirements implemented by DoD. Policies for CUI and creation of program documentation, to include Security Classification Guides, are separate from this rule.

Section 170.4(b) of the rule states Defense Industrial Base (DIB) is defined in 32 CFR part 236, which addresses DoD and DIB Cyber Security Activities. Section 236.2 includes the DoD approved definition for DIB.

The CMMC Program applies only to DoD contracts that include the DFARS clause 252.204–7021 and under which FCI or CUI is processed, stored, or transmitted on contractor information systems.

This includes CUI outside the category of the Defense Organizational Index Group. Contracts for the provision of electricity or other utilities which do not contain FAR clause 52.204–21 or DFARS clause 252.204–7012 and which do not require the processing, storing, or transmitting of FCI or CUI on contractor owned information systems will not require CMMC assessment. The CMMC rule makes no change to FAR cost allowability or cost accounting standards. The 32 CFR part 170 CMMC Program rule has been updated to add ''in performance of the DoD contract'' to § 170.3, and the 48 CFR part 204 CMMC Acquisition rule will provide the contractual direction.

A common carrier's information system is not within the contractor's CMMC Assessment Scope if CUI is properly encrypted during transport across the common carrier's information system. A common carrier who is a DoD contractor or subcontractor is responsible for complying with the CMMC requirements in their contracts. CUI encryption requirements already apply to the OSA, not the telecommunications network provider. The lack of adequate encryption on the part of the OSA would not trigger application of CMMC requirements to the common carrier's network. The term ''common carrier'' appears in the comment section to a previous rule making process. Its definition and use are taken from CNSSI 4009. Efforts to define it or related terms by other agencies are outside the scope of the CMMC Program. Commenter scenarios where a common carrier would be privy to an OSA's encryption keys are unrealistic. DoD declines to provide additional guidance.

CMMC Program requirements make no change to existing policies for information security requirements implemented by DoD. Policies for CUI and creation of program documentation, to include Security Classification Guides, are separate from this rule. Relevant policies include DoDI 5200.48 ''Controlled Unclassified Information'' and DoD Manual 5200.45 ''Instructions for Developing Security Classification Guides''. CMMC Program requirements will be identified as solicitation requirements. Contractors will be required to meet the stated CMMC requirements, when applicable, at or above the level identified. For this reason, it is up to each DIB organization to determine which CMMC level they should attain.

Questions regarding specific contractual matters are outside of the scope of this rule and may be addressed by the 48 CFR part 204 CMMC Acquisition rule. The CMMC program will be implemented as a pre-award requirement.

c. Joint Ventures

Comment: Two commenters requested clarification as to whether CMMC requirements will apply to companies engaged in Joint Ventures.

Response: CMMC program requirements are applicable when DoD requires processing, storing, or transmitting of either FCI or CUI in the performance of a contract between DoD and the respective contractor. CMMC Program requirements will apply to information systems associated with contract efforts that process, store, or transmit FCI or CUI, and to any information system that provides security protections for such systems, or information systems not logically or physically isolated from all such systems. The identity of an offeror or contractor as a joint venture does not in and of itself define the scope of the network to be assessed.

d. Fundamental Research Efforts

Comment: One commenter recommended that both the sharing of CUI and the decision to apply a CMMC compliance assessment should only be considered for contracts of sufficient contract value and performance period to make the expense of safeguarding CUI worthwhile. This commenter asserted that small businesses are selected for SBIR contract award not based on ability to protect information, but instead on the unique product or service they offer.

Some commenters expressed concern that CMMC could result in state-funded universities incurring costs to comply with CMMC level 2, while even the costs for implementing required FCI safeguarding requirements is a significant financial burden. These commenters speculated that applying FCI or CUI markings to fundamental research information negatively impact academic institutions by requiring them to remove such data from the public domain. This commenter cited DFARS clause 252.204–7000 as rationale to modify the CMMC rule to exclude fundamental research.

One commenter requested that when contracting for fundamental research, the Government include a CMMC requirement based only on whether information shared is currently FCI or

CUI, and not whether the effort might lead to development of FCI or CUI. Another commenter requested that DoD issue policies clearly describing how to recognize or identify circumstances that could result in fundamental research becoming FCI or CUI such that it would require being processed, stored, or transmitted on CMMC compliant information systems. The commenter expressed concern that absent such policies, research institutions may house all DoD-related project activities in CUI enclaves ''out of an abundance of caution'', thereby unnecessarily expanding CUI applicability at significant cost. They asked that DoD Instruction 5200.48, ''Controlled Unclassified Information,'' and a related DoD policy memorandum ''Clarifying Guidance for Marking and Handling Controlled Technical Information in accordance with Department of Defense Instruction 5200.48, 'Controlled Unclassified Information'' be incorporated into the rule by reference.

One commenter questioned whether and how CMMC requirements may apply to non-contract efforts, including grants, or efforts conducted under Other Transactional Authorities.

Response: One of the main purposes of the CMMC Program is to ensure that DoD contracts that require contractors to safeguard CUI will be awarded to contractors with the ability to protect that information. All contractor-owned information systems that process, store, or transmit CUI are subject to the requirements of NIST SP 800–171 when DFARS clause 252.204–7012 is included in the contract. This is the case whether or not the contractor is engaged in fundamental research.

To the extent that universities are solely engaged in fundamental research that only includes information intended for public release and does not include FCI or CUI, no CMMC requirement is likely to apply. When a research institution does process, store, or transmit FCI, the information should be adequately safeguarded in accordance with the FAR clause 52.204–21, if applied. When a research institution does process, store, or transmit CUI, the information should be adequately safeguarded in accordance with the DFARS clause 252.204–7012, if applied. That clause makes the contractor owned information system subject to NIST SP 800–171, which includes requirements for Awareness and Training (AT) and Physical Protection (PE). The CMMC Program provides a means to verify compliance.

DoD's CUI program policies already address responsibilities for identifying and marking information, including procedures for changing markings. The DoD declined to incorporate all the references associated with marking and handling CUI. The DoD instructions and policy guidance are authoritative and incorporating them into the CMMC regulation is beyond the scope of this rule. DoD declines to update the preamble to exclude the possibility that information may be designated CUI over the course of time. According to A&S memo dated 31 March 2021, titled Clarifying Guidance for Marking and Handling Controlled Technical Information in accordance with Department of Defense Instruction 5200.48, ''Controlled Unclassified Information,'' ''Information related to RDT&E-funded research efforts, other than fundamental research, do not always qualify as CUI.'' This implies that some DoD fundamental research may qualify as CUI. When the DoD does determine that research meets the definition of CUI, safeguarding requirements of DFARS clause 252.204–7012 will apply regardless of whether the contractor's work is fundamental research. In such instances, CMMC assessment requirements may also be applied. Contractors should work closely with Government Program Managers to ensure a proper understanding of the data being developed and the appropriate markings and safeguarding.

Questions regarding the application of CMMC requirements to specific transactions, including grants and OTAs, are outside of the scope of this 32 CFR part 170 CMMC Program rule.

e. DoD Waiver of CMMC Applicability

Comment: Several questions were submitted about waiver procedures for CMMC requirements. For example, someone asked which DoD person or office has authority to approve waiver requests. Others also requested insight to the specific criteria for waiver approval. One commenter submitted preferred rewording of the rule section that describes waivers while another suggested self-assessment should be required even when certification is waived.

Response: DoD internal policies, procedures, and approval requirements will govern the process for DoD to waive inclusion of the CMMC requirement in the solicitation. Once applicable to a solicitation, there is no process for OSAs to seek waivers of CMMC requirements from the DoD CIO. In accordance with § 170.5(d), a limited waiver authority is provided to the Acquisition Executive with acquisition oversight for the program in question. These officials may issue supplemental guidance dictating specific coordination requirements for waiver requests. Recommended administrative changes have been incorporated into § 170.5(d) to add clarity.

11. Determination of Applicable Assessment Type

a. Process for Level Determination

Comment: Multiple comments asked how DoD will determine the CMMC level to include in solicitations. Multiple comments inquired about the criteria DoD will use to determine when to require a CMMC Level 2 self-assessment, CMMC Level 2 certification, or CMMC Level 3 certification assessment. Multiple comments asked specifically about when CMMC Level 2 self-assessment will be required versus CMMC Level 2 Certification. One comment requested more information on which companies may ''self-attest''.

One comment requested § 170.5(a) be modified to prevent CMMC level 2 or 3 being assigned for contracts where only FCI is exchanged. One comment emphasized that requirement(s) for Contractor certification levels must be the same as stated throughout this proposed ruling. Two comments recommended providing contracting officers with interim guidance to ensure consistency in applying CMMC requirements. One comment requested the detailed guidance ensure CMMC requirements are selected based on risk, and that certification is not required by default.

Some commenters objected to the wording of one criterion for level selection as ''potential for and impacts from exploitation of information security deficiencies''. One asserted this equates to a sub-CONFIDENTIAL security classification. One comment expressed that all information systems that process CUI should have the same level of ''program criticality, information sensitivity, and the severity of cyber threat'' since CUI is Unclassified Information which is a ''handling caveat''.

Multiple comments requested a clearer description of what contracts require CMMC Level 3 Certification, one of which requested a definition of what constitutes a ''priority program'' that might require CMMC Level 3. One comment requested that acquisition processes first analyze the CUI for a proposed effort using published factors for aligning CUI to high value assets before setting CMMC levels. They asserted use of such published factors would improve accuracy of CUI marking.

Response: Pre-award contracting procedures and processes for CMMC assessment requirements will be addressed in the 48 CFR part 204 CMMC Acquisition rule. CMMC is a pre-award requirement. As stated in the Applicability section summary of the CMMC rule (§ 170.3), once CMMC is implemented in the 48 CFR part 204 CMMC Acquisition rule, DoD will specify the required CMMC Level in the solicitation and the resulting contract.

DoD's policies and procedures for the length of time allowed for proposal submission in response to any solicitation are beyond the scope of this rule. PMs typically consider the totality of the requirement when deciding how much time to allow for proposal submission or whether to seek industry input through Request for Information to inform solicitation details. Note that once attained, companies may reference a CMMC Status as part of any number of proposals to various solicitations with that level of CMMC requirement if the same assessment scope is used.

The type and sensitivity of information to be utilized during the contract, FCI or CUI, determines the requirements in the solicitation, which then informs the CMMC level required. CMMC level 1 requirements are designed to be applied when FAR clause 52.204–21 security requirements apply to the contract, whereas CMMC level 2 and 3 requirements are designed for the protection of CUI information, and to be applied when DFARS clause 252.204–7012 also applies.

When CMMC Program requirements are effective, the DoD will begin including CMMC assessment requirements in solicitations as described in § 170.3 Applicability. DoD solicitations will specify which requirements will apply to the contract award. Prior to issuance of a solicitation, DoD will determine the appropriate CMMC level and type of assessment needed to ensure adequate safeguarding of the DoD program information to be shared in performance of the contract. Identification of the CMMC level and assessment type will be part of the DoD's requirement definition process. As addressed in § 170.18(a) of this rule, a CMMC Level 2 Final CMMC Status is a prerequisite for CMMC Level 3 assessment and must be achieved for information systems within the Level 3 Assessment Scope.

Identification of priority programs is a function of the requirements definition process for any DoD effort. The DoD will issue policy guidance to Program Managers to clarify which programmatic indicators should be considered for selecting the most appropriate information safeguarding requirement and associated CMMC assessment requirement for any given solicitation. Once identified as a requirement, the CMMC Status required will apply uniformly to all prospective competitors.

b. Who Determines the CMMC Level

Comment: Two comments asked who, within the Department, determines the CMMC level required for a contract. One comment suggested that DoD should require senior-level approval to include CMMC Level 3 Certification requirements in solicitations to limit unnecessary application. One comment inquired about when and how CMMC levels change during the program office's Agile Acquisition Framework lifecycle.

Response: Based on DoD decision criteria that include the type and sensitivity of program information to be shared, Program Managers will identify and coordinate as appropriate the CMMC requirement in the solicitation. Internal policies for implementation of CMMC requirements by DoD's acquisition community have been developed, and work will continue as needed to integrate CMMC policies into relevant acquisition policies, guidebooks, and training materials. The DoD intends that requiring activities will determine when compliance should be assessed through CMMC Level 3 as part of the ordinary acquisition planning and requirements generation process.

The CMMC assessment level required does not change based on acquisition lifecycle phase, but based on whether FCI and CUI are processed, stored, or transmitted on contractor owned information systems. All contractor-owned information systems that process, store, or transmit CUI are subject to the requirements of NIST SP 800–171 when DFARS clause 252.204–7012 is included in the contract.

c. CMMC Level 3 Determination

Comment: Multiple comments requested further clarification about which types or categories of CUI require enhanced protection against Advanced Persistent Threats (APTs) at CMMC Level 3 and whether the CMMC level would be based on the Program or the data. Two comments expressed concern or asked how DoD Components will avoid assigning CMMC Level 3 requirements to too many contracts. One comment recommended that DoD modify its criteria for CMMC Level 3 to consider factors such as Acquisition Program Category.

Response: CMMC levels do not correspond to CUI levels as the CMMC Program requirements make changes to neither the CUI Program, categories of CUI, nor existing DoD policies for information security requirements. The CMMC Flow down requirement is defined in § 170.23.

The Requiring Activity knows the type and sensitivity of information that will be shared with or developed by the awarded contractor and selects the CMMC Level required to protect the information according to DoD guidance.

The DoD declines to modify CMMC Level 3 selection criteria as described in the commenters recommended alternatives, which have no bearing on DoD's need for increased confidence in a contractor's ability to safeguard certain CUI against Advanced Persistent Threats. The value of information, and impact of its loss, does not diminish based on the total number or dollar value of contracts held by the awardee, or acquisition program category. The DoD reserves the right to decide when compliance should be assessed by the Government through CMMC Level 3 certification. The DoD defines the work requirements to be solicited for any given program contract.

d. Environments Processing Both FCI and CUI

Comment: Two commentors recommended the elimination of separate assessments when the FCI and CUI environments are the same. One of these comments requested clarification regarding the scenario of an OSC having one assessment scope environment for both FCI and CUI that meets Level 2 requirements.

Response: CMMC Level 2 is required when CUI will be processed, stored, or transmitted on contractor information systems. Successful completion of a CMMC Level 2 self-assessment or CMMC Level 2 certification assessment will suffice to meet the CMMC Level 1 requirement for FCI if/when the scope is identical. The CMMC Level 2 Scoping Guide reflects this language.

e. Recommendations and Scenarios

Comment: One comment recommended removing CMMC Level 2 self-assessment, changing the CUI Program, or creating a new type of CUI to distinguish between CMMC Level 2 self-assessment and CMMC Level 2 Certification. Another comment noted that the requirements for CMMC Level 2 certification assessment are almost identical to requirements for CMMC Level 2 self-assessment. One comment expressed concern that DoD's designation of CMMC Level 2 self-

assessment and certification assessment runs contrary to FCI (FAR requirements) and the CUI Program. One comment asked if the designation of information as FCI or CUI changes the scope of CMMC.

One comment asked for clarification on which contracts will have sensitive unclassified DoD information but will not require CMMC assessment. One comment recommended removing the option for CMMC Level 2 self-assessments to reduce complexity. One comment posed multiple questions about what DoD will do if contracting officers assign CMMC Level 2 or CMMC Level 3 Certification requirements at a rate substantially higher than projected.

Response: The DoD CIO looked at CUI from a risk-based perspective and determined that different approaches to assessments could be implemented to address risk and help lower the burden for the DIB. The security requirements for a CMMC Level 2 self-assessment and a CMMC Level 2 certification assessment are the same, the only difference in these assessments is whether it is performed by the OSA or by an independent C3PAO.

The decision to rely upon self-assessment in lieu of certification assessment is a Government risk-based decision based upon the nature of the effort to be performed and CUI to be shared. The size of the company with access to the CUI is not a basis for this determination. The value of information (and impact of its loss) does not diminish when the information moves to contractors of smaller size. The DoD declines to modify the rule to include its internal decision process.

To select a CMMC Level for a procurement, Program Managers and requiring activities will identify the applicable CMMC Level using the factors included in § 170.5(b)(1) through (5). The DoD did agree with one comment to rephrase § 170.5(b)(4) to delete a reference to the ''potential for'' impact from exploitation of information security deficiencies, which likely cannot be effectively determined. The DoD does not agree that the wording equates to a sub-CONFIDENTIAL classification and declines to delete that criterion. § 170.5(b)(3) is appropriately worded in that it states Program Managers will consider the listed criteria in selecting a CMMC requirement level. It does not have the effect of ''transforming FCI into CUI''. The DoD reserves the right to define the criteria for selection of the CMMC assessment requirement, just as it defines all other requirements for inclusion in a solicitation.

The Department remains committed to implementing the CMMC program to require compliance assessment against applicable security requirements in all DoD contracts involving FCI or CUI. Some such contracts will require only a CMMC self-assessment, while others will require a certification assessment. The commenter misinterprets that some contracts that do require processing of FCI or CUI will not require CMMC assessment of either kind, without approval of a waiver.

The DoD declines to remove self-assessments from the rule. Self-assessments allow the acquiring organization to balance the cost and complexity of assessment with the risk to the information being shared with the OSA.

Supporting guidance for CMMC implementation will be updated, as necessary. DoD has options to mitigate implementation issues such as waivers and other contractual remedies. DoD's estimate for the number of contractor's requiring CMMC Level 1 and cost estimates represent derived estimates based on internal expertise and public feedback in accordance with OMB Circular A–4.

12. Flow-Down/Applicability to Sub Contractors

a. Applicability and Compliance

Comment: Several comments requested clarification about the applicability of CMMC requirements to subcontractors and how to correctly flow down requirements. Some asked whether prime contractors would have flexibility to flow down a lower CMMC level than required for the prime contract. Three comments expressed confusion about the type of Level 2 assessment required for subcontractors when supporting a prime that is required to meet CMMC Level 3 requirements. Two asked about the impact to flow-down when contractors hold multiple contracts. A couple comments requested clarity on how to determine the correct CMMC level to flow down.

Some comments asked what factors would result in flow-down of a particular CMMC requirement level, or whether affirmations submitted by primes would require knowledge of subcontractor compliance status.

Other comments asked what tools would be available to assist contractors in checking subcontractor compliance with CMMC requirements or suggested that SPRS should be made available for this purpose. One suggested that without this transparency, CMMC compliance would become a meaningless effort to ''check the box'' without actual steps to secure their systems. Another simply asked if they would have their own SPRS and eMASS access, or access through their prime. Some asked what action meets the rule's requirement to ''require subcontractor compliance'', *i.e.,* does simply including the CMMC clause in subcontracts meet that requirement.

One comment objected to the definition of subcontractor used in the rule, which they stated was overly broad and would result in application of CMMC requirements to too many businesses. Some comments suggested the flow-down requirement apply only to one sub-tier, while another requested advance notice of solicitations that plan to include CMMC requirements. One comment suggested that CUI be treated more like classified information, meaning to limit sharing of CUI with subcontractors. Some comments asked whether prime contractors are responsible for verifying subcontractor compliance with DFARS clause 252.204–7012, as C3PAOs do during an assessment. Two comments recommended rephrasing the flow-down section, with one specifically asking to clarify it is required only when FCI or CUI will be processed, stored, or transmitted in the performance of any particular prime contract. Another suggested edits for clarity or for consistency with DFARS clause 252.204–7012.

Response: It is up to each OSA to protect FCI and CUI and to determine the assessment boundary, policies, and procedures necessary to do that. Section 170.23 specifically addresses the CMMC requirements that apply to subcontractors that will process, store, or transmit FCI or CUI. Section 170.23 addresses flow down of CMMC requirements from the prime contractor to the subcontractors in the supply chain. Prime contractors are responsible for complying with contract terms and conditions, including the requirement to flow down applicable CMMC requirements to subcontractors. The DoD modified § 170.23(a)(3) to clarify that when a subcontractor will process, store, or transmit CUI in performance of the subcontract and the Prime contractor has, for the associated prime contract, a requirement of Level 2 certification assessment, then CMMC Level 2 certification assessment is the minimum requirement for the subcontractor. Requirements for External Service Providers are defined in § 170.4; not all companies that provide services to an OSA are considered ESPs.

As in other contexts, the Government may specify additional guidance in the solicitation. CMMC assessments will be identified as pre-award requirements. Subcontractors at each tier are responsible for submitting their own assessment and affirmation information in SPRS. CMMC self-assessments and certifications will be reflected in SPRS, including an indicator of the currency of the credentials. Contracting Officers and Program Managers need not review any assessment artifacts, only the resulting scores and certificate validity period.

Work arrangements between the prime and subcontractor are beyond the scope of this rule, however, if CUI is flowed down and will be processed, stored, or transmitted on subcontractor information systems in the performance of a DoD contract then CMMC requirements also flow down as described in § 170.23. The DoD will not track progress toward certification but will implement CMMC as a pre-award requirement. An OSA's pursuit of a C3PAO assessment is a business decision to be made by each contractor considering the contract opportunities it wishes to pursue.

The DoD disagrees with one commenter's assertion that CMMC requirement will flow down ''regardless of what work they do'', because it does not acknowledge the point that flow-down requirements are for subcontractors who process, store, or transmit CUI. The text of § 170.23, clearly conditions the flow-down to those cases when a subcontractor will process, store, or transmit FCI or CUI. The prime contractor's responsibility is to flow down CMMC assessment requirements as described in § 170.23 and to ensure that FCI and CUI are not further disseminated to subcontractors that do not meet the CMMC requirement indicated in § 170.23. Likewise, subcontractors must also flow down CMMC requirements and ensure that FCI and CUI are not further disseminated to subcontractors that do not meet the CMMC requirement indicated in § 170.23. Section 170.23 has been revised to make this clearer. DoD declines to accept the recommendation to treat CUI like classified data. Classified information is managed differently from CUI, and different safeguarding regulations apply to these different categories of information (each of which are defined in 32 CFR part 2002).

This rule makes no change to CUI policies for marking of data, and CMMC levels are not CUI categories in the DoD CUI registry. Primes and their subcontractors must understand flow-down requirements based on § 170.23, which clearly identifies requirements that apply when subcontractors will process, store, or transmit CUI in performance of the subcontract and the Prime contractor has a requirement of Level 3 certification assessment (*i.e.,* CMMC Level 2 certification assessment is the minimum requirement for the subcontractor). In addition, the rule has been revised to make clear that the requirement applies in the performance of a subcontract when the relevant prime contract has a CMMC requirement. The rationale for the minimum level 2 certification flow-down requirement is that the DoD made a risk-based decision not to mandate flow down of the level 3 requirement unless explicit guidance is provided to do so. As stated in § 170.23(a)(3), when a Prime contractor has a requirement of Level 2 certification, any CUI that is flowed down for a subcontractor to process, store, or transmit in performance of the subcontract will also carry a minimum requirement of Level 2 certification assessment.

CMMC Program requirements will be identified as solicitation and contract requirements, and contractors will be required to meet the stated CMMC requirements, when applicable, at or above the level identified. One commenter misinterpreted a response to a prior public comment. The quoted content says that contractors and subcontractors each must verify (through CMMC assessment) that all applicable security requirements of NIST SP 800–171 required via DFARS clause 252.204–7012 have been implemented. Contractors are not required to assess subcontractor implementation of the requirements of NIST SP 800–171. The prime contractor's responsibility is to flow down CMMC assessment requirements as described in § 170.23 and also to refrain from disseminating FCI or CUI to subcontractors that have not indicated meeting the CMMC level described in that section for the type of information to be shared. Likewise, subcontractors must also flow down CMMC requirements or refrain from disseminating FCI or CUI. The DoD does not provide SPRS access or other tools for contractors to identify the CMMC status or other companies. The DoD expects that defense contractors will share information about CMMC status with other DIB members to facilitate effective teaming arrangements when bidding for DoD contracts.

Prime contractors will not be granted access to subcontractor's information in SPRS. However, prime contractors should communicate early and often with prospective subcontractors to confirm current CMMC status, including whether the level matches that required. This interaction does not involve the government and is beyond the scope of this rule.

This rule follows the format and includes all sections required in OMB guidelines for formal rulemaking. The DoD lacks authority to modify the template or omit required sections, which results in some repetition.

DIB contractors are responsible for submitting their Level 1 and Level 2 self-assessments and will access SPRS to enter the results. DIB contractors do not have access to CMMC eMASS, as that system is used to support certification assessments only.

CMMC Program requirements are designed to require completion of an assessment and an annual affirmation. The purpose of the annual affirmation addressed in § 170.22 is to validate to the DoD that the contractor is actively maintaining its CMMC level status, which is more than a checkbox exercise.

One commenter misinterpreted the quoted definition of subcontractor, which makes clear that term includes only those entities providing supplies, materials, equipment, or services under a subcontract in connection with the prime contract. DFARS clause 252.204–7012 and FAR clause 52.204–21 also flow-down the requirement to safeguard information. CMMC program requirements will be flowed down similarly, therefore there is no anticipated expansion of scope. The cost estimates included in the published rule include costs for both existing DIB members and new entrants (or newly covered entities).

The DoD modified the Overview summary of CMMC 2.0 to read ''The DFARS clause 252.204–7012 also requires defense contractors to include this clause in all subcontracts that will require the subcontractor to process, store, or transmit CUI.'' The DoD declined additional edits in this location that requested reframing the criteria Program Managers will use select CMMC requirements to address Levels 2 and 3 only. The DoD may apply CMMC Level 2 or 3 requirements when there is anticipation of the need for the contactor or subcontractors to process, store, or transmit CUI during the performance of a contract.

b. Prime and Subcontractor Relationships

Comment: Many requested specific examples of when a prime contractor should flow down its CMMC requirements to a subcontractor or ESP, and how to determine the appropriate CMMC level to flow down. For example,

one comment asked whether the subcontract document would require safeguarding, necessitating flow-down of the CMMC requirement. Some comments expressed concern that flow-down requirements are not sufficiently clear to prevent prime contractors from unnecessarily sharing CUI and applying CMMC requirements to lower tier suppliers. Another thought that the flow-down requirements will drastically expand the scope of the program and drive cost increases for the DIB.

Several comments suggested strategies for minimizing the burden of security implementation on lower tier subcontractors, such as requiring prime contractors to provide access to CUI on prime contractor systems, or prohibiting prime contractors from unnecessarily sharing CUI information that would necessitate a CMMC requirement. One asked whether the prime contractor has a responsibility to check which CMMC level the subcontractor has flowed down to the next tier. One comment referenced industry activities aimed at gauging subcontractor preparedness for CMMC and expressed concern with anecdotal evidence that primes will not issue orders until the subcontractor has submitted CMMC scores into SPRS.

Response: One commentor correctly interpreted § 170.23(a)(3) as meaning that CMMC level 2 Certification requirements (not self-assessments) flow down for subcontractors that will handle CUI when the Prime contract specifies a CMMC Level 2 Certification requirement.

At the time of award, the DoD may have no visibility into whether the awardee will choose to further disseminate DoD's CUI, but DFARS clause 252.204–7012 and DFARS clause 252.204–7021 require that the prime contractor flow down the information security requirement to any subcontractor with which the CUI will be shared. Decisions regarding the DoD information that must be shared to support completion of subcontractor tasks, will take place between the prime contractor and the subcontractors chosen to complete the specific tasks. The DoD encourages prime contractors to work with its subcontractors to flow down CUI with the required security and the least burden. The DoD declines to revise the rule to address responsibilities for derivative marking of CUI because this rule makes no change to DFARS clause 252.204–7012 or DoD's CUI policies regarding marking of CUI, including creation of information.

The specific contractual language is part of the 48 CFR part 204 CMMC Acquisition rule and beyond the scope of this 32 CFR part 170 CMMC Program rule. This rule describes DoD's intent for CMMC Program requirements, which include that all prime and subcontractors at all tiers that process, store, or transmit CUI in the performance of a DoD contract (or sub-contract) are required to demonstrate compliance with the contract requirements (*i.e.,* FAR clause 52.204–21 or DFARS clause 252.204–7012) for adequately safeguarding FCI or CUI.

CMMC flow-down requirements are designed to apply consistent assessment requirements to all subcontractors, regardless of company size, who are required to adequately safeguard CUI. The DoD cannot dictate DIB business practices and encourages prime contractors to carefully consider the necessity of sharing CUI information and work with subcontractors to flow down CUI only when deemed appropriate.

Likewise, the criteria by which contractors select CSPs for support or the availability of GFE for any particular contract are beyond the scope of this rule. The DoD declines to limit CMMC program requirements to the first-tier subcontractor, as suggested by the commenter. When a contractor or subcontractor responds to multiple solicitations, that contractor should complete the highest assessment level among them for the assessment scope defined for use in performance of the contracts. The contractor may also elect to structure its environment to meet differing CMMC requirements based on the contract(s) in question.

Contractual remedies for non-compliance are a 48 CFR part 204 CMMC Acquisition rule matter and beyond the scope of this rule.

c. Requirements

Comment: Some comments objected to CMMC Level 2 certification assessment being identified as the minimum flow-down from prime contractors with a CMMC Level 3 requirement. They asked how the more sensitive data associated with a Level 3 requirement would be tracked. Three asked whether CMMC Level 2 certification assessment must be flowed down as the CMMC requirement when the prime contract requires a higher level, and the subcontract is for limited scope. One comment complained that the rule does not actively encourage primes to flow down Level 2 self-assessment requirements instead of certification requirements.

One comment suggested the Department is impermissibly attempting to make sensitivity determinations of other agencies' CUI and FCI through the implementation of this rule.

Another comment requested affirmation that contractors remain responsible for determining whether information that they create (derived from CUI) retains its CUI identity when sharing that information with lower tier suppliers, and for determining any associated CMMC flow-down requirement.

Response: DoD will issue guidance to Program Managers to reiterate the most appropriate information safeguarding requirements for DoD information and the associated CMMC assessment requirement for any given solicitation. CMMC program requirements will be identified in the solicitation, and contractors will be required to meet the stated CMMC requirements, when applicable, at or above the level identified by the time of contract award. CMMC requirements flow down from primes to subcontractors, as described in section § 170.23.

The DoD declined to provide forecasts of upcoming DoD solicitations with CMMC assessment requirements. Given that FAR clause 52.204–21 was effective in 2016 and DFARS clause 252.204–7012 was effective in 2017, OSAs have had over seven years to implement NIST SP 800–171 R2 requirements and close out POA&Ms. DoD contracts that require OSAs to process, store, or transmit CUI and include DFARS clause 252.204–7020, also require a minimum of a self-assessment against NIST SP 800–171 requirements. That self-assessment includes the same requirements as the CMMC Level 1 and CMMC Level 2 self-assessments.

DoD must enforce CMMC requirements uniformly for all defense contractors and subcontractors, regardless of size, who process, store, or transmit FCI, and CUI, regardless of size. The value of DoD information (and impact of its loss) does not diminish when the information moves to contractors and subcontractors. The DoD cannot dictate business practices but encourages prime contractors to work with its subcontractors to limit the flow down of FCI and CUI. The DoD declines to base CUI safeguarding requirements on contract ceiling value.

This DoD 32 CFR part 170 CMMC Program rule does not impact or supersede 32 CFR part 2002 (the CUI Program) or make exceptions for the categories of CUI or the Designating Agency for the CUI. CMMC requirements apply to DoD contracts that will involve processing, storing, or transmitting of FCI or CUI on any non-Federal information system.

13. The CMMC Ecosystem Roles, Responsibilities and Requirements

a. Government

Comment: Some comments asked how the Department plans to address complaints and concerns from ecosystem stakeholders and the process by which disputes between OSCs and C3PAOs or the CMMC AB are resolved. Two comments wanted the CMMC PMO to document a process for ecosystem stakeholders to register complaints or use of Service Level Agreements to hold the Department accountable to respond.

Some asked whether the DoD could be subject to litigation challenging DoD's reliance on the CMMC AB's appeals process to resolve disputes between OSCs and C3PAOs. The commenters asserted resolving such disputes may be an inherently governmental function. One commenter noted that transactions between OSCs and C3PAOs for initiating an assessment are beyond the DoD's authority to regulate, since the DoD is not a party to the transaction. They perceived DoD's indirect oversight of C3PAOs through the CMMC AB as creating conflicts of interest and potential legal liabilities. One commenter requested the DoD modify the rule to state the CMMC PMO is responsible for the assessment and monitoring of the CMMC AB, as well as the CMMC AB's performance of its roles.

One commenter noted the ISO/IEC 17011:2017(E) requirements that the CMMC AB must meet and asked why the rule identifies a timeline for compliance instead of requiring immediate accreditation.

One commenter referenced a CMMC-related Request for Information issued prior to CMMC program development to gauge industry's capability to provide the necessary ecosystem accreditation and management functions. They asserted no response was provided to their RFI response.

One comment suggested the CMMC PMO should develop a process to act as the authoritative source for assessment interpretations to ensure consistency. One person asked which DoD office authored the rule. Another noted the realignment of the CMMC PMO from OUSD(A&S) to DoD CIO and asked whether this indicated a lack of OUSD(A&S) involvement in the program. One commenter noted that DoD Program Managers and requiring activities have a role in the CMMC Program and suggested that their responsibilities for marking and managing CUI be added to the rule.

One commenter wanted to require DIBCAC assessors to complete CCP and CCA training and certification exams through a CAICO approved licensed training provider.

Response: DoD agreed with the commenter that the government does not have authority over transactions between the OSC and C3PAO. The roles and responsibilities of the government are set forth in § 170.6. The interaction between the CMMC Accreditation Body and C3PAOs is governed by the requirements of this rule in §§ 170.8 and 170.9, including Conflict of Interest, Code of Professional Conduct, and Ethics policies, as well as ISO/IEC standards.

All DCMA DIBCAC assessors comply with DoD regulations regarding the cybersecurity workforce, to include DoD Directives 8140 and 8570 and other internal training standards. DCMA DIBCAC assessors' credentials for CMMC Levels 2 and 3 exceed the training that CCPs and CCAs complete through Approved Training Providers and include industry certification and a security clearance. Additionally, DCMA DIBCAC assessors must take the CMMC certification examinations.

DoD's contract with the CMMC AB assigned places responsibility for Level 2 assessment interpretation to the CMMC Accreditation Body. The CMMC Accreditation Body publishes assessment procedures and guidance for C3PAO's conducting CMMC Level 2 Certification Assessments. The CMMC AB is required to provide the CMMC PMO with all plans or changes related to its own activities and activities within the CMMC Ecosystem for review prior to implementation and publication. The DCMA DIBCAC is responsible for CMMC Level 3 assessment interpretation and will use the same process that is used for DIBCAC High Assessments.

Management oversight of the CMMC Program was realigned from the OUSD(A&S) to the Office of the DoD CIO for better integration with the Department's other DIB cybersecurity related initiatives. Comments pertaining to DoD's organizational structure are not relevant to the content of this rule. The DoD CIO is responsible for all matters relating to the DoD information enterprise, including network policy and standards and cybersecurity. In this capacity, the DoD CIO prescribes IT standards, including network and cybersecurity standards. The DoD CIO oversees programs to enhance and supplement DIB company capabilities to safeguard DoD information that resides on or transits DIB unclassified information systems.

The DoD reviewed and assessed whitepapers that were submitted by RFI respondents and determined that no single respondent could meet all the broad facets required to serve as the CMMC Accreditation Body.

§§ 170.8, 170.9, and 170.10 document the roles of the CMMC AB and the CAICO in managing a complaints/appeals process for CCAs, CCPs, and C3PAOs. OSCs concerned about the results of a Level 2 or Level 3 Certification assessment have a route of appeal documented in § 170.9. DoD, as the contracting entity, is not subject to service level agreements. Vendors and prospective vendors can voice concerns with the relevant contracting officer. External organizations may utilize existing DoD procedures to file complaints or concerns against any DoD organization.

This rule establishes requirements for the conduct of assessments, as well as the requirements for handling of disputes, to include an appeals process. In the roles established by this rule, C3PAOs and the CMMC AB execute program requirements as codified in the 32 CFR part 170 CMMC Program rule, with appropriate DoD oversight. For ISO/IEC 17020:2012(E) and ISO/IEC 17011:2017(E) compliance, an appeals process is required. Appeals are addressed in §§ 170.8(b)(16) and 170.9(b)(9), (14), (20), and (21).

The DoD declines to update the rule content of § 170.6 to include a new subsection on DoD PMs and requesting activities and their responsibilities regarding marking CUI as that subject matter is already addressed for the DoD. DoD Instruction 5200.48 on CUI establishes policy, assigns responsibilities, and prescribes procedures for CUI throughout the DoD in accordance with 32 CFR part 2002, CFR for CUI to include 32 CFR 2002.20 Marking CUI; and 48 CFR 252.204–7008 and DFARS clause 252.204–7012. The CMMC Program requirements make no change to existing policies for information security implemented by the DoD.

The DoD declined to modify the rule to further define the existing CMMC PMO oversight responsibilities, identified in § 170.6, which includes the CMMC AB and all other aspects of the program.

b. CMMC-AB

Comment: There were multiple comments regarding the CMMC Accreditation Body (AB). Ten comments were not relevant to the rule text. Multiple commenters asked about mechanisms to monitor the CMMC AB and how the DoD provides oversight. Seven comments provided valuable editorial recommendations that

enhanced the existing rule text. Seven comments also raised concerns and asked for clarification about certification of the CMMC AB, its standing with international accreditation bodies and the effects of that standing on the C3PAOs. Two comments sought clarity on the CMMC AB's responsibilities and what resources they will provide to the CMMC ecosystem. One comment suggested incorporation by reference of specific CMMC AB generated artifacts. One comment requested clarity on terms and definitions regarding the CMMC AB.

Response: Some comments received lacked relevance to the rule's content, including the establishment of outside entities. The DoD declines to respond to speculative or editorial comments about private citizens or entities, which are outside the scope of this rule. The DoD declines to respond to requests for documents related to the CMMC AB and the CAICO that lack relevance to the CMMC rule.

The term CMMC Accreditation Body is a generic term for whichever accreditation body is supporting the DoD at a given time. The rule has been updated to remove reference to any specific accreditation body. There is only one Accreditation Body for the DoD CMMC Program at any given time, and its primary mission is to authorize and accredit the C3PAOs. The Accreditation Body does not issue certifications. The current CMMC AB is under a no-cost contract that has followed normal DoD contracting procedures. The DoD declines to delete the section outlining requirements for the CMMC AB, which are enduring and apply irrespective of which entity the DoD has currently approved to serve in that capacity.

This rule identifies the requirements for the Accreditation Body's role in the CMMC Ecosystem. The DoD has a variety of options available to address the commenter's concern should the current CMMC AB not be able to fulfill this role. These include but are not limited to, contracting with a new/replacement Accreditation Body. And authorized and accredited C3PAOs would be able to continue conducting CMMC assessments.

§ 170.8(b)(6) requires the CMMC AB to complete a CMMC Level 2 assessment conducted by DCMA DIBCAC that must meet all CMMC Final Level 2 certification assessment requirements and will not result in a CMMC Level 2 certification. This requirement for an assessment is based on the potential compilation of sensitive information on the CMMC AB's information systems. After the CMMC AB's successful completion of this Level 2 assessment, the DoD reserves the right to send CUI to the CMMC AB, as appropriate.

Requirements for the CMMC AB, detailed in § 170.8(b) of this rule, include DoD requirements to comply with Conflict of Interest, Code of Professional Conduct and Ethics policies as set forth in the DoD contract with the AB. § 170.8(b)(3) details the ISO/IEC requirements the CMMC AB must meet and the timeline for meeting them. § 170.8(b)(3)(i) and (ii) further detail the requirements for the CMMC AB to authorize and accredit C3PAOs. The CMMC AB is under contract with the DoD and must fully comply with the contract requirements.

The CMMC rule was updated to clarify that the CMMC AB must be a U.S.-based signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement within 24 months of DoD approval and must operate in accordance with ISO/IEC 17011:2017(E). The rule was also updated to clarify that a disqualifying eligibility determination may result in the CMMC AB losing its authorization or accreditation under the CMMC Program.

All CMMC ecosystem members are required to abide by the appropriate ethics and conflicts of interest policies established by the CMMC AB and CAICO. Rule content pertaining to ethics, quality assurance functions, record keeping, data encryption, security, etc. functions across the ecosystem are tailored to reflect the role each entity fills in the ecosystem. The CMMC AB is not an agency of the Federal government; it is a private sector organization operating under contract with the DoD. As described in § 170.6(a), the Office of the Department of Defense Chief Information Officer (DoD CIO) provides oversight of the CMMC Program and is responsible for establishing CMMC assessment, accreditation, and training requirements as well as developing and updating CMMC Program implementing guidance. The Accreditation Body must be under contract with the DoD. The rule has been modified to include additional CMMC AB oversight responsibilities for the CMMC PMO. The Department declines to incorporate CMMC AB generated artifacts into the rule by reference. The responsibilities of the DoD CIO and CMMC PMO are outlined in § 170.6 and the responsibilities of the Accreditation Body are outlined in § 170.8.

The DoD acknowledges that the CMMC AB may not offer both accreditation services and certification services. DoD declines to make edits to these sections as they are in alignment with the roles and responsibilities of the CMMC AB. The DoD has revised § 170.8(b)(17)(i)(C) in the rule to clarify that the ''CMMC activities'' which former Accreditation Body members are prohibited from include any or all responsibilities described in Subpart C of this rule.

The rule was updated to indicate that C3PAOs must also meet administrative requirements as determined by the CMMC AB. It was also updated to clarify that the term ''independent assessor staff'' in § 170.8(b)(4) refers to independent CMMC Certified Assessor staff, and to clarify the meaning of the term ''members'' at § 170.8(b)(17)(i)(B). DoD declines to modify § 170.8(b)(15) to include the phrase ''technical accuracy and alignment with all applicable legal, regulatory, and policy requirements'', as this does not result in a substantive change to the requirements as currently specified.

c. C3PAOs

Comment: Clarification was requested regarding C3PAOs' timelines for accreditation and their dependencies on the CMMC AB accreditation process. Some commenters requested additional time. Clarification was also requested on the current disposition of authorized C3PAOs. A few comments asked for simplification and clarification of the difference between the terms ''authorized'' and ''accredited'' with the establishment of C3PAOs. One comment requested that the rule be edited to require full compliance before C3PAOs can conduct certifications, and that duplicative language relating to ethics, record keeping, etc., be moved to a central location in the rule. One commentor questioned whether § 170.9(b)(16), which states ''Ensure that all CMMC assessment activities are performed on the information system within the CMMC Assessment Scope'', applies to all C3PAO personnel or just those involved in the Quality Assurance process.

Other comments objected to the requirement that C3PAOs obtain a CMMC Level 2 certification assessment because the assessment does not result in a Level 2 certification. They asked whether this would require two separate assessments every three years for C3PAOs that also conduct contractor work for DoD. Two comments requested clarification on determining the scope for a CMMC Level 2 assessment of a C3PAO to be used by DIBCAC, and if or when they would be required to obtain a FedRAMP Moderate certification. Also, clarification was requested on whether a C3PAO is permitted to

possess OSC CUI and other artifacts during the assessment so long as they are destroyed upon completion of the assessment. One comment suggested that all information collected by the C3PAO be encrypted.

Three comments asked for clarification on what constitutes a C3PAO assessment team and whether it can consist of solely a Lead CCA. One commentor asked whether entities accredited under ISO 17020:2012(E) by another accreditation body, rather than the CMMC AB, meets CMMC C3PAO requirements. A couple of comments asked for clarification on whether a C3PAO could be foreign owned and participate in the current CMMC AB Marketplace.

Response: One commenter misinterpreted several sections of the CMMC rule. By defining the requirements in this rule to become a C3PAO, and defining a scoring methodology, the DoD is providing the authority and guidance necessary for C3PAOs to conduct assessments.

DoD considered many alternatives before deciding upon the current CMMC structure. The DoD has established requirements for a CMMC Accreditation Body, and this accreditation body will administer the CMMC Ecosystem. The appeals process is defined in §§ 170.8(b)(16) and 170.9(b)(9), (14), (20), and (21). The DoD will not assume the workload of directly managing the CMMC ecosystem or the other alternatives suggested. DoD must treat all potential defense contractors and subcontractors fairly. DoD cannot inadvertently create a pathway to a free assessment for an organization by virtue of its dual-purpose as a C3PAO and separately as a defense contractor. Therefore, DoD assesses C3PAOs free of charge, but the assessment does not result in a Certificate of CMMC Status. The C3PAOs determine the people, processes, and technologies that are in-scope for their DIBCAC assessment to become a C3PAO. The need to protect the assessment information is independent of its status as FCI or CUI. Assessment information, such as which requirements are MET or not, as well as the evidence and analysis leading to that result, would provide valuable insights to an adversary if not protected. A C3PAO is not a CSP and therefore would not require a FedRAMP moderate assessment to be a C3PAO. However, if they use a CSP to process, store, or transmit assessment information, then the CSP would require a FedRAMP Moderate, or equivalent, assessment. The CSP assessment results and CRM would be in scope for the C3PAO assessment.

The requirements in § 170.9 apply to both authorized and accredited C3PAOs. The only difference between authorization and accreditation is the status of the CMMC Accreditation Body. Prior to the CMMC AB achieving its full ISO/IEC 17011:2017(E) compliance, the interim term ''authorized'' is used for C3PAOs. As stated in §§ 170.8(b)(3)(i) and 170.9(b)(1) and (2), currently authorized C3PAOs must achieve and maintain compliance with ISO/IEC 17020:2012(E) within 27 months of authorization. As stated in § 170.9(b)(6), C3PAOs must obtain a Level 2 certification assessment, but this does not result in a CMMC Level 2 certificate. The DoD declines to modify the rule text related to C3PAO requirements as it does not make a substantive change. Requirements are specified in the rule for each entity within the CMMC ecosystem.

A C3PAO may start preparing for compliance with ISO/IEC 17020:2012(E) before the Accreditation Body achieves compliance with ISO/IEC 17011:2017(E). The 27-month timeline for a C3PAO to achieve and maintain compliance with ISO/IEC 17020:2012(E) begins on the date that the C3PAO is authorized by the Accreditation Body, as addressed in § 170.9(b)(2) C3PAOs authorized by the CMMC AB prior to becoming compliant with ISO/IEC 17020:2012(E) must be accredited by the CMMC AB within 27 months of the C3PAO's initial authorization to meet CMMC program requirements. The accreditation process is not tied to, nor is it impacted by, the DoD's appropriations period.

The rule has been updated to add ''authorized'' to the definition of a C3PAO. Authorized is defined in § 170.4.

DoD disagrees with the suggestion that certain C3PAO requirements are not needed or redundant. C3PAO's must follow specific requirements for CMMC assessment record retention and disposition, audits, personal information, and CMMC Assessment Scope. Each paragraph number is independent, dependent sub-paragraphs are numbered with lower case Roman numerals. The requirement in § 170.9(b)(16) applies to all C3PAO company personnel participating in the CMMC assessment process.

The size of a C3PAO assessment team is variable based on factors including the scope of the assessment and the arrangements between the OSC and C3PAO. The rule has been updated in § 170.9(b)(12) to clarify that, at a minimum, the assessment team must have a Lead CCA, as defined in § 170.11(b)(10), and one other CCA. A C3PAO is permitted to possess OSC CUI and artifacts during an assessment. CMMC Certified Assessors must use the C3PAO's information technology which has received a CMMC Level 2 certification assessment as stated in § 170.11(b)(7) and any copies of the OSC's original artifacts must be destroyed when the assessment is complete as defined in § 170.9(1).

The DoD has considered the recommendation to require encryption of all information and declines to revise the rule text, since the C3PAO is required in § 170.9(b)(6) to obtain a Level 2 certification assessment conducted by DCMA DIBCAC.

Several foreign or international companies submitted comments expressing interest in the rule section pertaining to C3PAO requirements (§ 170.9(b)) and correctly noted that this section does not preclude otherwise qualified foreign companies from achieving C3PAO accreditation. Also, the DoD does permit C3PAO personnel who are not eligible to obtain a Tier 3 background investigation to meet the equivalent of a favorably adjudicated Tier 3 background investigation. DoD will determine the Tier 3 background investigation equivalence for use with the CMMC Program only.

d. CAICO

Comment: Numerous comments requested correction of perceived misstatements, oversights, or erroneous paragraph references in the CAICO responsibilities section. One commenter suggested the level of detail in § 170.10(b) is more appropriate for a statement of work and some paragraphs could be deleted from the rule. They offered preferred rewording to clarify that the CAICO must also comply with AB and ISO/IEC requirements, and further recommended deleting the requirement to provide all documentation in English. In addition, they recommended deleting separation of duties as a requirement, because it is already required under ISO/IEC certification. One commenter conflated CAICO subcontractors with DIB subcontractors and suggested deletion of the rule's restrictions on releasing CMMC-related information. One comment asked whether the Cyber AB and CAICO have documented processes for regular review and updates to their compliance documentation. Lastly, one comment requested duplicative language relating to ethics, record keeping, etc. be moved to a central location in the rule.

A few commenters suggested preferred edits to improve the role of the CAICO. One comment noted that the

accreditor for certifying the CAICO should be a U.S.-based signatory to ILAC or relevant International Accreditation Forum (IAF) in addition to complying with ISO/IEC 17011:2017(E). Two comments noted concerns that having only one CAICO would create an untenable bottleneck should something happen to the single CAICO. One commenter asserted that the CMMC Certified Instructor (CCI) certification requirement is redundant and not cost-effective since instructors will need to be certified as CCPs or CCAs to teach those courses. One comment suggested a grace period of 18–24 months from final rule publication, to allow update of training and examinations, before implementing the CCP and CCA certification requirements. Three comments recommended that Approved Publishing Partner (APP) and Approved Training Providers (ATP) sections be added to Subpart C of the rule. One commenter asked for clarification on what constitutes a CAICO subcontractor and if this includes LTPs and LPPs, and asked why an authorization process for LTPs and LPPs is not included in the rule.

One commenter appreciated that CAICO responsibilities include compliance with relevant ISO/IEC standards, as those are internationally recognized standards.

One commenter provided an attachment containing an image of an article published in the February 2024 issue of National Defense Magazine. The commentor did not provide specific questions or comments regarding the article, they simply submitted an article. DoD declines to comment on the reposting of information being reported in the media.

Response: The DoD declines to comment on the reposting of information being reported in the media. This rule identifies requirements for the CAICO role in the ecosystem. The DoD has a variety of options available to address issues with reliance on a single CAICO. These include but are not limited to working with the CMMC AB to identify a new/replacement CAICO.

The final rule includes a requirement for the Accreditation Body, CAICO, and C3PAOs to adhere to appropriate ISO/IEC standards, which include the current version of the standard for conformity assessment (ISO/IEC 17024:2012(E) located at ISO website: *www.iso.org/standard/52993.html*).

All CMMC ecosystem members are required inter alia to abide by the appropriate ethics and conflicts of interest policies established by the CMMC AB and CAICO. Rule content pertaining to ethics, quality assurance functions, record keeping, data encryption, security, etc. functions across the ecosystem are tailored to reflect the role each entity fills in the ecosystem. Repeating this content in the section of each ecosystem role serves to emphasize the importance of adherence to these requirements.

DoD disagrees with the commenter's suggestion that certain CAICO requirements are not needed or are redundant. The DoD requirement for documentation in English refers to official information provided to the Accreditation Body or the DoD. The commenter's preferred rewording of § 170.10(b)(3) is unnecessary because there is a separate requirement for the CAICO to meet ISO/IEC standards, and this rule does not codify non-DoD requirements. The DoD declines to remove the requirement in § 170.10(b)(10) to provide status information to the CMMC AB because it is necessary for program management. The rule retains the separation of duties requirement at § 170.10(b)(11), which is more specific than the management of impartiality required under ISO/IEC 17024:2012(E).

The DoD declines to delete certification requirements for CCI. Having the technical background as a CCP or CCA does not ensure all the instructor-unique qualifications necessary to be a CCI are met. The DoD also declines to remove the reference to § 170.10 from § 170.12(b)(1) since it is accurate that the CAICO certifies CCIs.

Section § 170.10(b)(13) ensures that personal information is encrypted and protected in all CAICO information systems and databases and those of any CAICO training support service providers. DoD disagrees with the commentor's statement that training support service providers of the CAICO be allowed to disclose information about CCAs and/or CCPs. § 170.10 references the CAICO requirements. Entities providing training support services to the CAICO are not a part of the assessment process in the ecosystem. It is not up to them to release data on certified persons in the ecosystem. Any metrics regarding certifications will come from the CAICO.

DoD declines to add Approved Publishing Partner (APP) and Approved Training Providers (ATP), or sections to the rule. The CMMC Program defines the requirements for the ecosystem. Specific requirements for publishing and training guidelines are determined by the CAICO and do not require the oversight of the DoD. The CMMC Rule does not use the term Licensed Training Provider (LTP), as the LTPs are not required to be licensed. The acronym ATP means Approved Training Provider which encompasses the same role in the CMMC Ecosystem. The DoD does not intend to further delay implementation of CMMC to provide an 18 to 24-month grace period from the official release of the rule to build curriculum.

The DoD has reviewed commenter recommendations and revised the rule as follows:

The CMMC rule has been updated to state that the CAICO must be accredited by a U.S. based signatory to ILAC or other relevant IAF mutual recognition arrangements and operate in accordance with ISO/IEC 17011:2017(E). The DoD has removed the term ''practitioner'' from § 170.10(b)(8) for clarity and changed the term subcontractor to training service support provider.

e. CCPs and CCAs

Comment: Some comments requested DoD's response to speculations about market forces, competitiveness of the CMMC Certified Professional (CCP) and CMMC Certified Assessment (CCA) roles and career opportunities, assessor burnout, complexity of CMMC ecosystem, and a limited assessor pool.

Several comments identified administrative changes or preferred rewording or reordering of the CCP and CCA sections of the ecosystem requirements. For example, two commenters objected to repeating the requirement to meet CoPC and COI requirements for each Ecosystem member in § 170.8. Another comment requested deletion of the requirement for all documentation and records to be provided in English.

One commenter recommended revising proficiency and experience requirements for CCPs, CCAs, and Lead CCAs. Another requested clarification on what requirements govern the certification of a CCA and requested the rule allow the CAICO to establish the certification validity period. One comment recommended all additional assessor certification requirements in § 170.11(b)(6)(ii) be removed from the rule, so that only those prerequisite training requirements identified by the CAICO would apply.

Another comment suggested that a requirement prohibiting assessors from use of personally owned IT that is contained in the CCA section at § 170.11 also be added to the C3PAO requirements section at § 170.9. Two commenters objected to the restrictions on CCAs sharing information with people outside the assessment team.

One comment questioned the requirement for a Tier 3 background investigation for CCPs and another suggested the validity period of CCP certification should be determined by the CAICO. Yet another comment suggested changing certification periods from 3 to 4 years for those certified prior to the rule becoming effective. One comment suggested there is insufficient clarity regarding the role CCPs may play in an assessment and another asked whether a CCPs was allowed to review more than just Level 1 requirements. Two other comments recommended updating CCP training to include Level 2 practices. Another comment noted that assessor cannot be robotic and that they must be allowed to evaluate the situation as it pertains to the company being evaluated.

One comment asked for clarification on Lead CCA requirements and requested a reduction in the management experience to 2 years. Two other comments recommended adding IT and cybersecurity experience as relevant skills. One comment also recommended that Lead CCAs have industry-specific knowledge of the industry in which the OSC being assessed participates. Another comment requested clarification whether years of experience are cumulative for the Lead CCA. One comment recommended changing the name of Lead CCA and adding roles and responsibilities requirements. One stated that the rule's CCA prerequisites is too low a skill set and recommended increasing the requirements for both CCAs and Lead CCAs. While another comment noted the rule referenced both DoD Manual 8570 and DoD Manual 8140.03 and one or the either should be used.

One commenter suggested that should sufficient assessors not be available to meet demand, the DoD should provide a delay or ''grace period'' to meet certification requirements.

Response: The CMMC rule provides detail on anticipated impacts on the DIB in the Impact and Cost Analysis summary of the preamble. Speculation on market forces on roles in the CMMC ecosystem such as CCPs and CCAs are outside of the scope of the CMMC program rulemaking. Likewise, limitations on career opportunities and associated issues such as burn-out or job satisfaction are beyond the scope of the program.

The DoD updated the rule to clarify that CCAs must meet all the requirements set forth in § 170.11(b) and modified the rule in § 170.10(b)(10) to include CMMC Certified Professionals (CCPs). § 170.13(b)(6) was changed to conform to rule text in § 170.11(b)(9) and to clarify with whom information may be shared.

The DoD determined the certification requirements specified in § 170.11(b)(6) meet the needs of ensuring certified assessors have the required depth of cybersecurity knowledge and experience that is beyond what the CMMC-specific training provides.

The DoD disagreed with the comment that the CAICO should determine the length of time a CCP certification is valid. DoD has a significant interest in ensuring the quality of assessors in the CMMC ecosystem and the currency of their training. The DoD does not agree with the assertion that managerial, and personnel related skills are most relevant for success as a Lead Assessor. As written, § 170.11 of the rule requires Lead Assessors to have a balance of technical and managerial expertise. A Lead Assessor also requires assessment or audit experience. The DoD views these skills as the minimum required to adequately provide the technical guidance and managerial oversight of the assessment team. The DoD declined to revise the rule to specify IT and/or Cybersecurity for the required audit experience.

The DoD also disagreed with a recommendation to require Lead CCAs to have industry-specific knowledge of the industry in which the OSC being assessed participates. The DoD found that this requirement would unreasonably restrict C3PAOs from participating in a broad range of assessments and could have a negative effect on the ability of the DIB to schedule CMMC Level 2 certification assessments. The OSC can select a C3PAO with the experience it considers valuable.

The DoD declined a commentor's request to modify the rule to allow the CAICO to determine the requirement for the frequency of CCA/CCP certification. The DoD considers the 3 years certification period a key CMMC program requirement that will be enacted and managed by the CAICO. The DoD also declined to change the rule to extend the certification timeline to 4 years for those earning a certification prior to completion of rulemaking. Additionally, the DoD did not accept the recommendation to remove the requirement for providing documentation in the English language, which applies to all official information that would be provided to the CAICO, CMMC AB, or the DoD.

The DoD disagreed with a commenter's recommendation to remove the second sentence in § 170.11(b)(7) that prohibits individual assessors from using any IT other than that provided to them by the C3PAO that has been contracted to perform that OSA's assessment. This sentence is required to eliminate ambiguity, particularly for C3PAOs that may have implemented a BYOD program or that allow some work roles to use personal devices. The DoD updated the rule to provide additional clarity.

The DoD does not concur with the comment calling for a DoD Manual 8140.03 requirement on CCAs. Assessment teams are required to have a Lead Assessor who must meet the higher level of the DoDM 8140.03 requirements. The rule has been updated to remove reference to DoD Manual 8570.

The experience requirements referenced for the Lead CCA are cumulative. The rule has been updated to move Lead CCA requirements to the end of § 170.11, but not to create a new section.

The DoD disagreed with the commenter's assertion that Assessors are robotic. Assessors will go through CMMC training and will assess each unique CMMC Assessment Scope, as defined by the OSA, against the security requirements. As specified in § 170.13(a) CCPs can participate on CMMC Level 2 certification assessments with CCA oversight where the CCA makes all final decisions. Updates to training are beyond the scope of this rule. Statements made in training materials produced prior to final adoption of the CMMC rule are beyond the scope of CMMC rulemaking. DoD disagrees with the comment that § 170.13 does not provide sufficient detail regarding the role CCPs may play in an assessment. The requirement in the rule that ''with CCA oversight where the CCA makes all final determinations'' provides sufficient flexibility to adapt to a wide variety of assessments while ensuring the responsibility for assessment findings rests with the CCA and Lead CCA.

The rule restates COI and CoPC requirements in each ecosystem section because all CMMC ecosystem members are required to abide by the appropriate ethics and conflicts of interest policies established by the CMMC AB and the CAICO. Rule content pertaining to ethics, quality assurance functions, record keeping, data encryption, security, and other functions across the ecosystem are tailored to reflect the role each entity fills in the ecosystem.

DoD CIO, in coordination with OUSD/I&S, evaluated the requirements for the CMMC Ecosystem. Based on the access to sensitive unclassified information, a Tier 3 background investigation that results in determination of national

security eligibility is required. § 170.13(a) states that a CCP is eligible to participate in Level 2 certification assessment with CCA oversight and is eligible to become a CCA and will receive additional training and testing per the requirements in § 170.11.

The phased implementation plan described in § 170.3(e) is intended to address ramp-up issues and provide time to train the necessary number of assessors. DoD has updated the rule to add an additional six months to the Phase 1 timeline.

e. CCI

1. Training and Training Materials

Comment: One comment mistook the requirement to ''provide all documentation and records in English'' as applying to training materials. Four comments expressed concerns about the requirements for confidentiality surrounding training records. These concerns arose primarily from a misinterpretation of the requirement to ''keep confidential all information obtained during the performance of CMMC training activities'' to mean a requirement to keep the training materials themselves confidential, rather than keeping student records confidential.

Response: The requirement to ''provide all documentation and records in English'' refers to official information that would be provided to the CMMC Assessor and Instructor Certification Organization (CAICO) or the DoD. The terms do not pertain to all materials used in the delivery of a course. The DoD disagreed with the recommendation to delete the § 170.12(b)(7) requirement for keeping CMMC training records and information confidential. ''Training activities'' do not include course material. The example in § 170.12(b)(7) (student records) makes clear the type of data covered by the rule.

2. Time Limits and Other Constraints

Comment: One comment recommended that the CAICO, instead of the DoD, determine the frequency of CMMC Certified Instructor (CCI) certification. Another requested clarification on the length of time that a CCI may not provide consulting services. One comment recommended changing the rule to require CCIs to provide updates to the CAICO and the CMMC AB no less than annually, in lieu of ''most up to date''.

Two comments expressed concern that CCIs are not allowed to provide consulting services to OSCs; one of the comments asserted this would result in reduced quality of training for CMMC Certified Professionals (CCP) and CMMC Certified Assessors (CCA). One comment expressed disagreement with the requirement prohibiting CCIs from exam development and exam proctoring. Another comment recommended a rule update indicating CCIs can teach both CCA and CMMC Certified Professional (CCP) candidates.

Response: The DoD declined a commenter's request to modify the rule to allow the CAICO to determine the requirement for validity period of a CCI certification. The DoD considers the 3-year certification period for CCIs as a key CMMC program requirement that is to be enforced by the CAICO.

The DoD modified § 170.12(b)(4) to read ''annually'' instead of ''most up to date'' to clarify the reporting requirement.

All CMMC ecosystem members are required to abide by the appropriate ethics and conflicts of interest (COI) policies established by the CMMC AB and CAICO. Rule content pertaining to ethics, quality assurance functions, record keeping, data encryption, security, and other functions across the ecosystem are tailored to reflect the role each entity fills in the ecosystem. The DoD defined COI requirements to reduce the possibility that a CMMC Ecosystem member acting in one capacity may bias, or be biased by, clients that are paying them to perform another CMMC related service. CCIs are not permitted to develop or proctor exams to avoid participating in any activity, practice, or transaction that could result in an actual or perceived conflict of interest.

3. Relationship to CAICO and Other Ecosystem Members

Comment: One comment asked why the rule does not include requirements for LTPs, and another requested additional rule text to clarify the relationship between an ATP and the CAICO in administrative matters of students. One comment recommended not requiring CCIs to provide qualification and training information to the CAICO.

One comment recommended a method for reducing a perceived redundancy in the rule text between ecosystem-related sections. Two comments asserted that a CCI certification is redundant because individuals attempting to become CCIs are already certified as CCPs or CCAs.

One comment asked that a new requirement be added to the rule under § 170.12 to address the transition of Provisional Instructors to CCIs.

Response: The CMMC rule does not use the term Licensed Training Provider (LTP), as training providers are not required to be licensed. The correct term for CMMC training providers is Approved Training Provider (ATP). The CMMC rule contains the requirements to create the training for the CMMC Program. § 170.10 contains the requirements for the CAICO to ensure compliance with ISO/IEC 17024:2012(E) and to ensure all training products, instruction, and testing materials are of high quality.

DoD disagreed with a comment to delete a requirement in the rule for CCIs to update the CAICO regarding qualification, training experience, and other information relating to their competency to teach within the CMMC ecosystem. Viewing and verifying CCI qualifications is an important element of quality assurance in the CAICO's role of training, testing, authorizing, certifying, and recertifying CMMC assessors, instructors, and related individuals.

§ 170.12(b) in the rule was updated to add the requirement for a CCI to be certified at or above the level of training they are delivering. The DoD also modified § 170.12(a)(11) to add CMMC Certified Professional (CCP) candidates.

The DoD declined to remove the certification requirement for CCIs. Although CMMC Certified Assessors have the technical background, that does not imply that they meet all the instructor-unique qualifications necessary to be a CCI.

The DoD modified § 170.12 to include requirements for Provisional Instructors prior to their transition to a CMMC Certified Instructor. Any Provisional Instructor (PI) will be required to achieve certification under the CMMC Certified Instructor (CCI) program within 18 months of the final rule publication. The PI designation ends 18 months after the effective date of the rule.

f. Conflicts of Interest and Code of Professional Conduct

Comment: Many commenters had questions about existing CMMC conflict of interest (CoI) requirements and had suggestions for further protecting the impartiality of the CMMC Program. One commenter requested the Department develop a mechanism to prevent third-party assessment organizations from delaying re-evaluation of NOT MET requirements to create a pipeline of future assessment work. The commenter recommended removing the 10-day re-evaluation deadline requirement currently in the CMMC Rule to prevent any conflicts of interest. Another commenter stated that allowing a

commercial entity to manage the CMMC 'ecosystem' creates a scenario 'fox watching the henhouse'' condition and that fraud and abuse will be rampant.

Some commenters questioned the legality of the current CMMC AB's establishment and alleged unethical behavior by its Board of Directors. They cited the number of resignations among its Board of Directors as evidence of internal politics, conflicts of interests, or ethics concerns. One commenter suggested the 6-month ''cooling off period'' between an employee leaving the CMMC AB and supporting other CMMC roles be extended to one year to ensure impartiality within the CMMC Program. Another commenter claimed an informational newsletter offered by the CMMC AB to ecosystem members violates the conflicts of interest requirements. In addition, commenters alleged that the CMMC AB's progress (prior to final rule publication) toward ISO/IEC compliance violates the terms of its contract with DoD, which the DoD should terminate.

Commenters also stated that DoD's no-cost contract with the current CMMC AB has forced them to focus on generating revenue instead of building a CMMC Assessor cadre. One commenter cited publicly available tax filings of the current CMMC AB to substantiate that view. Another commenter noted concerns that the rule permits a timeline for meeting the ISO/IEC requirements, rather than requiring immediate compliance, and suggested that it would be more advantageous to cite different ISO/IEC requirements (for conformity assessment) than those identified in the rule.

One commenter wrote that significant delays in CMMC implementation this far beyond the Department's earlier objectives of 2020 constitute fraud and claimed that DoD representatives directed companies to comply with requirements that have become irrelevant due to changes in program requirements that occurred during rulemaking.

Many commenters stated the Department needs to further clarify existing CoI requirements for CCIs, CCAs, and CCPs in the CMMC Rule text. Specifically, commenters suggested the DoD:

—Revise § 170.12(b)(5) to state that CCIs may serve on an assessment team for a student's company, provided the CCI does not provide consulting to an OSC during delivery of the CMMC Instruction or breach other conflict of interest rules, and add that the CCI must ''[b]e a currently certified CCA and conduct at least one certified or mock assessment under the direction of a C3PAO annually.''

—Revise § 170.12(b)(6) to allow CCIs to craft exam objectives and content, as CCIs are the ''most in tune with issues faced by candidate CCPs and CCAs.''

—Strike § 170.12 altogether, because potential CoIs will be rare and can be ''managed by existing conflicts of interest mechanisms''; clarify that ''while serving as a CMMC instructor'' means ''limited only to while actively teaching or any time while the person holds the CCI certification''; and that CoI concerns could be addressed by the addition of an Instructor Code of Conduct. One commenter also suggested this section would significantly decrease the available pool of CMMC instructors, as they would be forced to choose between instructing and consulting, which may be a more lucrative option. They also claimed it prevented CCIs who teach CCP/CCA courses at night from providing consulting services during the day.

—Impose a three- or four-year prohibition on ecosystem members from participating in the CMMC assessment process for an assessment in which they previously served as a consultant or ''since the OSC last obtained CMMC certification, whichever is most recent.''

—Add language to §§ 170.11 and 170.13 to clarify if an individual consults with a defense industrial base company, they are prohibited from participating as a CMMC assessor for that same company.

—Update § 170.8(b)(ii)(17)(ii)(G) and add a time limit to this requirement to ensure a consultant can perform assessments, given an appropriate amount of time has passed.

—Revise § 170.8(b)(17)(ii)(G) to say, ''Prohibit CMMC Ecosystem members from participating in the CMMC assessment process for a CMMC assessment in which they previously served as an employee or consultant to prepare the organization for any CMMC assessment,'' as both an OSC employee and a CCPA/CCP serving as a consultant would face identical CoI.

—Provide more detail on the scope of CCA and CCP conflict of interest disclosure required, particularly around the definition of ''process, store, or transmit'' in § 170.4(b).

—More narrowly tailor the CoI requirement in § 170.8(b)(17)(i)(D) and more expressly identify the ''perceived conflicts of interest'' scenarios to help ecosystem members avoid legal risk.

—Rewrite § 170.8(b)(17)(iii)(C) to clarify what constitutes a ''satisfactory record of integrity and business ethics.''

—Provide more detail in § 170.10(b)(11) on the term ''separation of duties,'' so CCAs know whether they can volunteer to develop test questions or provide training.

Response Summary: Some comments received lacked relevance to the rule's content, which is limited to specific CMMC Program requirements. The DoD declines to respond to speculative or editorial comments about private citizens or entities, all of which are not within the scope of this rule. Personnel actions taken by the CMMC AB and comments regarding filing of IRS forms are not within the scope of this rule.

§ 170.8(b) of this final rule provides requirements of the CMMC AB. CMMC Program requirements as described in this rule requires the CMMC Accreditation Body and the CAICO to have and abide by ethics and conflicts of interest rules and to have and maintain a Code of Professional Conduct (CoPC). § 170.8(b)(3) describes the ISO/IEC requirements and the timeline in which the CMMC AB needs to meet those requirements. The DoD declines to comment on business decisions made by the current CMMC AB in the performance of its CMMC related roles, responsibilities, and requirements. Based on information currently known to DoD, the CMMC AB is currently performing as defined in this final rule and the terms of the contract. The ANSI National Accreditation Body is performing the function of accrediting the CAICO, which is appropriate given its status as a subsidiary of the CMMC AB.

The DoD defined CMMC Conflict of Interest requirements to reduce the possibility that a member of the CMMC Ecosystem acting in one capacity may bias, or be biased by, clients that are paying them to perform another CMMC related service. The rule text includes ethics requirements for members of the CMMC ecosystem, to include the CMMC AB (§ 170.8). The DoD concurred with some comments and has increased the cooling off period from six months to one year in § 170.8(b)(17)(i)(C).

DoD considered many alternatives before deciding upon the current CMMC structure. The DoD has established requirements for a CMMC Accreditation Body, and this accreditation body will administer the CMMC Ecosystem. The phased CMMC implementation plan provides time to train the necessary number of assessors and, the rule has been updated to add an additional six months to the Phase 1 timeline.

The DoD requires that the Accreditation Body must achieve and maintain compliance with the ISO/IEC 17011:2017(E) standard (the international benchmark used in demonstrating an accreditation body's impartiality, technical competency, and resources) and the requirements set forth in § 170.8. The CMMC Proposed rule also requires compliance with ISO/IEC 17020:2012(E) for conformity assessments. § 170.12(b)(5) was revised to indicate that a CMMC instructor, subject to the Code of Professional Ethics and Conflict of Interest policies, may serve on an assessment team but cannot consult. CCIs are not permitted to develop or proctor exams to avoid participating in any activity, practice, or transaction that could result in an actual or perceived conflict of interest.

The CAICO is responsible to ensure the separation of duties for individuals volunteering to assist with testing, training, and certification activities. An example of separation of duties is shown in § 170.12(b)(6), which specifies that a CCI cannot be involved in examination activities.

DoD modified § 170.8(b)(17)(ii)(G) to add that a consultant is only limited from participation in the assessment process for 36 months. CMMC Ecosystem members do not participate in an assessor capacity on DIBCAC assessments. The DoD declined to add explicit requirements prohibiting ecosystem members from participating in an assessment of an OSC by whom they were previously employed (directly or as a consultant), because the scenario is already covered under § 170.8(b)(17)(ii)(G).

DoD disagreed with the comments that a CMMC Ecosystem member is unable to avoid perceived conflicts of interest. The Accreditation Body is required to provide a CoI policy in § 170.8(b)(17) for CMMC Ecosystem members. The Department expects that a reasonable person subject to the CoI policy should understand how to avoid the appearance of conflicts of interest and, if unsure, seek clarity from the Accreditation Body. Details of the disclosure requirements are in the Accreditation Body conflict of interest policy.

A satisfactory record of integrity and business ethics is a record that does not indicate derogatory behavior in relation to professional conduct or conflict of interest.

The DoD declined to remove the 10-day re-evaluation deadline in §§ 170.17(c)(2) and 170.18(c)(2) to ensure consistency in the assessment process. The OSC may utilize the appeals process, as necessary. The DoD is required to codify CMMC program requirements through a prescribed and formal rulemaking process. The timeline for CMMC implementation changed due in part to DoD's decision to pause and assess the program, seek opportunities to streamline and ease the burden of its implementation, and respond to public comments. The DoD declines to respond to speculative or editorial comments regarding the actions of private citizens, which are not within the scope of this rule.

g. Ecosystem Eligibility

1. Foreign Ownership

Comment: Two comments noted the rule does not include Foreign Ownership, Control, or Influence (FOCI) requirements for the CAICO. One comment recommended the rule incorporate the definition of the ''national technology and industrial base'' and exclude those companies from FOCI requirements. The NTIB includes organizations from the United States, the United Kingdom of Great Britain and Northern Ireland, Australia, New Zealand, and Canada that are engaged in research, development, production, integration, services, or information technology activities.

Response: The CAICO has no FOCI requirement because they do not have knowledge of the OSC's network or potential vulnerabilities identified in the assessment process. Per § 170.9(b)(5), the CMMC Program implements the FOCI program that is managed by DCSA. Potential FOCI exemptions are outside the scope of this 32 CFR part 170 CMMC Program rule and must be addressed through international arrangements or agreements.

2. Personnel Security

Comment: There were numerous comments regarding the Tier 3 Personnel Security requirements. Several comments recommended editorial clarification. Multiple comments requested clarification on what ''not eligible'' meant and what is the ''equivalent process''. One comment recommended the Tier 3 background investigation be required for all authorized personnel while two comments recommended eliminating the Tier 3 background investigation requirement. Two other comments requested clarification on why a Tier 3 investigation is required when no secret information is handled and there is no clearance granted. Another comment requested clarification on the Tier 3 process. Three comments requested clarity on the citizenship requirements and how the Tier 3 requirement will be enforced for international C3PAO's.

Another comment recommended adding a requirement for CMMC Instructors and Assessors to report to the CAICO within 30 days of conviction, or guilty pleas to certain crimes.

Response: In coordination with the OUSD/I&S, the DoD CIO evaluated requirements for the CMMC Ecosystem. Based on the access to sensitive unclassified information, a Tier 3 background investigation that results in determination of national security eligibility is required as specified in this rule. The concept of ''not eligible'' in § 170.9(b)(4) is intended to cover those applicants who do not meet the entrance requirements for a DCSA Tier 3 background investigation, it is not an alternative for applicants who do not pass its Tier 3 background investigation. The DCSA maintains a record of all background investigation information in the Personnel Vetting Records system of records, DUSDI 02-DoD, as published in the **Federal Register.** The details of the Tier 3 background investigation are included in this rule to inform the public of the CMMC requirement and that the investigation will not result in a clearance. The DoD declines to remove reference to the Standard Form 86 from the rule. All documentation and records for the background investigation process must be provided in English; rulemaking as a Federal regulation requires this level of detail to ensure clarity of understanding and interpretation. Details about background investigation equivalency is available from DCSA at *www.dcsa.mil/Industrial-Security/International-Programs/Security-Assurances-for-Personnel-Facilities/*. As stated in the 32 CFR part 170 CMMC Program rule, C3PAOs must meet the criteria defined in section § 170.9. If a non-U.S. organization, and its employees, meet all the requirements in § 170.9 and § 170.11, it would not be prohibited from operating as a C3PAO within the U.S. or abroad. The DoD declined to make recommended administrative changes to § 170.9(b)(3), because they did not result in a substantive change.

While a C3PAO may use its own employees to staff an assessment, it also may leverage CCAs and CCPS who are independent contractors, rather than employees of a specific C3PAO. Because these independent CCAs and CCPs may not be covered by the C3PAO's background check requirement, CMMC requires CCAs and CCPs to have their own Type 3 background checks or equivalent.

Section 170.10 has been updated to specify the CAICO must require CMMC

Ecosystem members to report to the CAICO, within 30 days, if they are convicted, plead guilty, or plead no contest for certain specified legal matters or criminal activities.

h. ISO/IEC Standards

Comment: Several comments addressed ISO/IEC standards referenced in the proposed rule. Most of these were related to ISO/IEC 17020:2012(E). One commenter wanted to know what the proposed rule meant by ''out-of-cycle from ISO/IEC 17020:2012(E).'' Another felt the section outlining CMMC AB responsibilities should clarify that the CMMC PMO must approve all C3PAO accreditation requirements established by the Accreditation Body under ISO/IEC 17020:2012(E). One person felt the rule should give C3PAOs more time to achieve compliance with ISO/IEC 17020:2012(E) and one commenter asserted that including a revocation process in the CMMC PMO roles and responsibilities section was inconsistent with ISO/IEC 17020:2012(E) standards because the C3PAO was the certification body.

One comment asserted the requirement in the rule for the CMMC AB to complete the ILAC Peer Review prior to accrediting C3PAOs is too onerous and not consistent with the ISO/IEC process for gaining international recognition as an accreditation body in accordance with ISO/IEC 17011:2017(E).

Response: The rule was updated in § 170.8(a) to clarify responsibilities of the Accreditation Body. DoD agreed with the comment that the requirement to complete the Peer Review prior to accrediting C3PAOs was too onerous and inconsistent with the ISO/IEC process under ISO/IEC 17011:2017(E). The rule has been updated for clarity.

Using the terms of the ISO/IEC 17020:2012(E), the activity of the C3PAO is an ''inspection'', rather than a ''certification''. The C3PAO is an inspection body, not a certification body, and is responsible for conducting the Level 2 certification assessment [Inspection]. The rule was revised to delete terms related to granting or revoking certification assessment status. The DoD reserves the right to conduct a DCMA DIBCAC assessment of the OSA, as provided for under the DFARS clause 252.204–7012 and DFARS clause 252.204–7020. DoD declines to extend the period for C3PAOs to achieve compliance with ISO/IEC 17020:2012(E). The Department has determined that 27 months is reasonable and sufficient for a C3PAO to achieve compliance. The rule was also updated in § 170.9(b)(11) to clarify that audit information must be provided upon request.

14. Ecosystem Capacity

Comment: Commenters expressed concern that the demand for third-party assessments amongst the defense industrial base will exceed the capacity of available Certified CMMC Assessors and Certified CMMC Professionals and government assessors which may prevent timely and affordable audits or cause businesses to lose out on DoD contracts. To mitigate the concerns, one commenter suggested delaying phase-in of certification assessment by two years, by relying on self-assessment. One commenter warned of solicitation protests if companies are kept out of a competitive procurement due to a slow CMMC assessment process. Another suggested that insufficient assessors may shrink the market for DoD contractors and compromise assessment quality. Commenters were apprehensive that DoD projections for certification demand didn't factor in all subcontractors and that the CMMC Accreditation Body lacks a strategy for scaling to meet increased C3PAO demand.

Additionally, one commenter pointed out that the rule indicates companies can pursue a certification assessment at any time after the rule is published, which could tie up already limited C3PAO resources and impede assessment opportunities for other companies bidding on an upcoming contract. Another expressed concern that often-extensive travel times required for assessors to reach rural-based companies like electric cooperatives will disincentivize assessors from prioritizing these companies and prevent their timely assessment.

Commenters suggested several actions the Department could take to mitigate capacity-related risks, including: extending the phase-in of Level 2 certification requirements; prioritizing companies for Level 2 phase-in; allowing C3PAOs to issue interim or conditional certifications when unable to timely complete contractor assessments; and waiving requirements for OSCs that are in the assessment process but not yet certified. Some asked that DoD forecast the volume and timing of Level 3 certification requirements and clearly communicate those assessment requirements with contractors. Another requested forecasts of both Level 2 and Level 3 assessment capacity against various demand scenarios for each certification level.

Several commenters suggested that CMMC assessment requirements for External Service Providers (ESPs) will also impede CMMC implementation, as ESPs (1) must be CMMC certified before an OSC can include them in their CMMC certification assessment scope and (2) will be competing with DIB companies for scarce C3PAO assessors. Commenters suggested ways to reduce burden on ESPs, which included: allowing use of non-compliant ESPs until Phase 3 and prioritizing certification assessments for ESPs ahead of other assessments.

Several commenters expressed concern about CCA and CCP roles, based on perceived scarcity of candidates in the job market compared with demand for similar services. Concerns included the potential for CCA and CCP burnout from overwork, dissatisfaction with repetitive assessments tasks, limited career path in the roles, and the complexity of operating within the CMMC ecosystem. One commenter compared CCA and CCP roles with those of Certified Public Accountants and Certified Information System Auditors, who have access to more varied opportunities and industries.

Response: DoD received numerous comments about the use of ESPs which do not process, store, or transmit CUI. In response, the DoD revised the rule to reduce the assessment burden for ESPs. ESP assessment, certification, and authorization requirements in 32 CFR 170.19(c)(2) and (d)(2) have been updated. ESPs that are not CSPs and do NOT process, store, or transmit CUI, do not require CMMC assessment or certification. Services provided by an ESP are in the OSA's assessment scope. The phased implementation plan described in § 170.3(e) is intended to address ramp-up issues, provide time to train the necessary number of assessors, and allow companies time to understand and implement CMMC requirements. The DoD has updated the rule to add an additional six months to the Phase 1 timeline. Phase 2 will start one calendar year after the start of Phase 1. It is beyond the scope of this rule for DoD to determine the order in which organizations are assessed.

The DoD declined to delete text stating that OSAs may elect to complete a self-assessment or pursue CMMC certification assessment to distinguish themselves as competitive because the recommendation did not result in a substantive change. CMMC rule describes anticipated impacts on the DIB in the Impact and Cost Analysis section. Speculation on market forces affecting the DIB is outside of the scope of the CMMC program. Speculation on market forces affecting CMMC

ecosystem CCP and CCA roles are also outside of the scope of the CMMC program. Likewise, limitations on career opportunities and associated issues such as burn-out or job satisfaction are beyond the scope of the program.

The DoD declines to comment on external market factors impacting CMMC compliance. The seven-year timespan reflects the DoD's estimate for all DIB members to achieve CMMC compliance. The implementation plan ramps up CMMC assessment requirements over 4 phases, such that the ecosystem will reach maximum capacity by year four. The DoD does not agree with commenter assertions that 70,000 or more entities will require CMMC Level 2 assessment by October 1, 2026. Table 6 of the Impact and Cost Analysis of CMMC 2.0 section provides the DoD's estimate of CMMC assessment numbers by year and level.

DoD considered many alternatives before deciding upon the current CMMC structure. By design, the CMMC program depends on the supply and demand dynamics of the free market, enabling it to naturally scale and adapt to capacity requirements. Planned changes to DCMA staffing levels have been considered with regard to implementation of CMMC Level 3 and C3PAO assessments as described in this rule. The DIBCAC will communicate extensively with contractors about the conduct of a Level 3 assessment during the pre-assessment planning phase.

15. Assessments

a. Level 1 and Mapping of 15 Level 1 to 17 Level 2 Requirements

Comment: A few questions were submitted about CMMC level 1 requirements, on topics such as whether DoD intended affirmations for CMMC level 1 be required annually versus triennially, and whether specific policies and procedures documentation is required for Level 1 self-assessments. One commenter asked about limits on deficiency remediation and re-accomplishing an assessment in the event a company fails a CMMC Level 1 self-assessment. Another commenter asked for the specific wording to reflect a CMMC Level 1 assessment score in SPRS.

One commenter objected to CMMC level 1 annual affirmation, which they considered an unwarranted expansion of CUI safeguarding requirements to information systems that process only FCI. One commenter recommended revisions to explicitly indicate that OSAs may choose to engage the services of a C3PAO to inform the OSA's Level 1 self-assessment submission. Another commenter recommended editorial revisions to avoid use of the term ''CMMC security requirements'' based on the observation that CMMC requirements are aligned directly to those identified in FAR clause 52.204–21 or NIST publications.

One commenter asked for explanation of perceived differences between tables in the published rule that map CMMC Level 1 Security Requirements to NIST SP 800–171A Jun2018, as compared with prior versions of the document.

One commenter asked for the rationale associated with mapping 15 requirements for CMMC level 1 to 17 requirements in CMMC level 2. Two commenters asked if systems that process FCI (and require CMMC level 1) are considered within scope for CMMC level 2 or 3 assessments, and if so, how they should be documented.

Response: When applicable, the DoD does require an annual CMMC Level 1 self-assessment against the 15 safeguarding requirements aligned with FAR clause 52.204–21. Annual affirmations are required at every CMMC level. There are no explicit documentation requirements for a CMMC Level 1 Self-Assessment. The DoD modified the Level 1 Scoping Guide to provide clarity.

An OSA may complete as many self-assessments as desired, and there is no required timeframe between Level 1 self-assessments and updating CMMC Status in SPRS. The entry in SPRS for CMMC Level 1 is a binary selection between Yes and No based on meeting all Level 1 security requirements.

The CMMC Program verifies implementation of security requirements for FCI in accordance with FAR clause 52.204–21. The DoD has elected to use the CMMC Status postings and attestations in SPRS as the mechanism to verify compliance with applicable CMMC requirements.

An OSA engaging an authorized C3PAO to perform the Level 1 self-assessment and then using the resulting CMMC Status when ''self-assessing'' is permissible. The OSA however retains all the responsibilities and liabilities of the affirmation. No revisions to the rule were necessary.

Writing style recommendations were not incorporated and no responses were provided to those comments based on comparison of pre-publication draft versions with those officially published for public comment. DoD aligned the security requirements for Level 1 exactly with those in FAR clause 52.204–21 and aligned the security requirements in Level 2 exactly with those in NIST SP 800–171 R2. The 15 security requirements in FAR clause 52.204–21, which make up CMMC Level 1, were mapped by NIST into 17 security requirements in NIST SP 800–171 R2. This was accomplished by splitting 1 requirement into 3 parts, while the other 14 align. Table 2 to § 170.15(c)(1)(ii) provides a mapping.

Meeting the CMMC Level 2 self-assessment (§ 170.16) or CMMC Level 2 certification assessment (§ 170.17) requirements also satisfies the CMMC Level 1 self-assessment requirements detailed in § 170.15 for the same CMMC Assessment Scope.

b. Level 2

Comment: Commenters provided a number of very specific Level 2 assessment scenarios and asked for rule interpretation for each scenario. Scenarios included differing scores for self-assessment and third-party assessment; assessment timing; conditional assessment expiration; and CUI enclaves.

One commenter stated the language describing certificates of assessment lacked clarity and seems to allow an OSC to be issued a certificate of assessment but not be certified. Two comments stated that wording describing the expiration of a Conditional Level 2 self-assessment or certification could be interpreted to mean that the OSA/OSC would be permanently barred from seeking further contracts using information systems within that CMMC Assessment Scope. One comment said it was not clearly stated that a Level 2 third party assessment would satisfy contractual requirements for a Level 2 self-assessment. One comment stated that the rule does not clearly indicate whether a Level 2 assessment checks for more than just proper implementation of the 110 requirements in NIST SP 800–171 R2 and includes paragraphs—(c) through (g) of DFARS clause 252.204–7012. This commenter advocated that those requirements be assessed only during DIBCAC assessments.

Response: The rule has been updated to clarify that meeting the requirements for a CMMC Level 2 certification assessment satisfies a CMMC Level 2 self-assessment requirement for the same CMMC Assessment Scope.

The term ''certificate of assessment'' has been replaced with the term ''Certificate of CMMC Status'' in the final rule. When an OSC has met all the requirements for a Level 2 certification assessment, a Certificate of CMMC Status is obtained from the C3PAO conducting the assessment. See § 170.9. Under CMMC, OSCs are not certified; rather, the assessed network receives a

Certificate of CMMC Status for the CMMC Assessment Scope if the network meets all applicable certification requirements. No rule edit is necessary because § 170.19 is clear on this point.

The phrase ''until such time as a valid CMMC Level 2 self-assessment is achieved'' is added to the rule in the event a Conditional Level 2 self-assessment or Conditional Level 3 expires [see sections §§ 170.16(a)(1)(ii)(B)) and 170.17(a)(1)(ii)(B)].

The CMMC program does not assess paragraph (c) through (g) of DFARS clause 252.204–7012. The CMMC Program assesses the security requirements set forth in the FAR clause 52.204–21; National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 R2; and selected requirements from the NIST SP 800–172 Feb2021, as applicable (see table 1 to § 170.14(c)(4) CMMC Level 3 Requirements).

If the contract requires a Level 2 self-assessment (*i.e.,* a CMMC Status of ''Conditional/Final Level 2 (Self)''), then the Level 2 self-assessment score with a current affirmation is valid for that contract but not for a contract with a Level 2 certification assessment requirement. The DoD does not consider it realistic or likely that C3PAOs will purposefully ''slow roll'' completion of assessments for which they have been engaged by an OSC. However, the OSA's CMMC Status is based on final results of an assessment and a valid affirmation. A POA&M Close-out assessment need only re-assess those requirements that were assessed as NOT MET in the original assessment as addressed in § 170.21(b). The OSA status is based on the results of this POA&M Close-out assessment with a valid affirmation. If the subcontractor will process, store, or transmit CUI, then the flow down requirement for a Prime contract that specifies CMMC Level 3 certification assessment is, at a minimum, CMMC Level 2 certification assessment (*i.e.,* a CMMC Status of ''Conditional/Final Level 2 (C3PAO)'').

A POA&M closeout applies to all NOT–MET requirements so if one practice is not remediated within the 180-day time limit, the conditional certification will expire. Scope cannot be changed in the middle of an assessment, so the conditional certification will expire. If the scope is changed, a new assessment is required.

The assessment is performed based on the defined CMMC Assessment Scope. The OSA is only approved to process, store, or transmit FCI and CUI within the CMMC Assessment Scope defined.

If the conditional assessment certification expires due to exceeding the 180-day limit, a new full certification assessment is required. Contracting officers can utilize standard contract remedies during any period under which the OSA is not in compliance with CMMC requirements. If an OSC closed out their POA&M 32 months ago, that Level 2 Conditional certification assessment would have closed and the OSC would have received a Level 2 Final certification assessment for the remainder of the 3-year validity period. If after completing the Level 2 Final certification assessment, the OSC is reassessed and does not achieve a score of 110, then the OSC will either get a new Conditional Level 2 (C3PAO) CMMC Status certificate (if they meet the associated POA&M requirements), or the OSC will not receive a new certificate.

c. Level 3

Comment: Several comments addressed CMMC Level 3 assessment requirements and the relationship of Level 3 assessments to Level 2 assessments. One comment noted that a final version of the Level 3 assessment guidance was not available at the same time as other CMMC assessment guides. Another recommended the DoD first pilot implementation of CMMC Level 3 security requirements and clearly identify (in advance) the data or programs that will be subject to them. One commenter asked how DoD will maintain Level 3 requirements to align with NIST's guidance since Level 3 includes only a subset of NIST's SP 800–172 Feb2021 requirements.

Another asked about validating compliance for assets that changed asset categories when transitioning from Level 2 certification to Level 3 certification. One comment said it was that Level 2 certification is not clearly identified as a prerequisite for Level 3 certification, and that organizations might try to bypass Level 2. One comment asked whether those entities that would need a CMMC level 3 assessment could seek a combined Level 2 and Level 3 certification from the DIBCAC to reduce cost to the OSC.

One comment sought clarification of how long an OSC would be prohibited from seeking additional contract awards if a Level 3 certification expired. Two comments were concerned about the DIBCAC's ability to terminate a Level 3 assessment if the review identifies a Level 2 requirement that is not met.

Response: For CMMC Level 3, the DoD selected a subset of NIST SP 800–172 Feb2021 requirements for enhanced safeguarding. The CMMC Level 3 supplemental documents were not finalized prior to publication of the Proposed Rule. DoD's final determination of the specific subset of NIST SP 800–172 Feb2021 requirements is included in this final rule, which defines the ODPs for Level 3 in table 1 to § 170.14(c)(4). DoD will update the rule when required to change the security requirements, to include CMMC Level 3.

DoD has reviewed and declined the recommendation to conduct a pilot prior to phasing in CMMC Level 3 requirements. Given the evolving cybersecurity threat, DoD's best interests are served by ensuring that the selected CMMC Level 3 NIST SP 800–172 Feb2021 security requirements are in place to provide enhanced protections for sensitive DoD CUI.

In those cases when DCMA DIBCAC identifies that a Level 2 security requirement is NOT MET, DCMA DIBCAC may allow for remediation, place the assessment process on hold, or may immediately terminate the Level 3 assessment, depending on significance of the NOT MET security requirement(s) and the nature of the required remediation. The determination of whether a NOT MET requirement is significant is reserved for the judgment of the DCMA DIBCAC.

The rule has been updated to clarify that DCMA DIBCAC has the responsibility to validate compliance of all assets that changed asset category (*i.e.,* CRMA to CUI Asset) or assessment requirements (*i.e.,* Specialized Assets) between the Level 2 and Level 3 assessments. As addressed in § 170.18, a condition to request a Level 3 certification assessment from DCMA DIBCAC is the receipt of a Final Level 2 (C3PAO) CMMC Status. The DoD considered, but declined, the recommendation to allow OSAs to simultaneously pursue Level 2 and Level 3 in one assessment. DoD must enforce CMMC requirements uniformly across the Defense Industrial Base for all contractors and subcontractors who process, store, or transmit CUI, regardless of an OSA's intended CMMC level. Permitting OSCs to seek combined CMMC Level 2 and 3 assessments would unfairly benefit only a subset of OSCs that were identified to meet CMMC Level 3 requirements.

The rule has been updated to clarify that the OSC will be ineligible for additional contract awards that require a CMMC Level 3 certification assessment until such time as a valid (Conditional or Final) CMMC Level 3 (DIBCAC) CMMC Status is achieved for the information systems within the CMMC Assessment Scope.

d. Scoring Methodology

1. CMMC Point Value System

Comment: Multiple comments were received concerning the point values assigned to CMMC security requirements, their association to other frameworks, consistency between CMMC levels, and their use in POA&M eligibility determination. Numerous comments recommended that the CMMC Level 2 weighted point system where security requirements are valued as 1, 3, or 5 be modeled after the one point per requirement used in CMMC Level 3 scoring. Some also questioned why the CMMC Level 2 scoring structure was the same as the NIST SP 800–171 DoD Assessment Methodology (DODAM). Four comments recommended changes to the criteria for adding unimplemented security requirements to an Assessment POA&M. One comment noted that temporary deficiencies which are appropriately addressed in plans of action should be assessed as implemented. Some of the comments recommended not assigning point values to determine POA&M eligibility. Two other comments recommended dropping the NIST Basic and Derived security requirement designations and disassociating them from CMMC point values.

Response: Recommendations to assign a point value of 1 to all CMMC Level 2 security requirements were not accepted. CMMC adopted the scoring as included in the NIST SP 800–171 DoD Assessment Methodology (DoDAM) used by the DCMA DIBCAC and referenced in DFARS clause 252.204–7020. As addressed in § 170.20(a) in this rule, there is qualified standards acceptance between a DCMA DIBCAC High Assessment and CMMC Level 2 certification assessment. Revisions to the CMMC Scoring Methodology will be made concurrently with changes to the DoDAM. The variable point values of 1, 3, and 5 are linked to the NIST determination of Basic Security Requirements and Derived Security Requirements as described in § 170.24. The DoD has updated the rule text at § 170.24 to clarify which requirements may be included on a POA&M. CMMC Level 2 security requirement SC.L2–3.13.11 can be partially effective and may be included on a POA&M if encryption is employed and is not FIPS-validated.

The DoD added a definition for enduring exceptions and temporary deficiencies to the rule. § 170.21 addresses POA&Ms for assessments. Security requirement CA.L2–3.12.2 allows for the development and implementation of an operational plans of action designed to correct deficiencies and reduce or eliminate vulnerabilities in organizational systems. These operational plans of action are different from POA&Ms permitted under Conditional assessment. The rule has been updated to make this distinction clear. The CMMC rule does not prohibit the use of an operational plan of action to address necessary information system updates, patches, or reconfiguration as threats evolve.

2. NIST SP 800–171A Jun2018 Assessment Objectives

Comment: Multiple comments questioned the role of NIST SP 800–171A Jun2018 Assessment Objectives within the CMMC assessment process. Three comments asked whether all assessment objectives needed to be met to score a security requirement as MET. Two comments questioned the need to report assessment results at the assessment objective level within the CMMC instantiation of eMASS for CMMC Level 2 and CMMC Level 3 certification assessments. Some comments suggested that the DoD allow for contractors to take a more risk-based approach to include compensating controls instead of a strict security requirement-based model.

Response: DoD must enforce CMMC requirements uniformly for all defense contractors and subcontractors who process, store, or transmit CUI. Each assessment objective in NIST SP 800–171A Jun2018 must yield a finding of MET or NOT APPLICABLE for the overall security requirement to be scored as MET. Assessors exercise judgment, within CMMC guidelines, in determining when sufficient and adequate evidence has been presented to make an assessment finding. A security requirement can be applicable, even with assessment objectives that are N/A. The security requirement is NOT MET when one or more applicable assessment objectives is NOT MET. CMMC assessments are conducted at the security requirement objective level, and the results are captured at the security requirement objective level. Assessment results are entered into the CMMC instantiation of eMASS at the NIST SP 800–171A Jun2018 assessment objective level of detail to provide metrics on which assessment objectives are proving difficult to implement and to indicate where additional assessor training and guidance may be warranted.

The DoD declines to change requirements to allow additional organization-specific risk-based approaches. National Institute of Standards and Technology (NIST) determined the appropriate characteristics and considered the appropriate attack vectors when NIST SP 800–171 R2 was created, and tailored the security requirements to protect the confidentiality of CUI. Questions and comments related to NIST SP 800–171 R2 background, development and scenarios are outside the scope of the CMMC rule.

3. Other Scoring Comments

Comment: Three comments were received concerning the use of operational plans of action to document security requirements which are not fully implemented due to limitations beyond the ability of an OSA to address. The use of temporary deficiencies and enduring exceptions were suggested along with the recommendation that these items be scored as MET.

The scoring of FIPS-validated modules was questioned in four comments. An error in the point value for encryption (1 and 3 points vs the correct 3 and 5 points) was identified. Clarification on full credit for incomplete implementation of FIPS encryption was also requested.

Two comments were received about the relationship between CMMC Level 2 and CMMC Level 3 scoring asking if the point values in each assessment were cumulative and how the 80% eligibility for an assessment POA&M and Conditional certification would be calculated.

Three comments requested clarification around the use of N/A in security requirements, assessment objectives, and in matters pertaining to previously granted DoD CIO variances. One comment questioned what types of artifacts are required to substantiate a determination of N/A for a security requirement or assessment objective. Three comments addressed the need for a System Security Plan, its point value, if any, and the need for an SSP as a prerequisite for assessment as it exists in the DIBCAC DODAM.

Response: The government cannot comment on the suitability of specific implementations or products to meet CMMC security requirements and is aware that FIPS module validation can exceed the 180-day CMMC assessment POA&M threshold. Guidance regarding FIPS implementation on Windows 11 is not appropriate for inclusion in the rule text and DoD declines to make an update. Limitations of the FIPS-validated module process do not impact the implementation status of FIPS cryptography. The rule has been updated to include enduring exceptions and temporary deficiencies. Vendor

limitations with respect to FIPS validation could be considered enduring exceptions or temporary deficiencies and should be addressed in an OSA's operational plan of action.

Several requirements within NIST SP 800–171 R2 specify the use of encryption without consideration of the processing, storage, or transmission of CUI. Requirement 3.13.11 requires that the encryption used be a FIPS-validated module if the encryption is used to protect the confidentiality of CUI. The scoring in § 170.24(c)(2)(i)(B)(4)(ii) is based on the use of encryption and whether the encryption uses a FIPS-validated module. There is no consideration for multiple layers of encryption so specific guidance to assessors regarding layers of encryption is not needed and DoD declines to make the suggested addition. OSAs may choose how they implement security requirements and C3PAOs will assess based on the stated implementations. CCAs are trained in the correct process to assess security requirements. The DoD has updated the rule text at § 170.24(c) to clarify which requirements may be included on a POA&M, which addresses the error in the point value for encryption.

The scoring for CMMC Level 3 is separate from the scoring for CMMC Level 2. As stated in § 170.24(c)(3), the CMMC Level 3 assessment score is equal to the number of CMMC Level 3 security requirements that are assessed as MET. There are twenty-four CMMC Level 3 security requirements, identified in table 1 to § 170.14(c)(4). CMMC Level 3 POA&M eligibility is based on the number of CMMC Level 3 security requirements and does NOT include the 110 CMMC Level 2 requirements.

''Not applicable'' was removed from § 170.24(c)(9) for the case where the DoD CIO previously approved a variance. The rule has been updated to reflect the language of DFARS clause 252.204–7012 and the DoDAM, including nonapplicable or to have an alternative, but equally effective, security measure. Regarding the comment on N/A objectives, § 170.23 is clear that MET means all applicable objectives for the requirement and that if an objective does not apply, then it is equivalent to being MET. A security requirement can be applicable, even with one or more objectives that are N/A. The overall requirement is only NOT MET when one or more applicable objectives is not satisfied. The determination of assessment findings is made by an Assessor following the assessment methodology. In the case of a self-assessment, the Assessor is from the OSA. In the case of a certification assessment, the Assessor is from the C3PAO or DIBCAC. An assessment finding of NOT APPLICABLE (N/A) means a security requirement (or assessment objective) does not apply at the time of the CMMC assessment. For each assessment objective or security requirement marked N/A, the Certified Assessor includes a statement that explains why it does not apply to the contractor. The OSC should document in its SSP why the security requirement does not apply and provide justification. There is no standard set of artifacts required to justify a finding of N/A.

A System Security Plan as described in security requirement CA.L2–3.12.4 is required to conduct an assessment. The rule has been updated at § 170.24(c)(2)(i)(B)(6) for clarity. Security requirement CA.L2–3.12.4 does not have an associated point value. The OSA will not receive a -1 for a missing or incomplete SSP. The absence of an up-to-date system security plan at the time of the assessment would result in a finding that 'an assessment could not be completed due to incomplete information and noncompliance with DFARS clause 252.204–7012.' The rule has been updated in § 170.24(c)(6) to clarify this.

e. Artifacts

Comment: Several comments and requests for clarification dealt with artifacts that are reviewed or created during a CMMC assessment, or as part of compliance with other contractual requirements, including DFARS clause 252.204–7012. Some commenters asked whether standardized SSP and POA&M templates would be provided to assist with compliance. Other templates requested included pre-assessment planning materials, final assessment reports, and the resulting Certificate of CMMC Status.

Others expressed concern that sharing certain artifacts during the assessment process or permitting assessors to retain them would create vulnerability. In addition, commenters asked whether security protections are required for documents held due to the artifact retention requirements. One commenter asked how CMMC assessment scores, or affirmation information will be protected, and whether the CMMC program office will share this information outside of DoD. Another suggested that C3PAOs should not be required to retain any OSC provided materials.

One commenter misinterpreted the supplemental hashing guide as requiring use of the MS PowerShell script with the SHA256 algorithm. The commenter also stated it would be more efficient to specify a single hash be provided for combined artifacts rather than requiring separate hash values for each artifact. They recommended deletion of the hashing requirement. Another commenter suggested requiring OSCs to generate hashes for artifacts as part of a Level 2 self-assessment. One comment also asked whether hashing is required for Level 3 artifacts. One comment asked how long OSAs must retain artifacts following an assessment.

Some comments expressed concern that C3PAOs that receive or retain OSA artifacts identified as CUI would be required to undergo assessment by both the DIBCAC and another C3PAO. Four commenters objected to the 6-year artifact retention requirement for C3PAOs and requested reduction to 1 year. Three commenters asked whether self-assessors at level 1 or level 2 must also retain supporting artifacts for 6 years. Two commenters recommended revised wording of CMMC Level 3 requirements to provide greater clarity about artifact retention and integrity.

One commenter requested edits to the description of SSP content, advocating for deletion of references to organizational policies and procedures in place to comply with NIST SP 800–171 R2. The recommended edits also changed attribution of the requirement to create an SSP to reflect DFARS clause 252.204–7020 rather than DFARS clause 252.204–7012. This commenter also suggested additional wording to specify that the OSA need not define roles and responsibilities of security personnel in the SSP but may do so in ancillary documents.

Response: This rule retains the reference to DFARS clause 252.204–7012 that implements NIST SP 800–171 as the basis for the requirement to create and update an SSP. The DoD has considered the recommended changes to the rule regarding the SSP content and declines to make the revision. The NIST SP 800–171 R2 requirement for an SSP is foundational to performing a NIST SP 800–171 R2 self-assessment and its purpose is to provide critical information for performing the assessment. The SSP should detail the policies and procedures that support ''. . . how security requirements are implemented . . .'' for all NIST SP 800–171 R2 controls. DoD declines to establish a specific SSP format, as OSAs should define the best format for their organizations. The Overview section of the rule has been updated to remove the statement indicating SSPs will outline the roles and responsibilities of security personnel. DoD does not plan to provide document templates for SSPs and POA&Ms, as they are already available

in existing NIST guidance. Templates and schemas for the pre-assessment and assessment results documents are available to authorized CMMC eMASS users at *https://cmmc.emass.apps.mil*.

Commenter concerns about artifact retention reflect misunderstanding of the assessment process. Assessors and C3PAOs do not retain OSC artifacts, they only retain the hash value captured during the assessment process. Assessors will retain documents created during the assessment such as their notes and the Assessment Findings Reports. To facilitate the protection of these documents, authorized C3PAOs are required to go through a DIBCAC conducted CMMC Level 2 assessment and CMMC Assessors are only authorized to use C3PAO issued equipment that was within the scope of the DIBCAC assessment. Separately, the DIBCAC processes, stores, and transmits its assessment related data on DoD networks. Assessment Reports are submitted to DoD via eMASS, which is a government-owned, secured database. Sharing of this information is subject to DoD policies.

The OSC is responsible for maintaining and hashing all artifacts that supported the assessment. The rule has been modified to clarify C3PAOs do not maintain artifacts from the OSC. The OSCs artifacts must be hashed, and the value provided to the assessor for submission into CMMC eMASS. That hash value contains no sensitive information. An OSC's System Security Plan (SSP) will be reviewed as part of a CMMC certification assessment, but not shared outside of the OSC. Assessors will not retain copies of the SSP or any other proprietary OSC information. Assessors will retain the name, date, and version of the SSP for uploading in SPRS or eMASS, as appropriate for the level of assessment. Assessors will upload assessment information (*e.g.,* list of artifacts, hash of artifacts, and hashing algorithm used) into CMMC eMASS as addressed in § 170.9(b)(17), and the OSC will retain its assessment documentation as addressed in § 170.17(c)(4) and § 170.18(c)(4)

CMMC Level 2 self-assessments procedures as described in § 170.16(c)(1) require assessment in accordance with NIST SP 800–171A Jun2018, which if conducted properly will generate evidence. The rule has been modified to incorporate data retention requirements for self-assessments into §§ 170.15 and 170.16. OSAs are not required to generate hashes for self-assessment artifacts. Hashing is only required for Level 2 or Level 3 assessments by C3PAOs and DCMA DIBCAC. The rule and Hashing Guide have been updated to add clarity that only a single hash is required, and that artifact retention is for six years. The use of SHA256 algorithm is not mandatory and therefore, the name of the hash algorithm needs to be stored in eMASS.

There are no additional requirements for artifact storage and retention beyond those identified in the rule. It is up to the OSA to determine the best way to ensure artifact availability during the six-year retention period. The rule has been updated in §§ 170.15 through 170.18 to clarify artifact retention requirements.

DoD declines to reduce the artifact retention period from six years to one year. The rule has been updated to clarify that all OSAs and Assessors are required to retain their respective assessment data for six years. The requirement for an artifact retention period of six years is a result of the Department of Justice's input to the proposed rule.

f. POA&Ms

Comment: Over forty comments were received about POA&Ms seeking clarification or revision to the rule content on that topic.

Several commenters misinterpreted the requirement to remediate or close POA&M items within 180 days as eliminating acceptability of operational plans of action for normal corrective actions such as patching or other routine maintenance activities, thus making the achievement of 100% compliance impossible. Some commenters requested rule revisions to describe operational plans of action in more detail. One commenter asked that the concept of Enduring Exceptions be added to the rule to address special circumstances when remediation and full compliance with CMMC security requirements is not feasible as described in the NIST SP 800–171A Jun2018 assessment methodology.

Several commenters expressed concern with the 180-day timeline to close out POA&Ms or limits on which practices can be placed on them. Recommendations for changing the POA&M timeline ranged from completely deleting the time limit to extending it by 1 to 3 years. One variation was to permit more than 180 days for closeout only during an initial one-year ''ramp-up'' period. One commenter encouraged DoD to reduce POA&M restrictions to facilitate contractors' genuine attempts to meet requirements and mitigate information security risks. Three commenters also thought the rule should allow contractors to request approval to delay POA&M close-out when meeting the original timeline is impracticable, while another commenter suggested defining the close-out timeline in the contract, allowing negotiation of extension or renewal of POA&Ms through the contracting officer. Two commenters asked when the 180-day timeline begins and one asked what actions occur if the POA&M is not closed out within that period.

Four commenters noted that the number of security requirements explicitly precluded from POA&Ms makes CMMC challenging and requested greater flexibility in how many, and which practices may be included. Three commenters recommended that companies be allowed to have any number of failed practices reassessed for up to six-months after an assessment without having to complete and pay for a new full assessment. Three other commenters recommended that the DoD allow for risk informed POA&Ms, while one stated that the rule should not specify which requirements must be met. One commenter requested clarification on how many items of each point value may be included on a POA&M for CMMC Level 2 conditional certification. One commenter also asked DoD to consider abandoning controls with high failure rates, lowering score requirements based on evidence of sufficient mitigation.

Several comments expressed concern that CMMC conditional certification does not allow higher weighted practices on a POA&M and recommended the rule reduce those restrictions to allow more security practices. One commenter also recommended eliminating weighting altogether, permitting any requirement to be part of the POA&M. As rationale, one commenter referenced DFARS clause 252.204–7012 verbiage that permits contractors to request DoD CIO approval to vary from NIST SP 800–171 requirements, saying that since all approved variances are considered as ''Not Applicable'', all requirements should be POA&M eligible.

Two commenters asked where POA&Ms are maintained, who is responsible for validating close-out, and whether affirmation is required after each assessment (including POA&M close-out). One commenter asked about applicability of the 180-day POA&M close-out requirement to Critical, High, Medium, or Low findings against Service Level Agreements.

One commenter recommended that a description of appropriate POA&M entries to be added to the rule and

provided other recommended edits to the POA&M section, including addition of terms of art such as ''assessment-related'' and ''non-assessment-related'', and deletion of the words ''as applicable.''

Response: The CMMC Program allows the use of POA&Ms. Section 170.21 delineates the requirements that may be addressed as part of an assessment with a POA&M, that must be closed out by a POA&M closeout assessment within 180 days of the initial assessment to achieve the assessment requirement for Final certification. At Level 1, the OSA must affirm annually that it has reassessed its environment. Security requirement CA.L2–3.12.2 allows for the development and implementation of an operational plans of action designed to correct deficiencies and reduce or eliminate vulnerabilities in organizational systems. The CMMC rule does not prohibit an OSA from using an operational plan of action at any CMMC level to address necessary information system updates, patches, or reconfiguration as threats evolve. These are different from POA&Ms permitted under a Conditional certification assessment. The DoD has updated the rule to make this distinction clear. The Department also updated the rule to include a definition and clarity for enduring exceptions. The DoD CIO option for variances in DFARS clause 252.204–7012 is beyond the scope of this rule.

Operational plans of action are the appropriate mechanism to handle CSPs, ESPs (not a CSP) and third-party vendors that are no longer compliant with a CMMC requirement. Operational plans of action may be necessary when the relevant security requirement or control was fully implemented, but a vulnerability or deficiency is discovered after gaining a CMMC final compliance status, such as, but not limited to, routine updates, patches, or updates to CMMC compliance status. For purposes of CMMC compliance, operational plans of action are acceptable and are not subject to the 180-day timetable established for initial assessment. In addition, the rule has been modified to include a definition for Enduring Exceptions.

The DoD does not accept the recommendation to change the criteria for POA&Ms or the timeline allowed to remediate open POA&M items. The 180-day period allowed for POA&Ms and the determination of which weighted practices can be placed on a POA&M was a risk-based decision. The determination considers the relative risk DoD is willing to accept when a particular practice is not met and the amount of risk the DoD is willing to accept for those security practices that go ''NOT MET'' for an extended period. The DoD declined to edit the rule regarding the closeout of security requirements that are not allowed on the POA&M as stated in § 170.21. The decision in this scenario is a business decision between the applicable C3PAO and the OSC.

Given the evolving cybersecurity threat, DoD's best interests are served by ensuring that POA&Ms remain open for no longer than 180 days, regardless of which controls are included or the plan for remediation.

The 180-day period starts when the CMMC assessment results are finalized and submitted to SPRS or eMASS, as appropriate. As addressed in §§ 170.17(a)(1)(ii)(B) and 170.18(a)(1)(ii)(B), if the POA&M is not closed out within the 180-day timeframe, the Conditional Certification will expire. If the Conditional Certification expires within the period of performance of a contract, standard contractual remedies will apply, and the OSC will be ineligible for additional awards with CMMC Level 2 or 3 requirements for the information systems within the same CMMC Assessment Scope. The scoring methodology created by the DoD reflects the relative risk to DoD information when a security requirement is NOT MET. As defined in § 170.17(c)(2), a security requirement that is NOT MET may be re-evaluated during the Level 2 certification assessment and for 10 business days following the active assessment period under certain conditions. Likewise, when an OSC executes a contract with a C3PAO it may account for the timeliness of any re-assessments. The language in DFARS clause 252.204–7012 describing the DoD CIO's authority to approve variances is beyond the scope of this rule.

A POA&M for CMMC Level 2 can include up to 22 security requirements that have a value of 1, excluding those in § 170.21(a)(2)(iii), or may include non-FIPS-validated encryption and up to 19 security requirements that have a value of 1.

The OSA is responsible for maintaining the POA&M that resulted from a CMMC assessment; however, those security requirements that were NOT MET and placed on a POA&M are recorded in eMASS. The OSA is responsible for validating the close-out of the security requirements on the POA&M within 180 days of a self-assessment. The C3PAO or DCMA (as applicable) must perform the POA&M Close-out Assessment for a Final certification assessment. An affirmation of compliance is required upon the completion of any assessment—Conditional, Close-out, or Final—and annually after the completion of a Final assessment. The requirement outlined in § 170.21 for POA&M close out does not apply to Service Level Agreement (SLA) severity levels.

The Department declines to include recommended POA&M examples in the rule, as they are already available in existing NIST guidance, or make other word changes to § 170.21. This section of the CMMC rule has been updated to add clarity when discussing the POA&M regarding security requirements that were assessed as NOT MET during a CMMC assessment. These POA&Ms are distinct from an operational plan of action.

g. Assessment Activities and Reporting

1. Data Entry

Comment: One comment requested the rule state that records in SPRS must be updated within six months of the rule's effective date or when the functionality is in place, whichever is longer. Two comments asked for mitigations for assessment delays that could impact the timeliness of certification. One comment asked for more information about assessment frequency guidelines, and one asked which date would be used to determine timing of CMMC Level 2 triennial assessments, where this date is maintained, and who is responsible for ensuring contractors meet all applicable security requirements.

Response: To be eligible for a contract with a CMMC Level 1 self-assessment requirement, the OSA must perform a Level 1 self-assessment, input the result into SPRS, and submit an affirmation. The timeline for initiating and reporting a self- assessment is a business decision to be made by each contractor considering contract opportunities it wishes to pursue. Because the OSA can fully control timelines for completion of self-assessments and plan for changes within the assessment scope, and because CMMC certification assessments occur on a standard 3-year cycle, the DoD expects that companies will plan assessments well in advance of need. The required assessment frequency is every year for CMMC Level 1, and every 3 years for CMMC Levels 2 and 3, or when changes within the CMMC Assessment Scope invalidate the assessment.

Certification dates for CMMC levels 2 and 3 are set to the date the certification assessment results are entered into SPRS for self-assessments or the date the Certificate of CMMC Status is

entered into eMASS for third-party assessments. The triennial requirement renews on that date; there is no grace period. Each OSA's annual affirmation attests that they have implemented, and are maintaining their implementation of, the security requirements.

2. Supplier Risk Performance System and eMASS

Comment: Three commenters viewed CMMC's intent to store CMMC related data in an existing DoD system, SPRS, as an indication that SPRS would replace other DoD risk tracking systems or the risk monitoring responsibilities of other agencies. One commenter asked whether other Services would have their own systems, as the SPRS Program Office is within the Navy. Another comment stated CMMC and SPRS should not be tasked with the responsibility of addressing Supply Chain Risk Management (SCRM). One comment asked if the DoD intended to make CMMC Level 2 and 3 certification information available to other agencies, which could reduce the cost burden of compliance with assessment/certification programs adopted by other agencies. One comment asked how PII would be protected in SPRS. Another comment asked for SPRS to be redesigned to list assessment results for each security requirement instead of the aggregate level. One comment asked for a CMMC-specific process for entering data into SPRS to make it easier for small businesses and another comment asked for vendor visibility into a potential sub-contractor's SPRS score.

Several comments asked about the CAGE code requirement and noted a perception that businesses outside the U.S are unable to obtain a CAGE or become a member of PIEE and therefore unable to access SPRS. One comment asked whether each contract would require a new SPRS entry.

One comment asked if OSCs that already have an eMASS account would be able to access the CMMC instantiation of eMASS and one comment questioned the cost/benefit of entering pre-assessment data into eMASS. Another comment asked for clarification on the roles and responsibilities of DoD Program Managers regarding the data uploaded into eMASS. One commenter suggested that eMASS be modified to permit tracking of self-assessment, in addition to certification assessments.

Response: SPRS is used to provide CMMC Status, score results, and affirmation status to contracting officers and program managers as part of the contract award process. It does not supersede other DoD program office risk register systems. SPRS will be used for reporting CMMC Status of all contractors, regardless of which service issued the contract. Although the SPRS program is managed by the Department of the Navy, its use spans across the Department. There is no role for other agencies associated with this CMMC rule, which applies only to DoD contractors that process, store, or transmit FCI or CUI. The CMMC PMO has no current agreements with other Federal agencies to share CMMC assessment results. There is nothing that prevents an OSA from sharing their CMMC Status with other entities.

SPRS is an existing DoD database that is compliant with DoD regulations, which includes meeting Privacy requirements. DoD suppliers are already required to use SPRS to record NIST SP 800–171 self-assessment scores, as referenced in DFARS clause 252.204–7020. The CMMC rule expands the use of SPRS to include CMMC Status, certification assessment scores, and affirmations.

SPRS is the tool that the DoD acquisition workforce will use to verify companies meet CMMC requirements to be eligible for contract award. SPRS data entry does not make available to Contracting Officers scoring of individual security requirements.

The DoD does not concur with granting prime contractors access to view the CMMC scores or Certificates of CMMC Status for potential subcontractors in SPRS. Subcontractors may voluntarily share their CMMC Status, assessment scores, or certificates to facilitate business teaming arrangements. Changing access to PIEE and SPRS is outside the scope of this rule.

CMMC eMASS is a tailored, stand-alone instantiation of eMASS for use by authorized representatives from C3PAOs, the DCMA DIBCAC, and the CMMC PMO. Individuals from each C3PAO will have access to CMMC eMASS to upload Level 2 assessment data. DCMA DIBCAC personnel will have access to CMMC eMASS to upload Level 3 assessment data. OSAs will not have access to CMMC eMASS. Authorized personnel from OSAs may access SPRS, which will host assessment certification and self-assessment data, and will be able to upload and view scores only for their OSA.

The DOD declines to add requirements for submitting self-assessments in eMASS. The requirement is for the OSA to enter scores into SPRS. There is value to the DoD in having the pre-assessment information in CMMC eMASS for overall program management and oversight. The information indicates that an assessment is either scheduled or in-process. The CMMC PMO seeks to track CMMC program adoption, and pre-assessment information allows reporting on upcoming assessments. Based on the DoD cost analysis, the effort to upload pre-assessment material is minimal.

DoD Program Managers are not responsible for uploading data into eMASS, nor do they have any responsibility regarding the data uploaded to eMASS by DCMA. An ESP, OSA, or OSC seeking CMMC assessment will need a CAGE code and an account in SPRS to complete the annual attestation required of all CMMC certified or CMMC compliant organizations.

An OSA/OSC must obtain a CAGE code via *https://sam.gov* before registering in PIEE. Step by Step instructions for how to obtain an account can be found on the PIEE Vendor Account website: *https://piee.eb.mil/xhtml/unauth/web/homepage/vendorGettingStartedHelp.xhtml*.

CAGE codes (or NCAGE codes for non-US-based companies) are also required. US-based contractors obtain a Commercial and Government Entity (CAGE) code from *https://cage.dla.mil/Home/UsageAgree*. Businesses outside of the US must obtain a NATO Commercial and Government Entity (NCAGE) code from *https://eportal.nspa.nato.int/Codification/CageTool/home*.

As specified in §§ 170.15 and 170.16, SPRS inputs include the industry CAGE codes(s) associated with the information system(s) addressed by the CMMC Assessment Scope. For each new information system used to support a DoD contract with FCI or CUI, a new SPRS entry is required. If the contractor or subcontractor will use an information system associated with a CAGE code already recorded in SPRS then a new entry is not required.

3. Assessors and Certificates

Comment: One commenter asked if an assessor is prohibited from interacting with OSA IT tools such as MS Office 365 or cloud based GRC tools. One commenter requested the CMMC rule require C3PAOs to clearly indicate the CMMC Assessment Scope on the CMMC Certificate of CMMC Status, to include CAGE codes, that could be shared with trusted partners.

Response: The rule text in § 170.11(b)(7) does not prohibit collecting assessment evidence within the OSC environment using the OSC's IT. This section applies only to IT used

by the assessors to process, store, or transmit assessment-related information once it leaves the OSC environment. The rule has been modified to list the minimum required information to be included on the Certificate of CMMC Status, including CAGE code.

h. Reassessment

Comment: Some commenters interpreted the end of a CMMC assessment validity period (and need for new assessment) as having the same significance or meaning as a ''reassessment'', which the rule describes as potentially necessary only in rare circumstances when cybersecurity risks, threats, or awareness have changed.

Another commenter asked for examples of circumstances that might prompt a re-assessment and description of the process for completing one. Four commenters expressed concern that re-assessments might be frequent, costly, and time-consuming. These commenters sought confirmation that relatively common system maintenance activities would not require a new assessment or prevent annual affirmation.

One commenter questioned the rationale for differences between validity periods for CMMC Level 1 versus Levels 2 and 3 assessment and recommended standardization on either a 1-year or 3-year frequency for all levels. Other commenters asserted that annual affirmations would drive a need for annual assessments at levels 2 or 3 and requested deletion of the affirmation requirement.

One commenter asked whether system changes within an assessment scope would require notification to the contracting agency. Another asked for guidance on remediation of POA&M items and asked whether systems that fall out of compliance must be identified to the contracting agency.

Response: The DoD considered duration of assessment validity periods and has chosen to require self-assessment of the basic Level 1 requirements every year, rather than every three years. Levels 2 and 3 require implementation of a significantly larger number of more complex security requirements, which require more time and attention to assess.

The DoD also declines to delete the annual affirmation requirement and does not agree that it equates to an annual assessment. The rule was modified to clarify that reassessments may be required based on post-assessment indicators of cybersecurity issues or non-compliance and are different from new assessments that occur when an assessment validity period expires. Reassessment is expected to be infrequent, conducted by the DoD, and necessary when cybersecurity risks, threats, or awareness have changed, or indicators of cybersecurity deficiencies and/or non-compliance are present. When required, DCMA DIBCAC will initiate the re-assessment process using established procedures. The rule has been further updated to add this DCMA DIBCAC responsibility in § 170.7. OSCs seeking confirmation upon CMMC Level 2 POA&M close-out may undergo POA&M close-out assessment by a C3PAO, which is different from reassessment.

Self-assessments and certification assessments are valid for a defined CMMC Assessment Scope as outlined in § 170.19 CMMC Scoping. A new assessment is required if there are significant architectural or boundary changes to the previous CMMC Assessment Scope. Examples include, but are not limited to, expansions of networks or mergers and acquisitions. Operational changes within a CMMC Assessment Scope, such as adding or subtracting resources within the existing assessment boundary that follow the existing SSP do not require a new assessment, but rather are covered by the annual affirmations to the continuing compliance with requirements. The CMMC rule does not prohibit an OSA from using an operational plan of action at any CMMC Level to address necessary information system updates, patches, or reconfiguration as threats evolve.

If the CMMC Assessment Scope changes, then the current assessment is no longer valid and a new assessment is required. Requirements to notify the contracting agency of compliance changes are described in the 48 CFR part 204 CMMC Acquisition rule. An annual affirmation is required at each CMMC level.

16. CMMC Assessment Scoping Policy

Comment: One comment asked whether the requirements of DFARS clause 252.204–7012 apply to the entire contractor-owned information system, or only those components of the system that process, store, or transmit the CUI. Another questioned whether assets that process both FCI and CUI require CMMC Level 1 assessment.

One comment asserted that assessments described in DFARS provision 252.204–7019 and 7020 are scoped differently than CMMC assessments, and requested the rule be revised to avoid duplication with those assessments, where applicable. Another recommended that DoD determine scoping, boundaries, standards, and assessments based on CUI data rather than by systems.

One comment suggested that the rule be modified to address CMMC applicability to service providers that only provide temporary services, such as penetration testing, cyber incident response, or forensic analysis.

Response: OSAs determine the CMMC Assessment Scope based on how and where they will process, store, and transmit FCI and CUI. DoD has reviewed the suggested changes and declines to make any updates. Additional information for CMMC Scoping (§ 170.19) can be found in the relevant scoping guides. The applicability of DFARS clause 252.204–7012 requirements is not within the scope of this rule.

Meeting CMMC Level 2 self-assessment or certification assessment requirements also satisfies CMMC Level 1 self-assessment requirements for the same CMMC Assessment Scope. One commenter incorrectly assumes that CMMC asset categories drive a change to the assessment scope from what exists in DFARS clause 252.204–7012, which implements NIST SP 800–171 R2. No conflicts exist between the DFARS clause 252.204–7012 requirements and the CMMC requirements in this rule.

The DoD declines to change the rule to base scoping, boundaries, standards, or assessments solely on CUI data rather than on systems. The purpose of the CMMC Program is for contractors and subcontractors to demonstrate that FCI and CUI is adequately safeguarded through the methodology provided in the rule. The decision on what CMMC level is required for a contract is made by the Government after considering the nature of the planned effort, associated risks, and CUI to be shared. OSAs determine the CMMC Assessment Scope based on how and where they will process, store, and transmit FCI and CUI.

Service providers who only need temporary access to perform services such as penetration testing, cyber incident response, or forensic analysis do not meet the definition of an ESP in § 170.4 and do not process, store, or transmit CUI. Therefore, they are not within scope and the DoD declines to modify the rule to include them.

17. CMMC Assessment Scope for ESPs

a. CMMC Applicability to ESPs

Comment: DoD received numerous comments about the implications of using an ESP while seeking to comply with CMMC requirements. Many comments were concerns that the ESP

assessment requirements expanded the scope and cost of the CMMC program. Additionally, some comments described overarching concerns about applicability of CMMC requirements to an ESP when it only provided a Security Protection Asset or processed Security Protection Data. In general, commenters requested to narrow the rule while providing more clarity and definition related to CMMC requirements for ESPs and CSPs. Many comments gave either hypothetical or actual scenarios and asked whether the ESP in that scenario would be required to complete a CMMC assessment at the level required for the OSA being supported.

One comment suggested that ESPs should be treated the same as Risk Managed Assets. Another comment suggested that they be treated as Specialized Assets. Two comments proposed that DoD restrict DoD contractors to the use of an ESP/MSP/MSSP that is ISO/IEC 27001:2022(E) certified. Two comments suggest that OSA's be allowed to use non-certified or some form of conditionally certified ESPs if they retain the appropriate artifacts for review.

Response: The DoD has revised the rule to reduce the assessment burden on External Service Providers (ESP). ESP assessment, certification, and authorization requirements in §§ 170.19(c)(2) and (d)(2) have been updated. The use of an ESP, its relationship to the OSA, and the services provided need to be documented in the OSA's SSP and described in the ESP's service description and customer responsibility matrix (CRM), which describes the responsibilities of the OSA and ESP with respect to the services provided.

ESPs that are CSPs, and process, store, or transmit CUI, must meet the FedRAMP requirements in DFARS clause 252.204–7012. ESPs that are CSPs and do NOT process, store, or transmit CUI, are not required to meet FedRAMP requirements in DFARS clause 252.204–7012. Services provided by the CSP are in the OSA's scope.

When ESPs that are not CSPs, process, store, or transmit CUI, a CMMC assessment is required to verify compliance with requirements for safeguarding CUI. Any ESP services used to meet OSA requirements are within the scope of the OSA's CMMC assessment.

When ESPs that are not CSPs do NOT process, store, or transmit CUI, they do not require CMMC assessment or certification, however, services they provide are in the OSA's assessment scope. There is nothing in the rule that precludes an ESP, that is not a CSP, from voluntarily requesting a C3PAO assessment. A C3PAO may perform such an assessment if the ESP makes that business decision.

ESPs can be part of the same corporate/organizational structure but still be external to the OSA such as a centralized Security Operations Center (SOC) or Network Operations Center (NOC) which supports multiple business units. The same requirements apply and are based on whether the ESP provides cloud services and whether the ESP processes, stores, or transmits CUI on their systems.

An ESP that is used as on-site staff augmentation only, *i.e.,* the OSA provides all processes, technology, and facilities, does not need CMMC assessment. When ESPs are assessed as part of an OSA's assessment, the assessment type is dictated by the OSA's DoD contract CMMC requirement. The DoD declines to make any other suggested changes to the assessment of ESPs.

b. Definitions

Comment: Multiple comments state that the definition of CSP in the rule is overly broad and overlaps with the definition of ESP. One comment questioned whether a C3PAO is also a Security Protection Asset and by extension an ESP. Two comments requested change to the definition of Out-of-Scope Assets to stipulate that SPD is Out-of-Scope.

Response: Several comments requested clarification on when an ESP would be considered a CSP. CSPs, MSPs, and MSSPs are always considered ESPs. The DoD has updated the rule to narrow the definition of Cloud Service Provider based on the definition for cloud computing from NIST SP 800–145 Sept2011. An ESP would be considered a CSP when it provides its own cloud services based on a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing that can be rapidly provisioned and released with minimal management effort or service provider interaction on the part of the OSA.

An ESP (not a CSP) that provides technical support services to its clients would be considered an MSP. It does not host its own cloud platform offering. An ESP may utilize cloud offerings to deliver services to clients without being a CSP. An ESP that manages a third-party cloud service on behalf of an OSA would not be considered a CSP.

C3PAOs need not ''receive'' security protection data as part of an assessment; they view the security protection data while on premises at the OSC for the assessment. A C3PAO is not an ESP or security protection asset and is therefore not within the OSA assessment boundary. DoD declines to delete the phrase ''except for assets that provide security protection for a CUI asset'' from the definition of Out-of-Scope Assets. Assets that provide security protection for CUI are not Out-of-Scope Assets. A CMMC definition for Security Protection Data has been added to the rule.

c. OSA Relationship to ESP

Comment: Several comments request clarification related to use of an ESP that is internal to the OSA. One comment requested that DoD require CSPs grant the US Government, as part of the contract between the OSA and the CSP, access to any CUI that is subject to CMMC requirements in the event of contractual failures, criminal actions or other legal situations that warrant seizure of CUI data. Some comments also asked whether the DoD has standing or authority to require C3PAO assessment or conduct CMMC level 3 assessments of ESPs, given that the ESP's direct contractual relationship is not with the Government but with the OSA. Two comments suggest that ESPs will be covered by the subcontractor flow down requirements from an OSA.

Response: DoD agrees with the need for added clarity around internal ESPs and the rule was modified to remove the term internal ESP. An ESP that provides staff augmentation, where the OSA provides all processes, technology, and facilities, does not need CMMC assessment. Alternatively, an ESP can be part of the same organizational structure but still be external to the OSA, such as a centralized SOC or NOC which supports multiple business units. The CMMC requirements apply and are based on whether the ESP provides cloud services and whether the ESP processes, stores, or transmits CUI on their systems.

The OSA's contractual rights with its CSP are beyond the scope of this rule.

The rule states requirements for the OSA, not the ESP. The rule requires OSAs that process, store, or transmit FCI and CUI to protect that data. If those OSAs elect to use an ESP, and that ESP processes, stores, or transmits FCI or CUI from the OSA, then the OSA must require that the ESP protect the FCI and CUI and the ESP will be assessed as part of the OSA's assessment or require FedRAMP Moderate or equivalent.

Specifically for Level 3, if an OSC is seeking Level 3 certification and uses an ESP that is not a CSP and that DOES process, store, or transmit CUI, then the ESP will need to be assessed by DIBCAC

against the same Level 3 requirements as the OSC as part of the OSC's assessment unless the ESP voluntarily seeks a DIBCAC Assessment. If an OSC is seeking Level 3 certification and uses an ESP that DOES NOT process, store, or transmit CUI, then the ESP will NOT need to be assessed by DIBCAC against the same Level 3 requirements as the OSC. ESPs provide a service that meets the requirements specified by the OSA, and therefore ESPs are not subcontractors on a DoD contract and are not bound by subcontractor flow down requirements.

d. Assessment of ESPs

Comment: There were multiple comments regarding the assessment of an ESP. One comment recommends the rule be revised to identify the specific assessment requirements that would be considered NOT MET by the OSA when using a non-compliant ESP, and to further require C3PAOs to validate the OSCs use of compliant ESPs during a CMMC Level 2 assessment. One comment asks if an ESP, when assessed, will require a CAGE code, and enter scores into SPRS. Another comment asked whether CMMC certification would be required when offering full IT management and online storage, including CUI, if the MSP policies prevent employees from accessing customer data.

One comment asks for clarification on the contents of the System Security Plan when documenting the use of an ESP. Two comments ask how to assess an OSA that is using a CSP to store CUI that does not meet the FedRAMP requirements. One comment asks how C3PAOs can check on the assessment status of an ESP. Three comments ask how to avoid redundant assessments of ESPs. One comment asks to clarify how to handle ESPs at Level 3 with respect to requirement AC.L3–3.1.2e that restricts access to systems that are owned, provisioned, or issued by the organization. One comment recommends DoD exempt CSPs that provide service with end-to-end encryption from CMMC requirements, similar to a common carrier.

Several comments inquired about guidelines and practices for obtaining Customer Responsibility Matrices (CRM) from CSPs and suggest the rule be modified to also require them from ESPs. One comment asks about how to obtain a CSP's System Security Plan.

Response: Implications for OSAs and C3PAOs for using non-compliant ESPs are adequately addressed in the rule. The CMMC compliance of an ESP, including a CSP, falls under the OSA's assessment. If an ESP is used to meet any of the CMMC requirements for the OSA, then the ESP is part of the scope of the OSA's assessment, and the compliance of the ESP will be verified.

An ESP that is seeking CMMC assessment will need to obtain a CAGE code and an account in SPRS to enable the reporting of its assessment results via CMMC eMASS. A SPRS account is required to complete the CMMC annual affirmation requirement included in DoD contracts that include a CMMC certification requirement.

An ESP that processes, stores, or transmits CUI, is an extension of the OSA's environment. As part of that environment, the ESP will be assessed against all requirements and accountable for all users who have access to CUI as part of the ESP's service, not just OSA employees. The government cannot comment on specific implementation or documentation choices of an OSA, including the use of an ESP.

The C3PAO can only give credit to a FedRAMP Moderate Authorized or equivalent CSP. Any requirements dependent on contributions from a CSP in any other stage of compliance are considered NOT MET. The requirements in the rule for FedRAMP Moderate equivalency have been updated to reflect DoD policy. OSAs can consider CSPs in the FedRAMP process for equivalency if they meet the requirements in DoD policy.

An ESP that is a CSP will be listed on the FedRAMP Marketplace. An ESP that is not a CSP and processes, stores, or transmits CUI will be within the OSA's assessment scope. An ESP can also volunteer to have a C3PAO assessment and could make that information available to the OSA.

ESPs that are not CSPs may request voluntary CMMC assessments of their environment and use that as a business discriminator. The marketplace for ESP services will adjust to find the efficient manner for ESPs to support OSA assessments that may include their services. With respect to requirement AC.L3–3.1.2e, when an OSA adds an ESP's services to its network, the ESP is considered to be provisioned by the OSA. It is subject to the requirements for the use of an ESP.

A common carrier's information system is not within the contractor's CMMC Assessment Scope if CUI is properly encrypted during transport across the common carrier's information system.

In a cloud model, the end-to-end encryption would apply when transmitting between OSA CUI assets and a cloud service. Once within the security boundary of the CSP, the common carrier's system no longer contributes to the handling of the CUI and the CSP's security practices apply. If an OSA chooses to use a CSP to process, store, or transmit CUI, FedRAMP Moderate or equivalency requirements apply.

The rule has been updated to include the use of a Customer Responsibility Matrix by all ESPs, not just CSPs. Obtaining a copy of a CSP's SSP is not required for a CSP that is FedRAMP Authorized. Documentation on the services provided by the CSP and a CRM will be required.

e. Capacity for Assessment of ESPs

Comment: Some comments questioned whether the CMMC ecosystem would be adequate to provide the number of CMMC assessments necessary for ESPs. In response, some comments recommend ESPs be given priority for completing assessments. Others recommend different phasing or forms of assessment and certification during ramp up.

Response: DoD declines to make suggested changes to the ramp up and phasing of assessments for ESPs. DoD considered many alternatives before deciding upon the current CMMC assessment structure. By design, the CMMC program depends on the supply and demand dynamics of the free market, enabling it to naturally scale and adapt to capacity requirements. DoD declines to set priorities for the assessment marketplace. The DoD has utilized a phased implementation approach to reduce implementation risk. DoD expects that the public has utilized the lead-time prior to the publication of this rule to prepare for CMMC implementation and buy-down risk. CMMC Program requirements make no changes to existing policies for information security requirements implemented by the DoD. It is beyond the scope of this rule for DoD to determine the order in which organizations are assessed.

f. Remote Access by ESPs

Comment: Two comments ask for clarification on requirements for remote access by an ESP to an OSA, whether with OSA provided equipment or a VPN.

Response: The assessment of remote access may fall into several categories and is dependent on the specific architecture used and how the OSA creates its assessment environment. When an ESP is providing staff augmentation to the OSA and the OSA is providing all the systems used for remote access, then the OSA's policies and procedures apply and the ESP is not

considered to be processing, storing, or transmitting CUI. When the ESP is using a Virtual Desktop solution, then the endpoint client device will be considered out of scope when it is configured to prevent storage, processing, or transmission of CUI on the end client beyond the Keyboard, Video, Mouse input that is part of the Virtual Desktop Infrastructure (VDI) solution.

Establishing a VPN connection with MSP equipment brings that equipment into the OSA's assessment scope. The equipment must meet the OSA's requirements for external access and connection to the network. Depending on the processing performed by the ESP with the VPN connection, other requirements may apply.

18. CMMC Assessment Scope for Security Protection Assets and Data

a. Scope and Authority

Comment: Multiple comments asserted that the use of Security Protection Data and Security Protection Assets increases the scope and cost of CMMC assessments and recommend changes to the costs or removing SPD and SPA from the rule. One comment presented the increased scope as an inconsistency between NARA and NIST SP 800–171A Jun2018. A few comments asked what authority DoD uses to include SPD as part of CMMC assessment.

Response: The commenter misread the rule's application to ESPs and SPA/SPD. Security Protection Assets are specified in NIST SP 800–171 R2 Sec 1.1 which states: ''The requirements apply only to components of nonfederal systems that process, store, or transmit CUI, or that provide security protection for such components.'' The rule has been updated in table 3 to § 170.19(c)(1) and table 5 to § 170.19(d)(1) to change the definition and requirements of Security Protection Assets. The phrase ''irrespective of whether or not these assets process, store, or transmit CUI'' has been removed from the SPA description and the CMMC assessment requirements have been changed to read ''Assess against CMMC security requirements that are relevant to the capabilities provided.'' Similar changes were made to the guidance documents. In order to clarify and address concerns about the perceived ''expansion'' of requirements, the rule was revised to reflect that ESPs that only store SPD or provide an SPA and do not process, store, or transmit CUI do not require CMMC assessment or certification.

b. Definition and Requirements

Comment: Numerous comments requested that the DoD provide a definition for Security Protection Data (SPD) and configuration data, as well as requirements for SPD to help understand the scope of SPD and how that impacts the scope of Security Protection Assets and the assessment requirements of ESPs. One comment recommended the removal of the definition and use of SPD.

Multiple comments requested more information on the definition and scoping of Security Protection Assets, their relationship to CUI, and their requirements. Some comments suggested that the definition narrow the scope of Security Protection Assets and/or their security and assessment requirements. Other comments recommended eliminating the concept of SPA. Additional comments recommended changing the assessment requirements for SPAs to be the same as CRMAs Specialized Assets applicable NIST SP 800–171 R2 requirements, commensurate with the level of involvement with the security of CUI or to only assess the requirements provided by the SPA. Two comments recommended that the phrase'' irrespective of whether these assets process, store, or transmit CUI'' be removed from the definition of SPA.

Two comments asked for clarification on the requirements for CSPs that only handle SPD.

Two comments recommended different security and assessment requirements for ESPs that host SPD but do not process, store, or transmit CUI.

Response: DoD added a CMMC definition for Security Protection Data to the rule. The DoD considered the NIST definitions for System Information and Security Relevant Information in the development of the CMMC definition for SPD.

This rule does not regulate OSA Security Protection Data, but instead implements existing regulatory requirements for the safeguarding of CUI, as defined in 32 CFR 2002.14(h)(2) and implemented by DFARS clause 252.204–7012. This clause requires protection of security protection assets and security protection data through its specification of NIST SP 800–171.

DoD does not agree with the commentor's statement that the definition of Security Protection Assets ''is an exceedingly dangerous adjustment to the NIST SP 800–171 Revision 2 Paragraph 1.1 Scope of Applicability.'' Security Protection Assets provide security to the entirety of an OSA's assessment scope which includes CUI Assets and other in-scope assets.

The SPD definition also defines configuration data as data required to operate a security protection asset. This limits the possible interpretations of configuration data. Further, the rule has been updated to reflect that ESPs that do NOT process, store, or transmit CUI do not require CMMC assessment or certification.

All assets within an OSA defined CMMC Level 2 or 3 assessment boundary have access to CUI and can process, store, or transmit CUI. They are therefore subject to DFARS clause 252.204–7012 and required to meet NIST SP 800–171 requirements. This is the authority for including Contractor Risk Managed Assets (CRMAs) within CMMC assessments. For Level 2, DoD has decided to assume some risk and lessen the assurance burden for a class of these assets called Contractor Risk Managed Assets, as specified in table 3 to § 170.19(c)(1). DoD does not assume this risk at Level 3. CRMAs are subject to assessment against all CMMC requirements as specified in table 5 to § 170.19(d)(1).

19. CMMC Assessment Scope and FedRAMP Moderate Equivalency Requirements

Comment: Several commenters identified inconsistencies between rule content and a separate DoD policy memo that defines requirements Cloud Service Providers (CSPs) must meet to be considered FedRAMP moderate ''equivalent'' in the context of DFARS clause 252.204–7012. One commenter requested administrative changes to the rule for consistency, while others requested more substantive changes to deconflict the rule with DoD's policies. Differences between the two documents left some commenters unclear about when a CSP would be considered within a CMMC assessment scope or required to meet CMMC requirements. They also noted that some CSPs refuse to provide clients with Customer Responsibility Matrices (CRMs), which could impede an OSAs ability to meet CMMC requirements. One commenter asked for specific instances when a FedRAMP-moderate-authorized CSP would not be accepted as meeting CMMC requirements or which requirements such a CSP could not meet.

Another commenter stated the FedRAMP moderate equivalency requirements for CSPs in this rule will create confusion because they address only the NIST SP 800–171 requirements and do not include the additional cyber incident reporting requirements

identified in DFARS clause 252.204–7012. One comment suggested that any expectation for CSPs to meet the DFARS clause 252.204–7012 requirements for cyber incident reporting or completion of a System Security Plan should be referenced in this CMMC rule. Another commenter suggested that all DoD contracts with CUI should include clauses and provisions for CSPs to meet Federal requirements, including a self-assessment and certification of their systems.

One commenter asked whether it is sufficient for MSP/MSSPs to have FedRAMP certification instead of CMMC certification. Another interpreted the rule's wording related to security protection assets and data as expanding requirements levied on CSPs.

One commenter interpreted CMMC Level 3 assessment requirements as meaning all parts of an OSCs infrastructure are within scope for CMMC assessment if the OSC uses a CSP, and recommended the rule specify that security requirements from the CRM must be documented in the SSP. Another asked whether OSCs must track all FedRAMP controls in their SSP or only those relevant to NIST SP 800–171 R2.

Response: Requirements associated with the use of cloud service providers (CSPs) are covered under section (b)(2)(ii)(D) of DFARS clause 252.204–7012. When a CSP is used, it must meet the requirements of the FedRAMP moderate baseline or the equivalent. The rule was updated for consistency with those requirements, and now requires FedRAMP moderate or FedRAMP moderate equivalency as defined in DoD Policy.

§§ 170.16(c)(2), 170.17(c)(5), 170.18(c)(5) address CMMC requirements for CSPs. The CMMC rule does not add new requirements on the use of CSPs, which are found in DFARS clause 252.204–7012. A CSP must be assessed against the FedRAMP moderate baseline when the CSP processes, stores, or transmits CUI. The CMMC rule does not oppose or contradict the requirements of DFARS clause 252.204–7012, nor does this rule relieve a CSP from any requirement defined in DFARS clause 252.204–7012.

§ 170.17(c)(5)(iii) and the corresponding requirement in § 170.18(c)(5)(iii) only apply to CSPs used to process, store, or transmit CUI in the execution of the contract or subcontract requiring CMMC assessment. It does not expand to any cloud provider outside the scope of the assessment. Interactions between DoD contractors and their service providers are beyond the scope of the rule.

CMMC Level 2 self-assessment and affirmation requirements described in § 170.16 make clear that an OSA using a FedRAMP Authorized CSP (at the FedRAMP Moderate or higher baseline) is not responsible for the CSP's compliance. The OSA needs to document in its SSP how the OSA meets its requirements assigned in the CSP's CRM. When using a CSP that is not FedRAMP Authorized, the OSA is responsible for determining if the CSP meets the requirements for FedRAMP Moderate equivalency as specified in DoD policy. In this case, the OSA also needs to document in its SSP how the OSA meets the requirements assigned to it in the CSP's CRM.

The rule has been updated to include verbiage from the DFARS clause 252.204–7012 ''in the performance of a contract'' for consistency. Use of the term CUI in this rule is deliberate because DoD intends to assess compliance with NIST SP 800–171 R2 for all CUI. The DoD declines to replace the word CUI with the word CDI, as the term CUI more clearly conveys that NIST SP 800–171 is the requirement for all CUI information, as described in 32 CFR 2002.14.

DoD received numerous comments about the use of ESPs which do not process, store, or transmit CUI. In response to comments, the DoD has reduced the assessment burden on ESPs. ESP assessment, certification, and authorization requirements in §§ 170.19(c)(2) and (d)(2) have been updated.

20. CMMC Assessment Scope for Devices and Asset Categorization

a. Asset Categorization

Comment: There were many comments regarding the scoping and treatment of assets when using table 3 to § 170.19(c)(1) and table 5 to § 170.19(d)(1). Several comments asked about when asset categorization occurs, who approves it and how to document it. Two comments questioned the applicability of using NIST SP 800–171 R2 for Specialized Assets. Two comments suggested modifying the definition of Out-of-Scope assets by removing the last bullet or discussing the use of encryption. One commenter suggested adding more detailed definitions of the asset categories to the rule. One comment recommended removing asset categories from the rule.

Many comments requested scoping and categorization of specific scenarios, such as ERP systems, MRP systems, quantum computing systems, data diodes, asset isolation, and encrypted CUI. Numerous additional comments requested clarification on scoping and categorization of various security product classes.

Response: The OSA performs asset categorization and documents it in their SSP. The OSA may choose the format and content of its SSP. Table 3 to § 170.19(c)(1) requires that all asset categories, including Specialized Assets, be included in the asset inventory. There is no requirement to embed every asset in the SSP. In the SSP for Level 2, the OSA must show how Specialized Assets are managed using the contractor's risk-based security policies, procedures, and practices. Prior to the conduct of an assessment, the OSC engages with the C3PAO assessor. It is during this time that the classification of assets should be agreed upon, and the results of these discussions are documented in pre-planning materials. This is an example of the pre-assessment and planning material submitted by the C3PAO as required in § 170.9(b)(8) and the CMMC Assessment Scope submitted to eMASS as required in § 170.17(a)(i)(D). It is beyond the scope of this rule to address DoD review of specific Specialized Assets for individual contractors.

DoD does not agree with a commentor's statement that Specialized Assets are not actually assessed against CMMC security requirements. As documented in § 170.19, Specialized Assets are identified by the OSC. Assessment requirements of Specialized Assets differ between CMMC Level 2 and CMMC Level 3. If Specialized Assets are part of a CMMC Level 2 assessment, the OSA must document them in the asset inventory, document them in the SSP, and show how these assets are managed using the contractor's risk-based security policies, procedures, and practices. If Specialized Assets are part of a CMMC Level 3 assessment, they must be assessed against all CMMC Level 2 security requirements and CMMC Level 3 security requirements, identified in § 170.14(c)(4).

DoD agrees with one comment that even if NIST SP 800–171 R2 cannot be implemented, that does not mean the Specialized Assets cannot be secured. CMMC requirements are defined to align directly to NIST SP 800–171 R2 and NIST SP 800–172 Feb2021 requirements. For additional ease of burden, at Level 1, IoT and OT are not in scope, at Level 2 there are reduced requirements, but they become in-scope at Level 3, unless they are physically or logically isolated.

DoD has reviewed the text and declines to change the definition of Out-of-scope assets because CUI should not

be transmitted via clear-text per NIST SP 800–171 R2. The DoD has reviewed the suggested changes to asset categories and scoping tables and declines to make an update. The asset categories in the rule help the OSA understand the requirements of various asset types that might be found within the assessment boundary.

OSAs determine the asset categories and assessment scope based on how and where they will process, store, and transmit FCI and CUI. DoD cannot comment on the suitability of any specific approach or technology to successfully implement CMMC security requirements.

b. Virtual Desktop Infrastructure

Comment: Several comments requested clarification on the use of Virtual Desktop Infrastructures and how to scope its components.

Response: The rule has been updated in table 3 to § 170.19(c)(1) and table 5 to § 170.19(d)(1) to state that an endpoint hosting a VDI client configured to not allow any processing, storage, or transmission of FCI and CUI beyond the Keyboard/Video/Mouse sent to the VDI client is considered out of scope.

c. Contractor Risk Managed Assets

Comment: There were numerous comments regarding Contractor Risk Managed Assets. Several comments perceived conflicts in the changes between the current rule and previous intermediate documents regarding CRMA requirements. Multiple comments recommended additional details explaining risk-based management of assets. Two comments requested additional details on the limited checks that are permitted during assessment of CRMAs. Multiple comments requested clarification on CRMA requirements at Level 3 for the OSA and ESP. One comment requested clarification about the documentation requirements for CRMAs.

One comment asserted that the rule co-mingled CRMAs with assets of an ESP. One comment questioned why CRMAs were being included as in-scope assets subject to CMMC security requirements. One comment asked for clarification between the security requirements and assessment requirements for CRMAs.

Response: There was confusion and concern over conflicts from commenters regarding responses to comments on a previous version of the rule, other documentation, and the current rule. The DoD did not find any conflicting language around CRMAs. There is no conflict between CRMAs and the requirements for logical or physical boundaries. CRMAs are only applicable within the CMMC Assessment Scope. DoD does not agree with the statement that the wording change around Contractor Risk Managed Asset (CRMA) effectively makes the asset category moot.

The CRMA category was created to ease the assessment burden, based on the Department's risk tolerance. It is not intended to reduce the level of protection and the CMMC security requirements which apply to the assets. Despite the wording changes identified by the commentor, the CMMC security requirements and the assessor's ability to conduct a limited check to identify deficiencies as addressed in table 3 to § 170.19(c)(1) are unchanged.

Contractor Risk Managed Assets (CRMA) should be prepared to be assessed against CMMC security requirements at Level 2, and included in the SSP, asset inventory, and network diagrams.

Table 3 to § 170.19(c)(1) clearly addresses the assessment requirements for Contractor Risk Managed Assets. All CMMC security requirements must be MET when the OSA chooses to designate certain assets as Contractor Risk Managed Assets.

Eight guidance documents for the CMMC Program are listed in Appendix A to Part 170—Guidance. These documents provide additional guidance for the CMMC model, assessments, scoping, and hashing. Use of the guidance documents is optional.

The OSA is responsible for determining its CMMC Assessment Scope and its relationship to security domains. Assets are out-of-scope when they are physically or logically separated from the assessment scope. Contractor Risk Managed Assets are only applicable within the OSA's assessment scope. Table 3 to § 170.19(c)(1) is used to identify the asset categories within the assessment scope and the associated requirements for each asset category. Contractor's risk-based security policies, procedures, and practices are not used to define the scope of the assessment, they are descriptive of the types of documents an assessor will use to meet the CMMC assessment requirements.

It is beyond the scope of the CMMC rule to provide a detailed explanation of the usage of ''risk-based'' terminology when implementing or assessing CMMC requirements. DoD declines to speculate and clarify the relationship between any NIST SP 800–171 R2 definitions and any pending NIST SP 800–171 Revision 3 definitions.

The DoD has defined the effort allowed during a limited check in table 1 to 170.19(c)(1). A limited check may require submission of evidence.

The DoD cannot anticipate how an OSC will scope its CMMC Level 3 assessment with respect to its CMMC Level 2 environment. As specified in table 5 to § 170.19(d)(1), Level 2 Contractor Risk Managed Assets are categorized as CUI Assets at Level 3.

The rule has been updated to clarify that ESPs do not require a Level 3 certification unless they process, store, or transmit CUI in the performance of a contract with a CMMC Level 3 requirement.

3 As stated in table 1 to § 170.19(c)(1), CRMA assets must be prepared to be assessed against CMMC requirements. The SSP must provide sufficient documentation describing how security requirements are met to allow the assessor to follow the instruction in table 1 to not assess against other requirements. The assessor will then decide if a limited spot check is warranted. The results of the limited spot check can result in a requirement being scored as NOT MET.

The rule does not create two classes of Contractor Risk Managed Assets as one commenter asserts. Contractor Risk Managed Assets are only those assets that are owned by the OSC and within the assessment scope. ESP assets are subject to the ESP requirements of the rule.

All assets within the OSA defined assessment boundary have access to CUI and can process, store, or transmit CUI, and are therefore subject to DFARS clause 252.204–7012 and required to meet NIST SP 800–171 requirements. This is the authority for including CRMAs within CMMC assessments. For Level 2, DoD has decided to assume some risk and lessen the assurance burden for a class of these assets called Contractor Risk Managed Assets, as specified in table 3 to § 170.19(c)(1). DoD does not assume this risk at Level 3. Contractor Risk Managed Assets are subject to assessment against all CMMC requirements as specified in table 5 to § 170.19(d)(1).

At CMMC Level 2, Contractor Risk Managed Assets and Specialized Assets are assessed differently. Both types of assets must be documented in the SSPs; Specialized Assets will not, however, be assessed by the C3PAO while limited checks may be performed on Contractor Risk Managed Assets. OSCs should be prepared for assessment of Contractor Risk Managed Assets because a deeper assessment will be done if the assessor's evaluation of the OSC's policies and procedures raise questions. However, at

Level 3, Contractor Risk Managed Assets and Specialized Assets are assessed, like CUI assets, against all CMMC security requirements, so no additional explanation is required.

d. Specialized Assets

Comment: There were numerous comments regarding Specialized Assets. Several comments discuss the use of enduring exceptions for Specialized Assets and the use of the term in NIST SP 800–171 R2. Two comments confuse the current rule with responses to a previous version of the rule. A comment requests clarification why specialized assets are not CUI assets. Another comment asks about the difference in assessment requirements between CRMAs and Specialized assets. One comment requested processes and best practices for evaluation of specialized assets.

Two comments recommend that the Specialized asset requirements for Level 3 remain the same as Level 2 due to the difficulty of meeting the Level 3 requirements in a manufacturing environment. Two comments request additional clarification on the Level 2 assessment of Specialized assets when the assessment is a precursor to a Level 3 assessment.

Response: Definitions for enduring exceptions and temporary deficiencies have been added to the rule. Specialized Assets are a type of enduring exception and cover a broad range of circumstances and system types that may not be able to be fully secured as described in NIST SP 800–171 R2. It does not give an OSA the flexibility to broadly categorize assets as Specialized Assets.

The OSA would be expected to address asset categorization with a C3PAO during the initial scoping discussion to avoid disagreements during the assessment process.

In one example provided, a single asset which is unable to meet a single security requirement would be a temporary deficiency and be addressed using an operational plan of action, describing the cause with appropriate mitigation and remediation identified.

The sentence ''NIST SP 800–171 Rev 2 uses the term ''enduring exceptions'' to describe how to handle exceptions for Specialized Assets'' appears in answers to public comments on a previous version of the rule, which responded to the initial CMMC Program requirements, therefore the inclusion of the sentence is not relevant to the rule.

One commenter has misinterpreted the answer to a public comment on a previous version of the rule, which responded to the initial CMMC Program requirements. Specialized Assets are not evaluated at Level 1. Specialized Assets at Level 2 need to be documented in the SSP and included in the asset inventory and network diagrams. They also are to be managed using the contractor's risk-based security policies, procedures, and practices.

At Level 2, Specialized Assets do not need to be assessed against other CMMC security requirements. At Level 3, Specialized Assets should be prepared to be assessed against CMMC security requirements. CMMC also provides for the use of intermediary devices to safeguard OT and IOT devices that otherwise would be difficult or expensive to protect. The phrase ''or information systems not logically or physically isolated from all such systems'' only appears in answers to public comments on the original 48 CFR CMMC interim final rule publication, therefore the inclusion of the phrase is not relevant to the rule.

Specialized Assets span a broad spectrum of components and have different limitations on the application of security controls. Processes and practices to implement and assess security requirements on these devices are outside the scope of the CMMC rule.

The Level 3 assessment is designed to provide additional safeguards to protect the most sensitive CUI against advanced persistent threats (APTs). DoD estimates that only one percent of defense contractors will require a CMMC Level 3 assessment. DoD has judged that the risks associated with the exposure of this CUI are sufficient to justify the increased cost of a Level 3 assessment on the small percentage of the DIB that is processing, storing, or transmitting this type of data.

CMMC also provides for the use of intermediary devices to safeguard OT and IOT devices that otherwise would be difficult or expensive to protect. This difference between how a Specialized Asset is assessed at Level 2 and Level 3 is risk-based and affords a reduction in cost for a Level 2 certification. The CMMC Assessment Scope for a CMMC Level 2 certification assessment is discussed between the OSC and the C3PAO. If the OSC has a goal to undergo a CMMC Level 3 certification assessment for the same assessment scope, it may be good business practice for the OSC to disclose this information to the C3PAO and be assessed based on the Level 3 scoping, however this is not required.

e. Intermediary Devices

Comment: One comment asks for additional information on intermediary devices as referenced in table 5 to § 170.19(d)(1). Another comment asks for direction in situations where the comment asserts intermediary devices are not practical.

Response: An intermediary device is used in conjunction with a specialized asset to provide the capability to meet one or more of the CMMC security requirements. For example, such a device could be a boundary device or a proxy, depending on which requirements are being met. The rule is agnostic as to how many requirements are met and what technology is used to meet them. Implementation guidance for OT/IOT/IIOT is outside the scope of the CMMC rule.

21. CMMC Assessment Scope for Enterprise Versus Segmented Environments

Comment: Two commenters sought guidance for segmented networks that inherit some controls from an enterprise network that has a valid CMMC certification, and asked whether certification assessments may be shared between the networks.

Response: § 170.19 states that prior to a CMMC assessment, the OSA must define the CMMC Assessment Scope for the assessment, representing the boundary with which the CMMC assessment will be associated. Any CMMC certification granted applies only to the assessed CMMC Assessment Scope. An enclave may be able to leverage some elements of the enterprise assessment by inheriting some requirements from the enterprise network, but it cannot inherit the enterprise certification. Enclaves beyond the certified CMMC Assessment Scope must be assessed separately based on their own CMMC Assessment Scope.

There is no established metric for inherited implementations from an enterprise to any defined enclaves. The OSA determines the architecture that best meets its business needs and complies with CMMC requirements. Within the enclave, the OSA determines which requirements are implemented and which requirements are inherited; all requirements must be MET. If a process, policy, tool, or technology within the enclave would invalidate an implementation at the Enterprise level, that requirement cannot be inherited and the OSA must demonstrate that it is MET by implementation in some other way. Additional guidance related to assessments and enclaves has been added to the CMMC Scoping Guide Level 2 and Level 3.

22. Revocations and Appeals Process

Comment: One comment asked for more clarification regarding the granting

and revoking of interim validity status for a CMMC assessment. Several comments requested an appeal and remediation process if a CMMC assessment status is revoked by the DoD. One comment requested that the revocation process not be arbitrary or capricious and provide for due process. And one comment recommended removing the word ''maintained'' from the criteria for revocation of the validity status because maintenance is part of ongoing operations as specified in the security requirement for Risk Assessments and Continuous Monitoring (CA.L2–3.12.2). One commenter asked whether SPRS reporting is the only mechanism in place to ensure that OSAs maintain the SSP and conduct self-assessments correctly.

Three comments recommended that the DoD or CMMC PMO have a role in the assessment appeals process. Of these, one cited the DFARS clause 252.204–7012 clause as precedent for DoD CIO to render final decisions. Some commenters suggested the CMMC AB relationship to C3PAOs would bias any decisions they may make, and that final appeal authority is an inherently governmental risk acceptance decision. One comment suggested that the DIBCAC or other DoD entity render final appeals decisions or take responsibility for certifying OSCs. They also asked for the C3PAOs to be released from liability for reasonable assessment judgments. Two comments asked whether the only means to appeal a CMMC AB final decision is through litigation. Another comment asked who could escalate an appeal to the CMMC AB. One comment requested the rule include more requirements for the C3PAO appeals process, including that the process be time bound and address disputes related to perceived assessor errors, malfeasance, and unethical conduct, while another comment requested a simpler appeals process. One comment requested clarification as to how the OSC interfaces with the C3PAO for appeals purposes. One comment asked if there was a process to challenge C3PAOs' findings of non-compliance if additional requirements are applied from an assessment guide that are not included in the source standard. One comment asked how to dispute the specific CMMC level included in a solicitation.

Response: Requirements for CMMC Conditional certification assessments for each level are defined in §§ 170.16 through 170.18. Section 170.6(e) describes indications that may trigger investigative evaluations of an OSA's CMMC Status. The DoD has revised the rule throughout to delete the term ''revocation'' and to clarify that the DoD reserves its right to conduct a DCMA DIBCAC assessment of the OSA, as permitted under DFARS clause 252.204–7012 and DFARS clause 252.204–7020. If the results of a subsequent DIBCAC assessment show that adherence to provisions of this rule have not been achieved or maintained, the DIBCAC results take precedence over any pre-existing CMMC self-assessment(s) or Final certification assessment(s) and will result in SPRS reflecting that the OSA is not in compliance (*i.e.,* lacks a current Certificate of CMMC Status). There are no additional requirements or checks on self-assessments to ensure that OSAs maintain the SSP and conduct self-assessments correctly, beyond those identified in the rule.

One commenter misunderstood the meaning of 'maintained' with respect to the Level 1, 2, and 3 provisions. An operational plan of action can be created without risk to the certification validity period. If a security event generates risk for the protection of FCI or CUI, the associated security requirements should be readdressed expeditiously. If one or more of the requirements can't be remediated, the OSA should create an operational plan of action and resolve it in a time frame that continues to provide protection to FCI or CUI.

The Accreditation Body must have its own appeals process, as required under ISO/IEC 17011:2017(E). Each C3PAO is required to have an appeals process which involves elevation to the CMMC Accreditation Body for resolution. The appeals process is derived from and consistent with ISO/IEC 17020:2012(E) and ISO/IEC 17011:2017(E). The appeals process is addressed in §§ 170.7(b), 170.8(b)(16), and 170.9(b)(13), (19), and (20). An OSC, the CMMC AB, or a C3PAO may appeal the outcome of its DCMA DIBCAC conducted assessment within 21 days of the assessment by submitting a written basis for appeal that include the requirements in question for DCMA DIBCAC consideration. An OSC, the CMMC AB, or a C3PAO should visit *www.dcma.mil/DIBCAC* to obtain the latest for contact information for submitting appeals. A DCMA DIBCAC Quality Assurance Review Team will respond to acknowledge receipt of the appeal and may request additional supporting documentation.

By defining the requirements in this rule to become a C3PAO, and defining a scoring methodology, the DoD is providing the authority and guidance necessary for C3PAOs to conduct assessments. The CMMC Accreditation Body will administer the CMMC Ecosystem. The DoD will not assume the workload of directly managing the CMMC ecosystem or the other alternatives suggested. DoD declines to give the PMO responsibility to render the final decision on all CMMC Level 2 assessment appeals as this role is properly aligned to the CMMC Accreditation Body. The CMMC AB is under contract with the Department of Defense to execute defined roles and responsibilities for the DoD CMMC Program as outlined in § 170.8. The specified CMMC AB requirements were selected and approved by the DoD. They include Conflict of Interest, Code of Professional Conduct, and Ethics policies as set forth in the DoD contract.

For ISO/IEC 17020:2012(E) and ISO/IEC 17011:2017(E) compliance, an appeals process is required. CMMC-specific requirements for appeals are addressed in §§ 170.8(b)(16) and 170.9(b)(13), (19), and (20). The DoD expects the process to be managed efficiently, however setting a specific timeline is not appropriate as the time may vary based on the complexity of the issue.

Responsibility for final appeals determination rests with the CMMC AB. The DoD declines to mandate that the CMMC AB consult with the CMMC PMO or DIBCAC prior to rendering a decision. The CMMC PMO will serve in the oversight role for the entire CMMC program.

OSCs may submit any appeal arising from CMMC Level 2 assessment activities to C3PAOs as addressed in § 170.9(b)(19). OSCs may request a copy of the process from their C3PAO. The rule has been revised to reflect that any dispute over assessment findings which cannot be resolved by the C3PAO may be escalated to the CMMC AB by either the C3PAO or the OSC. The decision rendered by the CMMC AB will be final as stated in § 170.8(b)(16). Appeals pertaining to an assessor's professional conduct that is not resolved with the C3PAO will also be escalated and resolved by the CMMC AB.

As addressed in § 170.9(b)(13), the C3PAO will have a quality assurance individual responsible for managing the appeals process in accordance with ISO/IEC 17020:2012(E) and ISO/IEC 17011:2017(E). Identification of the C3PAO staff that an OSC should interface with is beyond the scope of this rule. It is a business decision that may vary by C3PAO and should be addressed between the OSC and C3PAO prior to conduct of an assessment.

The supplemental documents listed in Appendix A provide additional guidance to aid in CMMC

implementation and are not authoritative. In the event of conflicts with the security requirements incorporated by reference, this rule and NIST SP 800–171A Jun2018 or NIST SP 800–172A Mar2022 guidance will always take precedence. Disputes regarding the CMMC level specified in a contract solicitation should be addressed with the contracting officer using normal pre-award or post-award communications processes. No revision to the rule is required. Selection of the CMMC level is a DoD risk-based decision made by the Program Manager or Requiring Activity.

23. CMMC Cybersecurity Requirements

a. NIST SP 800–171 R2 Requirements

Comment: Several comments were received regarding FIPS-validated cryptography. Some recommended mitigating delays with FIPS validation testing and reducing the risk of CMMC assessment failures by allowing FIPS POA&Ms or POA&M extensions, waivers, or making encryption an organizationally defined parameter (ODP). Similarly, some recommended the DoD accept alternate FIPS solutions such as commercially viable modules with FIPS-approved protocols or FIPS-compliant—as opposed to FIPS-validated—protocols. One comment recommended that DoD collaborate with NIST to either improve the processing of FIPS validation testing and/or to define the encryption ODP for NIST SP 800–171 Revision 3. One comment recommended DoD work with NIST to align NIST ODPs in NIST SP 800–171 Revision 3 to DoD ODPs defined in the CMMC Rule for CMMC Level 3 to ensure consistency. Another commenter asked if FIPS 140–3 was an acceptable FIPS implementation.

Multiple comments addressed NIST requirements. One comment stated the NIST cybersecurity standards and guidelines are not legal requirements. The commenter recommended edits to the CMMC rule to require contractors implement requirements ''derived'' from NIST SP 800–171 R2 with measurable specifications to protect CUI. Two commentors felt the body of the proposed rule should have included a list of the NIST requirements to be assessed at each CMMC level. One comment suggested clarifying when a Systems Security Plan is required for each level. And, one asked if the CMMC Assessment Scope and attestation requirements included Non-Federal Organization (NFO) controls or the flow-down and reporting requirements from DFARS clause 252.204–7012.

Some comments were speculative in nature and outside the scope of the rule. One commenter was concerned that a CMMC assessment would not address the risk of insider threats and national security problems driven by political divisions within Congress.

Response: DoD is aware of industry concerns regarding FIPS validation required in NIST SP 800–171 R2 requirement 3.13.11. Because this is a NIST requirement, changing it is beyond the scope of the CMMC rule. As stated in § 170.5(3), the CMMC Program does not alter any separately applicable requirements to protect FCI or CUI, including the requirement to use FIPS-validated cryptography which comes from NIST SP 800–171 as required by DFARS clause 252.204–7012. Limitations of the FIPS-validated module process do not impact the implementation status of FIPS cryptography. However, the rule has been updated to allow for Enduring Exceptions and temporary deficiencies, which may apply to the implementation of FIPS.

DoD declined to update the rule to include ''FIPS-compliant'' encryption as opposed to ''FIPS-validated'' encryption. NIST SP 800–171 R2 requires the use of validated modules in specific conditions. Comments on the specific security requirements contained in NIST documentation are beyond the scope of this rule and should be directed to NIST. Collaboration between DoD and NIST about the NIST cryptographic module validation program, or to define cryptography related ODPs in NIST SP 800–171 Revision 3, is also beyond the scope of the rule. Recommendations for desired changes in NIST documentation should be directed to NIST.

The NIST Cryptographic Module Validation Program website provides a list of approved solutions and their timelines: *https://csrc.nist.gov/projects/cryptographic-module-validation-program*.

NIST SP 800–171 information security requirements were codified in 32 CFR part 2002 in response to guidance (in E.O. 13556) to standardize Federal agency policies for safeguarding CUI. The DoD has elected to use FAR clause 52.204–21, NIST SP 800–171 R2, and a subset of NIST SP 800–172 Feb2021 as the basis for the security requirements in this rule.

As stated in § 170.14(c), CMMC Level 1 requirements are found in FAR clause 52.204–21, CMMC Level 2 requirements are found in NIST SP 800–171 R2, and CMMC Level 3 requirements are a selected subset of NIST SP 800–172 Feb2021 requirements as specified in the 32 CFR part 170 CMMC Program rule in table 1 of § 170.14.

NIST SP 800–171A Jun2018 provides authoritative procedures for assessing NIST SP 800–171 R2 security requirements and the CMMC Level 2 Assessment Guide provides additional guidance for assessing CMMC Level 2 security requirements. Both documents are referenced in the 32 CFR part 170 CMMC Program rule, at §§ 170.16(c) and 170.17(c).

It is recommended that an OSA develop a SSP as a best practice at Level 1, however, it is not required for a CMMC Level 1 self-assessment. A CMMC assessment does not include Non-Federal Organization (NFO) controls from table E in NIST SP 800–171 R2 nor the DFARS clause 252.204–7021 flow down and reporting requirements.

DoD concurs that CMMC provides no mechanism for addressing insider threats posed by political divisions in Congress. However, insider threat in general is addressed in the following CMMC security requirements: AT.L2–3.2.3—Insider Threat Awareness; AC.L2–3.1.7—Privileged Functions; PS.L3–3.9.2e–Adverse Information.

b. Transition to Future NIST Requirements

Comment: Many commenters raised concerns about the CMMC Proposed Rule's citation of a specific version of a relevant baseline document, *i.e.,* NIST SP 800–171 R2. The expressed concerns focused mainly on a perceived potential for a timing conflict between the NIST revision requirements based on DFARS clause 252.204–7012 (revision in effect at time of solicitation) and this CMMC Program rule which specifies NIST SP 800–171 R2. Commentors provided a variety of differing suggestions to address these concerns. Some commenters recommended that no revision number be included, while others recommended citing Revision 3 rather than Revision 2. Others recommended delaying the CMMC Program. Some recommended changing DFARS clause 252.204–7012 or issuing a class deviation to address differences between the NIST revisions cited. Those that recommended citing to Revision 3 noted that to do otherwise could delay compliance with Revision 3 beyond NIST's anticipated finalization of that publication. Commenters noted that the criteria defined in guidance explaining how to assess against NIST requirements (*i.e.,* NIST SP 800–171A Jun2018) does not identify a revision number for the NIST SP 800–171 requirements to which they apply. In addition to the comments about NIST

SP 800–171 R2 and NIST SP 800–171 Revision 3, some commenters questioned how DoD would implement or how long the DoD would allow for transitioning to each future version of NIST standards once approved.

One commenter recommended defining a waiver process to manage the transition for each new NIST revision. Another commenter asked whether contract work stoppages are expected during such transitions and if industry would be afforded time to understand the impacts of new requirements to existing systems. One commenter suggested that CMMC affirmations should indicate continued compliance to the NIST SP 800–171 version that applied to the corresponding self-assessment or certification assessment.

Two commenters recommended changing the incorporation by reference version of NIST 800–53 that is cited in this rule be changed from Revision 5 to Revision 4, to better align with the incorporation of NIST SP 800–171 R2. Another commenter noted that both NIST SP 800–171 R2 and NIST SP 800–172 Feb2021 include Organizationally Defined Parameters (ODP), the latter of which are defined in this rule. The commenter advised against defining ODP for either reference, and recommended deletion of specific rule text that does so.

Response: DoD is aware of the differences between the language of DFARS clause 252.204–7012 and the proposed rule. 1 CFR part 51, which governs drafting of this rule, requires the specification of a revision to a standard. Specifying a revision benefits the CMMC Ecosystem by ensuring it moves forward from one NIST standard to the next in an organized manner. The DoD cites NIST SP 800–171 R2 in this final rule for a variety of reasons, including the time needed for industry preparation to implement the requirements and the time needed to prepare the CMMC Ecosystem to perform assessments against subsequent revisions. DoD is unable to incorporate suggestions that CMMC assessments be aligned to whichever NIST revision is current at the time of solicitation and declines to respond to speculation about the release timing of other publications. In May 2024, NIST published SP 800–171 Revision 3, *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations,* after these comments were received. DoD will issue future amendments to this rule to incorporate the current version at that time. Comments on the content of the NIST SP 800–171 Revision 3 publication or future NIST SP 800–171 revisions should be directed to NIST.

The final rule has been updated to specify the use of NIST SP 800–171A Jun2018, *Assessing Security Requirements for Controlled Unclassified Information,* and NIST SP 800–172A Mar2022, *Assessing Enhanced Security Requirements for Controlled Unclassified Information.*

The DoD has included the numbering scheme in the rule because the numbering scheme is a key element of the model. The CMMC numbering scheme for security requirements must pull together the independent numbering schemes of FAR clause 52.204–21 (for Level 1), NIST SP 800–171 R2 (for Level 2), and NIST SP 800–172 Feb2021 (for Level 3); it must also identify the domain and CMMC level of the security requirement. DoD developed the least complicated scheme that met all these criteria.

The CMMC Program Office is unable to respond to comments proposing changes to the DFARS, which is subject to separate rulemaking procedures. One commenter described a hypothetical scenario wherein a solicitation is issued such that DFARS clause 252.204–7012 would require compliance with NIST SP 800–171 Revision 3, but the CMMC requirement identified is for assessment against NIST SP 800–171 R2. In this hypothetical scenario, it is possible that the bidder may meet the CMMC requirement by citing a valid CMMC assessment against NIST SP 800–171 R2, while also availing themselves of the flexibilities provided in DFARS clause 252.204–7012 (2)(ii)(B) to submit a written request to the Contracting Officer to vary from the current version of NIST SP 800–171.

Recommendations for modification to or deviation from DFARS clause 252.204–7012 are beyond the scope of this rule. The DoD has evaluated the potential interaction between the CMMC program requirements and the existing requirements in DFARS clause 252.204–7012 and believes that potential conflicts have been resolved.

NIST SP 800–53 R5 is incorporated by reference only for applicable definitions because DoD chose to use the latest definitions available. While it is also true that NIST SP 800–171 R2 was based on NIST SP 800–53 Revision 4, the origination of NIST SP 800–171 R2 is beyond the scope of this rule.

Contractors and subcontractors will not be expected to stop work while they implement changing standards. Implementation of this rule will be introduced as a pre-award requirement in new DoD solicitations, as described in the timeline at § 170.3(e).

Any substantive change to CMMC security requirements must go through rulemaking, and its associated timeline, which may include public comment. The new rule may include a transition period for implementation of the new security requirements.

The commenter correctly identifies that the programmatic intent of this rule is for affirmations to signify systems in question remain compliant as indicated by the assessment that was conducted. Assessments are conducted against the specified NIST publication versions or the requirements in FAR clause 52.204–21. The 48 CFR part 204 CMMC Acquisition rule also reinforces this thought by providing specific wording of the affirmation.

c. NIST SP 800–172 Feb2021 Requirements

Comment: Multiple comments recommended adding all the omitted requirements from NIST SP 800–172 Feb2021 or a subset including Network Intrusion Detection System, Deception and Unpredictability, arguing that they are necessary for protecting CUI and to defend against advanced persistent threats.

Two comments inferred that the requirement to restrict access to systems owned, provisioned or issued by the OSC means that the OSC must provide all equipment used to access the system, which they asserted is impossible because outside entities using GFE, to include DoD, may need access. One commenter also asked if DIB Furnished Equipment would be required, and one commenter argued for an exception for GFE, even though it is not owned, provisioned, or issued by the OSC.

Three comments stated that Organizationally Defined Parameters (ODP) values need to be set by OSAs, not DoD. One commenter argued this will be necessary because of the emerging ODPs at Level 2 associated with NIST SP 800–171 Revision 3. One commenter argued this is critical for uniformity across the Federal enterprise as many contractors support multiple Federal agencies. The commenter further offered that allowing ODP values to be set by OSAs could be limited to contractor systems not operated on behalf of the DoD. One commenter suggested that ODP values set by OSAs may require approval by the contracting officer. One comment stated that the ODPs are too detailed for the 32 CFR part 170 CMMC Program rule, and table 1 to § 170.14 should be moved to the Level 3 Assessment Guide.

One comment argued that removal or quarantine of components to facilitate patching or re-configuration, as specified in table 1 to § 170.14(c)(4) CM.L3–3.4.2e, is a disruptive and

possibly a destructive operational constraint affecting business operations. They asserted that patching and reconfiguration are standard day-to-day IT administrative activity, and components do not need to be removed or quarantined.

One comment asserted that CMMC should be based on NIST SP 800–53 R5 requirements (linked to the associated NIST SP 800–172 Feb2021 requirements) due to additional labor required to create NIST SP 800–53 R5 solutions and benefits to be gained from NIST SP 800–53 R5 overlays.

Two comments argued that IA:L3–3.5.3e regarding 'the prohibition of system components from connecting to organizational systems unless certain conditions are met' is essentially the same requirement as CM:L2–3.4.7 'restricting, disabling, or preventing the use of nonessential programs, functions, ports, protocols, and services'.

Response: DoD considered many alternatives before deciding which NIST SP 800–172 Feb2021 requirements to include as part of CMMC Level 3. NIST SP 800–172 Feb2021 notes that ''There is no expectation that all of the enhanced security requirements will be selected by Federal agencies implementing this guidance.'' For a variety of reasons, including DoD's estimation of cybersecurity maturity and complexity across the DIB, and potential cost of certain Level 3 requirements compared with the benefit, the DoD has included a limited set of NIST SP 800–172 Feb2021 requirements. On a contract-by-contract basis, additional requirements may be added. OSAs are at liberty to implement additional requirements.

The intent of AC.L3–3.1.2e, which requires restricted access to systems and system components, is not that DIB companies issue laptops to external users wishing to access Level 3 enclaves. While laptop issuance is one solution, other options are available. The important concept in this requirement is ''comply to connect'', and it applies to all users, both within the OSA and externally, equally. In complying with this requirement, GFE may be considered provisioned by the OSC and therefore is not restricted under that requirement.

DoD defines the ODPs for NIST SP 800–172 Feb2021 included in CMMC Level 3. This eliminates the risk of different parameters being set for different DoD programs. Rulemaking requirements dictate that table 1 to 170.14(c)(4) be codified in the rule. The Assessment Guide is an optional document.

DoD declines to accept the risk of removing security requirement CM.L3–3.4.2e. The Assessment Guide has been updated to include additional discussion on this security requirement. Feedback on individual security requirements should be direct to NIST.

Any relationship to the NIST SP 800–53 R5 controls is for information only. The requirements that must be implemented for CMMC Level 3 are defined in the rule table 1 to § 170.14(c)(4).

IA:L3–3.5.3e and CM:L2–3.4.7 are different requirements. The L2 requirement is about functionality, and the L3 requirement is about trust. Feedback on individual security requirements should be direct to NIST.

24. CMMC Annual Affirmation Requirements

Comment: One commenter recommended the affirmation statement include a statement confirming the scope has not changed and requested the rule be modified to identify types of changes that would constitute a change of system scope. Another commenter recommended removing any requirement for affirmation after assessment certificate issuance or else revising the rule to identify any benefits the affirmation provides that conducting an independent assessment does not already provide. Another commenter recommended the DoD clarify that out-of-cycle affirmations are not needed.

Three comments said the affirmation language needs revision because maintaining perfect scores is not possible and asking individuals to affirm continuous compliance is unreasonable. One commenter voiced apprehension that signing the affirmation statement would make a person criminally liable under the False Claims Act, due to the need for system maintenance to fix things that break. One commenter expressed concern that continuous monitoring by contractors increases cost and burden to stay in compliance and opens companies up to False Claims Act liabilities. One of these commenters recommended DoD rely on representation and self-assessment in lieu of affirmations to indicate that the offeror meets the requirements of the CMMC level required by the solicitation. Two commenters requested clarification on what affirmation entails. Another commenter requested modification to clarify that the Affirming Official will attest only that the requirements are implemented as of the certification date, or proposal submission date, and requested removal of affirmation references to continuous compliance.

Two commenters urged the Department to align the annual affirmation timeline with the 3-year assessment timeline to ensure consistency and reduce potential False Claims Act liability. One commenter also incorrectly believed a prime contractor affirmation would be made on behalf of its entire supply chain.

Another commenter asked DoD to clarify that an organization may obtain from C3PAOs a limited review of changes made since the last assessment in support of required affirmations and noted that the DoD or CMMC AB may wish to clarify what supporting evidence is required for annual affirmations. Additionally, the commenter recommended that DoD reconsider the requirements for CMMC Level 1 since these are covered by System for Award Management (SAM).

One commenter asked, in reference to POA&M closeout affirmations, if there was no longer an expectation that a C3PAO will confirm the close out of a POA&M. One commenter provided a recommendation to include an executive summary in the affirmation that includes POA&M related metrics as an indicator of an OSA's effective O&M, security, and continuous monitoring activities.

Response: As described in § 170.22(a)(2)(ii), the CMMC affirmation shall include a statement to the effect that the OSA has implemented and will maintain implementation ''within the relevant assessment scope'', which adequately addresses the commenters suggestion. No change to the rule text was therefore required. Annual affirmations ensure OSAs conduct periodic checks and verify to the Department that changes to their networks have not taken them out of compliance during the certification period. The annual affirmation requirement enables DoD to permit 3 years between CMMC Level 2 or 3 assessments, rather than requiring annual assessments. The DoD does not agree with the comment that following the procedures in § 170.22 creates an additional burden. The DoD does not concur with removing the terms ''continuing'' or ''continuous ''as it relates to an OSA's affirmation. Continuing compliance means that the contractor system in question remains in compliance and that the OSA intends to maintain compliance over time, not that the OSA cannot have an operational plan of action. Any changes to the information system beyond use of operational plans of action require a new assessment and a new affirmation. Operational plans of action as described in CA.L2–3.12.2 are part of normal

maintenance of a system and do not require a separate out-of-cycle affirmation. The DoD declines to address specific cases when affirmations are not required. DoD's use of the term OSA within the affirmations section is deliberate and conveys that each organization is responsible for affirmations pertaining to their own assessments. An Affirming Official definition was added to the rule and provides that clarification.

The rule delineates which requirements may be addressed with a POA&M for up to 180 days to achieve Final CMMC Status. As stated in § 170.22, an Affirming Official attests the organization is satisfying and will maintain its specified cybersecurity requirements. An OSA may complete a self-assessment and submit a new affirmation at any time. POA&Ms associated with conditional assessments are closed-out by C3PAOs for Level 2 final certification assessments and by DCMA DIBCAC for Level 3 final certification assessments. OSAs must affirm results in SPRS for all assessments.

If an OSA makes significant changes within the CMMC Assessment Scope, a new assessment and affirmation are required. The rule does not preclude OSAs from contacting a C3PAO for a review prior to an annual affirmation, however this is not required. No supporting evidence is required for an annual affirmation. Annual representations and certifications submitted in the System for Award Management (SAM) serve a different purpose from the CMMC affirmation requirement completed in SPRS. Furthermore, given the sensitivity of an OSA's cyber security status, the DoD has elected not to use SAM, a public website.

Details for completion of the annual affirmation, including wording of the affirmation statement, are addressed in the 48 CFR part 204 CMMC Acquisition rule. The affirmation signifies the requirements were implemented as of the date of the self-assessment or certification, and that the OSA has and intends to maintain the system as assessed. The DoD declines to require the use of an executive summary or the publication of metrics in the affirmation statement as part of the affirmation because that is not consistent with the purpose of the affirmation requirement.

Regarding the alignment of assessments and affirmation timelines, the DoD declines to adopt recommended changes which would allow up to 3 years to elapse before DIB companies would be required to assess the status of their cybersecurity compliance.

25. CMMC Acceptance of Alternate Standards

a. CMMC and Other Agency Standards or Acceptance of CMMC Assessments

Comment: Several commenters asked for additional detail about § 170.20 Standards Acceptance. One commenter described discussions from various DoD industry engagements and suggested the rule is inconsistent with information provided at those information exchange events.

Some commenters observed the rule does not describe DoD efforts to coordinate with other agencies regarding any additional cybersecurity requirements they choose to implement, which could conflict or add burden for companies that must also comply CMMC requirements. One comment suggested implementing the CMMC program government wide. An industry association submitted several comments regarding perceived duplication between this rule and cybersecurity requirements of other Federal agencies and foreign governments. They also recommended the DoD modify the rule to reflect other agency standards, such as TSA and CISA security directives requiring cyber incident reporting for natural gas utilities.

Several commenters thought the rule did not adequately explain potential portability of CMMC assessments, referring to whether other agencies might recognize CMMC compliance as meeting or partially meeting their requirements. One specifically suggested CMMC affirmations could be accepted as evidence of compliance with any similar cybersecurity requirements other agencies may implement. One comment suggested that by assessing compliance of all applicable security requirements, the CMMC program will impede efforts to establish DoD information sharing agreements with other non-DoD organizations, including other agencies and foreign governments.

Response: Some comments received lacked relevance to the rule's content, which is limited to specific CMMC Program requirements. The DoD declines to respond to speculative or editorial comments about private citizens or entities, all of which are not within the scope of this rule.

Similar data security requirements are already applied to contractors across all Federal agencies, due to the applicability of FAR clause 52.204–21, and 32 CFR part 2002. All executive agencies are required to comply with the same standards for protection of FCI and CUI in those regulations. Once attained, a current CMMC certification may be presented for consideration by any entity (including other government agencies) as an indicator that the security requirements associated with the certificate level (*e.g.,* CMMC Level 2) have in fact been implemented.

CMMC Program requirements are designed to ensure compliance with existing standards for protection of FCI and CUI and align directly to NIST guidelines (*e.g.,* NIST SP 800–171 R2) and the basic safeguarding requirements of FAR clause 52.204–21 that apply to all executive agencies. Regulations issued by any executive agency must be aligned to these overarching requirements, therefore CMMC Program requirements will not conflict with any FCI or CUI safeguarding regulations that may be issued by other agencies as cited by the commenter. All executive agencies are permitted to submit and review comments as part of the formal rulemaking process, and additional coordination is not required. This rule provides a consistent way of verifying contractors' compliance with the referenced FAR and NIST requirements, in addition to those from NIST SP 800–172 Feb2021 where applicable.

b. Requests To Recognize Alternate Standards

Comment: Several commenters requested the rule be modified to accept or recognize alternate standards for the purpose of meeting CMMC assessment requirements. Some small to medium businesses recommended acceptance of healthcare relevant standards or other recognized certification frameworks as a substitute for CMMC and FedRAMP Equivalency.

Another comment cited verbiage in the DFARS clause 252.204–7012 clause that references DoD CIO approval to ''vary'' from NIST SP 800–171 requirements as rationale for revising the CMMC rule to permit acceptance of other standards such as the NERC Critical Infrastructure Protection standards which apply to North America's Bulk Electric System (BES).

Some comments expressed concern that absent greater acceptance of the standards required by other agencies, companies complying with CMMC would be at a competitive disadvantage due to the perceived costs of complying with CMMC standards. Another comment expressed a similar concern but cited the need for acceptance of foreign C3PAOs to effectively scale CMMC to include assessment of foreign OSCs.

Response: CMMC Program requirements apply to those contractors that seek to bid for DoD work which requires processing, storing, or transmitting FCI or CUI in a contractor owned information system. Section 170.20 addresses Standards Acceptance and delineates the only existing bases for accepting alternate standards in this rule. The DoD does not currently have standards acceptance with other Federal entities in lieu of the CMMC requirement.

DoD's harmonization of requirements with other agencies is achieved through compliance with NIST standards. DoD's recognition of the standards of other nations occurs through negotiation of international arrangements and agreements, which is beyond the scope of this rule. The CMMC Program has aligned requirements with NIST standards, and many foreign nations are adopting NIST standards as well. In developing this rule, the DoD worked with standards bodies, removed unique requirements, and aligned new requirements directly with NIST SP 800–171 R2 and select NIST SP 800–172 Feb2021 requirements to reduce and streamline cybersecurity burden across the industry. CMMC Program requirements make no change to existing policies for limits on dissemination of CUI. Comments on information sharing between other agencies or foreign entities are beyond the scope of this rule. The requirement to comply with NIST SP 800–171 was mandated in DFARS clause 252.204–7012. Granting alternatives to that standard is beyond the scope of this rule.

Several foreign or international companies submitted comments expressing interest in the rule section pertaining to C3PAO requirements (§ 170.9(b)) and correctly noted that this section does not preclude otherwise qualified foreign companies from achieving C3PAO accreditation. Note that the DoD does permit C3PAO personnel who are not eligible to obtain a Tier 3 background investigation to meet the equivalent of a favorably adjudicated Tier 3 background investigation. DoD will determine the Tier 3 background investigation equivalence for use with the CMMC Program only.

c. CMMC Acceptance of Other DIBCAC Assessments

Comment: Some commenters either did not understand or objected to the fact that standards acceptance requirements for DIBCAC High Assessments require a score of 110 without POA&Ms. Other comments requested clarity regarding standards acceptance of DIBCAC High Assessments at CMMC Levels 2 and 3. One comment inquired about the programmatic details of DCMA's Joint Surveillance Program.

Another comment expressed concerns over disparities between how CMMC C3PAOs and DIBCAC assess, given the fact that DIBCAC assessors are empowered to make risk acceptance decisions on behalf of the Government, whereas C3PAO assessors are not. One commenter questioned the use of the NIST SP 800–171 R2 Cybersecurity FAQs as published in the DoD Procurement Toolbox. Another commenter asked whether C3PAOs assess for compliance with DFARS clause 252.204–7012, paragraphs c–g, as DCMA DIBCAC does in their assessments of OSAs. One commenter suggested that the DIBCAC is not certified to conduct Level 3 assessments and that training requirements for CMMC Level 2 C3PAO assessors should also apply to DIBCAC assessors, or else Level 3 assessments should be conducted by C3PAOs.

Response: There is qualified standards acceptance between DCMA DIBCAC High Assessment and CMMC Level 2 Certification Assessment as described in § 170.20(a). There is no standards acceptance between DCMA DIBCAC High Assessment and CMMC Level 3. To be eligible for standards acceptance resulting in a CMMC certification, an OSC must achieve a perfect 110 score on the Joint Surveillance assessment without any open POA&Ms at the time of assessment. If the Joint Surveillance assessment results in POA&M actions, any POA&M must be closed prior to standards acceptance.

Completion of a prior DCMA DIBCAC High Assessment does not necessarily indicate the likelihood of a future CMMC Level 3 requirement. DIBCAC High assessments are currently conducted against the NIST SP 800–171 R2 requirements, whereas the DoD will identify the need for a CMMC Level 3 assessment when its internal policies indicate the added protections of NIST SP 800–172 Feb2021 are necessary to adequately safeguard DoD information.

Acceptance of a small number of DIBCAC High or Joint Surveillance Program assessments to meet future CMMC Level 2 assessment requirements will reduce the initial demand for C3PAO assessment. Only those DIBCAC High Assessments completed prior to the effective date of the rule are eligible for standards acceptance to meet CMMC Level 2 Certification requirements. The DoD will enter CMMC Level 2 Certifications into eMASS for suitable DIBCAC High Assessments, with a validity period of 3 years from the date of the original High Assessment. A CMMC Final Level 2 certification assessment is entered into eMASS by the C3PAO following a successful (*i.e.,* perfect score with no POA&Ms) joint surveillance assessment against NIST SP 800–171 R2. It is not the result of a CMMC Level 3 assessment but can be provided as evidence that an OSC is ready to initiate a CMMC Level 3 assessment.

Although Joint Surveillance is listed as standards acceptance in 170.20(a)(1), the details of this DCMA program and any changes to it are beyond the scope of this rule. A Joint surveillance is a DCMA DIBCAC assessment and falls under their purview. The CMMC office understands that there is disparity between what is assessed by a C3PAO and the DIBCAC and that the guidance information in the DoD Procurement Toolbox is the driving factor. Since the Procurement Toolbox is outside of the scope of the 32 CFR part 170 CMMC Program rule, it cannot be properly addressed here or in the rule. With CMMC the DoD utilizes a risk-based approach in its allowance for POA&Ms, gradient scoring for certain controls (*e.g.,* FIPS and MFA), temporary deficiencies, and enduring exceptions.

DCMA DIBCAC assessors are trained and qualified to conduct assessment against NIST SP 800–171 R2 for the DoD. DoD determined that C3PAOs conducting assessments on other C3PAOs introduced a significant conflict of interest. Given the sensitivity of the programs requiring Level 3 assessments, the DoD determined that those assessments must be completed by a DoD entity. The DoD declines to respond to speculative or editorial comments regarding DCMA DIBCAC assessments.

The CMMC model (§ 170.14) only incorporates requirements from FAR clause 52.204–21, NIST SP 800–171 R2, and NIST SP 800–172 Feb2021. C3PAOs are only responsible for assessing the requirements of § 170.17. DCMA DIBCAC operates under different authorities and can address all the requirements of DFARS clause 252.204–7012.

d. Validity Period for Standards Acceptance

Comment: Two comments asked how SPRS would be updated to reflect CMMC Level 2 certification when based on standards acceptance. One asked whether that update would be automatic. One comment asked whether CMMC standards acceptance for

DIBCAC joint surveillance assessments would result in certifications being issued to the OSA by the C3PAO or by DIBCAC.

Some comments, including those from three industry associations, objected to the start date for the 3-year validity of CMMC certification based on standards acceptance of prior DIBCAC assessments. Those comments requested the validity period begin with the effective date of the 32 CFR part 170 CMMC Program rule. Along these lines, another commenter asked whether C3PAOs may certify an OSA based on evidence of a perfect 110-scored DIBCAC High Assessment. One comment requested a 1-year extension of the validity period to 4 years.

Response: The DoD has considered the recommendation to modify the validity period for certifications resulting from standards acceptance and declines to revise the rule text. It is important that contractors maintain security compliance for systems that process, store, or transmit DoD CUI. Given the evolving cybersecurity threat, DoD's best interests are served by ensuring that CMMC Level 2 assessments remain valid for no longer than a 3-year period, regardless of who performs the assessment.

A C3PAO may not simply read the DIBCAC assessment score in SPRS and grant a completed CMMC Level 2 certification assessment. C3PAOs may only submit certification assessment results based on having conducted a certification assessment. An OSA is free to seek a C3PAO certification assessment, but this would be unnecessary, because a valid DIBCAC High assessment with a 110 score will automatically be converted in SPRS to reflect a CMMC Final Level 2 certification assessment provided all requirements of § 170.20(a)(1) are met. A DIBCAC High assessment conducted after the rule is effective is not eligible for standards acceptance.

26. CMMC Requirements and International Entities

a. Applicability to International Entities

Comment: Several public commenters asked whether and how the CMMC rule content would apply to foreign based or international companies, either as companies seeking to comply with assessment requirements or as companies seeking to participate in the CMMC Ecosystem.

Some questions asked for interpretation of requirements for specific scenarios, such as how CMMC requirements might affect Status of Forces Agreements for DoD installations overseas. Others asked about application of flow-down requirements to foreign subcontractors, including in circumstances when DFARS clauses do not apply or when international agreements supersede application of DFARS clause 252.204–7012. A few comments asked how foreign or multinational corporations with facilities abroad can attain CAGE codes, access SPRS, or meet other aspects of CMMC requirements. Some asserted that specific systems contractors need to access, such as SPRS and PIEE, are not designed to accommodate foreign address formats and requested modifications or alternative options to facilitate submission of CMMC affirmations. One commenter suggested that assessment of foreign contractor information systems should only be conducted by the host country, and asked whether foreign contractors should be partially exempted from CMMC requirements.

Response: CMMC Program requirements are applicable when DoD requires processing, storing, or transmitting of either FCI or CUI during performance of a DoD contract. CMMC Program requirements would not apply to a DoD Installation's communication with a Host Nation government on matters related to the Installation. CMMC program requirements apply to all DoD contractors alike when contract performance will require processing, storing, or transmitting of FCI or CUI on contractor-owned information systems. This 32 CFR part 170 CMMC Program rule does not permit partial exemption of assessment requirements for foreign contractors. Any discussion of exemptions or deviations for foreign businesses are outside the scope of the 32 CFR part 170 CMMC Program rule and must be addressed through government-to-government international arrangements or agreements. Pathways and timelines for achieving these agreements are outside the scope of this rule.

CMMC requirements apply to both domestic and international primes and flow down to subcontractors throughout the supply chain if their information systems process, store, or transmit FCI or CUI. CMMC requirements are based upon the type of information processed and shared, regardless of where the company is headquartered or operates. Certification requirements for subcontractors are addressed in § 170.23(a)(1) through (4). For additional information about flow-down of contractual requirements, see the 48 CFR part 204 CMMC Acquisition rule. The CMMC process is the same for international and domestic contractors and subcontractors. International subcontractors must undergo a CMMC assessment at the appropriate level to demonstrate compliance with NIST SP 800–171 R2 requirements. All OSAs must register in *https://sam.gov*, which has instructions for obtaining applicable CAGE or NATO CAGE codes (NCAGE codes).

Address data is not a required SPRS data input for CMMC purposes. Contractor address information is required to obtain a CAGE code that, along with a Unique Entity ID, is required to register in SAM. SPRS currently receives assessment information from domestic and international entities. International organizations get CAGE codes in the same manner that US organizations do, including in some instances NCAGE codes. CAGE codes are required for a contractor to register for a user account in Procurement Integrated Enterprise Environment (PIEE) that provides contractors access to SPRS and other applications as necessary for DoD contracts.

b. International Agreements

Comment: Several commenters asked about procedures for establishing recognition of other nations' cybersecurity standards or assessment programs as acceptable alternatives to CMMC program requirements. Another commenter noted the rule provides no explicit recognition of existing agreements between the DoD and other nations related to information sharing and defense procurement. They and other commenters asked that the rule identify a specific process for reaching agreements related to CMMC program requirements. Some of these commenters identified specific foreign cybersecurity programs and requested that the DoD work toward reciprocal recognition of their underlying standards. One of these commenters requested that DoD identify timelines for establishing bilateral agreements.

In particular, the Canadian counterpart for the CMMC program expressed concern that Canadian companies could be disadvantaged in seeking CMMC certification and requested the DoD consider establishing a unified accreditation body for Canadian and US C3PAOs.

Response: While the rule does address application to foreign contractors and ecosystem participants throughout, these requirements may be superseded by the terms and conditions of applicable international arrangements or agreements.

CMMC validates cybersecurity requirements, as defined in FAR clause

52.204–21, NIST SP 800–171 R2, and a selected subset of NIST SP 800–172 Feb2021, where applicable. These cybersecurity requirements apply to international and domestic companies when included in a DoD contract. The Department cannot speculate about the arrangements of any international agreement and how it may or may not impact international partners, as these arrangements are beyond the scope of this 32 CFR part 170 CMMC Program rule.

The DoD has designed CMMC Program requirements to apply to those contractors that bid for DoD work which will require access to process, store, or transmit FCI or CUI in a contractor owned information system. A CMMC certification assessment is portable in the sense that it provides confidence that the holder has been assessed by an authorized third party for compliance with the applicable security standards (*e.g.,* NIST SP 800–171 R2 or NIST SP 800–172 Feb2021). Once attained, CMMC certification assessment status may be presented for consideration by any entity as an indicator that they have implemented security requirements associated with the certificate level (*e.g.,* NIST SP 800–171 R2 or NIST SP 800–172 Feb2021). Section 170.20 delineates the only existing bases for accepting alternate standards in this rule.- It is beyond the scope of this rule to provide a specific set of directions or guidance on recognition for alternate cybersecurity standards. Deviations from DFARS clauses are also beyond the scope of this rule.

Section 170.20 has been modified to state that an OSC with a perfect score from a prior DCMA DIBCAC High Assessment aligned with the same CMMC Level 2 Scoping may meet CMMC Final Level 2 certification assessment requirements via acceptance of the prior DIBCAC assessment in lieu of a C3PAO assessment. Standards Acceptance does not refer to international standards acceptance, which is not described within the rule.

c. C3PAO, CCP, and CCA Requirements

Comment: In addition to the interest in international agreements, some commenters expressed concern about CMMC ecosystem capacity to meet demand for Level 2 certification. They advocated support for accreditation of non-U.S. based C3PAOs. One commenter suggested that FOCI requirements be deleted from the rule and managed via DoD's oversight of the CMMC AB. One commenter speculated the phased CMMC implementation plan would require all non-U.S. firms to comply simultaneously and recommended that foreign contractors be allowed additional time to comply. Another recommended that foreign companies be permitted to simply self-assess in lieu of obtaining a CMMC Level 2 certification assessment.

Several commenters asked about foreign nationals participating in the CMMC ecosystem and noted discrepancies between qualifications identified in the rule and content on the CMMC AB's website at the time of rule publication. These commenters expressed interest in the ability for foreign citizens to become CCAs, CCPs, and LTPs (a term no longer used in the rule).

One commenter presumed that only U.S.-based Cloud Service Providers (CSPs) may become FedRAMP authorized, and asserted a need to authorize or accredit foreign-based CSPs that foreign DIB contractors might use while still achieving CMMC compliance. Another asked how foreign small businesses can comply with CMMC without access to U.S. approved CSPs. One commenter asked for guidance on how to get foreign products and services, such as encryption and decryption mechanisms, approved for use in information systems that require CMMC assessment. One commenter suggested that the CMMC program permit assessment by C3PAOs and assessors accredited in accordance with other ISO/IEC standards than those identified in this rule. They cited ISO/IEC 27001 or 9901 as suitable alternate ISO/IEC standards.

Response: The DoD declines to delay CMMC Program implementation for non-U.S. organizations. International businesses will not receive special accommodations because the CMMC Program's phased implementation will impact both U.S. and non-U.S. defense contractors equally. The implementation plan described in the rule does not promote or prioritize certification assessments of any contractor over any other contractor. All companies, regardless of location or nationality, will have access to any authorized C3PAO. The rule does not preclude non-U.S. citizens or foreign-owned C3PAOs from operating in the U.S. Additionally, U.S. owned C3PAOs may operate in a foreign nation.

As stated in the rule, C3PAOs must meet the criteria in § 170.9. Non-U.S. organizations and employees that meet all the requirements in §§ 170.9 and 170.11 will not be prohibited from operating as a C3PAO within the U.S. or abroad. A list of authorized C3PAOs is available on the current CMMC AB marketplace. DoD does not concur with the recommendation to delete § 170.9(b)(5) content identifying FOCI requirements. Those details for complying with FOCI are necessary for understanding the requirement.

Some commenters noted differences between the rule content and information on the CMMC AB website. The CMMC AB is part of the public and had no access to advance information prior to publication of the proposed rule. The rule takes precedence in the event of any discrepancy with CMMC AB materials.

The document 'Career Pathway Certified Assessor 612', dated 2020, has been replaced by a regularly updated DoD Cyberspace Workforce Framework which may be found at *https://public.cyber.mil/dcwf-work-role/security-control-assessor/*. Intermediate and Advanced Foundational Qualification Options in the DoD Cyberspace Workforce Framework's Security Control Assessor (612) Work Role are available to foreign nationals. The rule has been updated to reflect this reference update.

A domestic or international business seeking a contract that contains DFARS clause 252.204–7012, and using a cloud service provider to process, store, or transmit covered defense information in performance of that DoD contract, must ensure that the CSP meets FedRAMP authorization or equivalency requirements. As the FedRAMP program and FedRAMP equivalency are available to international organizations, foreign entities do not need to develop their own FedRAMP program. FedRAMP authorization or equivalency is also available to small businesses. The DoD leverages the FedRAMP program to implement requirements for the adoption of secure cloud services across the Federal Government and provide a standardized approach to security and risk assessment for cloud technologies. Export controlled goods and ITAR are outside the scope of the 32 CFR part 170 CMMC Program rule.

The process for identifying specific products or services that may meet NIST security requirements is beyond the scope of this rule. CMMC program requirements are unrelated to evaluation or approval of encryption or decryption products manufactured by foreign information security companies.

DoD considered many alternatives before deciding upon the current CMMC structure. Alternative methods of assessment have proven inadequate and necessitated the establishment of CMMC. DoD declines to accept the recommendation of an alternate path to C3PAO accreditation.

27. Impact to Small Businesses

a. Funding the CMMC Program

Comment: One comment asserted that the rule does not address CMMC program funding, affordability, and sustainability. They recommended the DoD conduct and publish a comprehensive cost assessment for each level of CMMC certification and explore ways to reduce the financial burden on contractors.

Response: DoD included an analysis of costs to meet CMMC requirements in the regulatory impact analysis for this rule.

As described in the estimate included with the rule, the major cost categories for compliance with CMMC requirements are anticipated to include costs for completing a self-assessment (*e.g.,* Level 1 or 2); costs to prepare for and undergo C3PAO assessment (Level 2); costs required to implement the Level 3 security requirements and for preparing to undergo DCMA DIBCAC assessment (Level 3). All of these except the market costs of a C3PAO are controlled by the organization seeking assessment. Market forces of supply and demand will determine C3PAO pricing for CMMC Level 2 certification assessments.

Analysis of costs to meet CMMC requirements is provided in the regulatory impact analysis for this rule. The CMMC rule does not make any change to cost allowability as defined in the FAR 31.201–2 Determining Allowability. Verifying compliance with applicable security requirements may increase cost and is necessary for the protection of DoD CUI. With the revised CMMC, the DoD has streamlined requirements to align directly to NIST guidelines and has eliminated unique security practices to ease the burden on smaller companies. DoD must enforce CMMC requirements uniformly across the Defense Industrial Base for all contractors and subcontractors who process, store, or transmit CUI. The value of information (and impact of its loss) does not diminish when the information moves to contractors and subcontractors. The DoD declines to speculate about how OSCs and C3PAOs negotiate mutually acceptable terms and conditions for assessment agreements. The DoD declined to modify the estimates, which are intended to be representative and to inform rulemaking.

b. Disproportionate Cost Burden

Comment: Many comments emphasized the importance of small business to the DoD contracting environment and expressed the concern that increased cost burden on small companies will result in an anti-competitive barrier to entry. Specifically, commenters state the lack of in-house security resources, inability to amortize costs, upfront costs to comply with CMMC Level 1 and 2 without guaranteed contracts, keeping pace with requirements changes, paying market rates for C3PAO assessments, and obtaining ''perfect'' compliance with requirement or assessment objectives may not be affordable or may cause unacceptable enterprise disruption. One comment asserted that the DoD is not considering additional costs to small- and medium-sized businesses (SMBs) for ongoing compliance. One comment stated the cost of entry for a new SMB may be insurmountable even with cost recovery. One comment suggested ''right-sizing'' CMMC by tailoring security requirements based on business size and number of employees. Additionally, one comment asserted that small businesses would be unfairly punished while large, legacy primes would lobby and get waivers.

Two comments noted that CMMC will increase costs, perhaps doubling annual IT and security spending, ultimately passing the cost to customers, the government and the taxpayer and asked how the DoD plans to deal with price increases from subcontractors and primes. One comment suggested the DoD pay contractor employees to learn to cyber defend rather than pay auditor assessment costs.

Response: The DoD concurs with commenters' assessment of the importance of small businesses to the DoD. The DoD has streamlined CMMC requirements to align directly to NIST guidelines and has eliminated unique security practices to ease the burden on smaller companies. In recognition of the cyber threat both to DoD and to the DIB, CMMC Program requirements are designed to ensure compliance with existing standards for protection of FCI and CUI. These cybersecurity requirements align directly to NIST guidelines (*i.e.,* NIST SP 800–171 R2 and NIST SP 800–172 Feb2021) and the basic safeguarding requirements (FAR clause 52.204–21) that apply to all executive agencies.

The analysis of costs to meet CMMC Level 1 and 2 requirements are provided in the Regulatory Impact Analysis published with this rule. Note that certification is never required for CMMC Level 1, which is a self-assessment requirement. CMMC Level 2 may either be met via self-assessment, or via certification following a C3PAO assessment, depending on the specific requirement cited in the solicitation. Some comments appeared to reference costs to meet the requirements of existing DFARS clause 252.204–7012. Please refer to 81 FR 72990, October 21, 2016, for DoD's final rule implementing the DoD's requirement that ''contractors shall implement NIST SP 800–171 as soon as practical, but not later than December 31, 2017.''

The cost estimates for SMBs represent average derived estimates based on internal expertise and public feedback in accordance with OMB Circular A–4. The size and complexity of the network within scope of the assessment impacts the estimates as well.

The DoD has streamlined CMMC requirements to align directly to NIST guidelines and has eliminated unique security practices to ease the burden on smaller companies. In addition, CMMC Level 1 and select CMMC Level 2 requirements are now met via self-assessment, which reduces burden to small businesses.

The CMMC program incorporates flexibility with the use of self-assessment, POA&Ms, and waivers. Since December 2017, DFARS clause 252.204–7012 has required contractors to implement the NIST SP 800–171 security requirements to provide adequate security applicable for processing, storing, or transmitting CUI in support of the performance of a DoD contract. OSAs that are currently attesting that they meet DFARS clause 252.204–7012 should not have difficulty successfully achieving a Level 2 self-assessment.

Some comments received lacked relevance to the rule's content, which is limited to specific CMMC Program requirements. The DoD declines to address speculation about lobbying activities. Verifying compliance with applicable security requirements may increase financial cost to the DoD due to increased contract costs but it is necessary for the protection of DoD CUI. The cost of lost technological advantage over potential adversaries is greater than the costs of such enforcement. The value of information (and impact of its loss) does not diminish when the information moves to contractors.

The trade-off is between protecting sensitive information from our nation's adversaries and accepting the fact that security costs increase for numerous reasons. Many of those cost-drivers are completely independent of CMMC. While CMMC compliance adds to an organization's cost, no member of the DIB can assume the status-quo in today's ever-changing cyber security environment. Increasing costs to protect the nation's data and industries from

emerging threats is simply a component of doing business anywhere in the world. Processing, storing, or transmitting sensitive Government information comes with a handling cost that needs to be built into each organization's business model.

Some comments included suggestions about how workflow should occur between prime and subcontractors to decrease or eliminate the transfer of CUI to subcontractors. The DoD cannot dictate these business practices but encourages prime contractors to work with its subcontractors to flow down CUI with the required security and the least burden. Questions regarding what to mark as CUI are out of scope of this rule. At the time of award, the DoD may have no visibility into whether the awardee will choose to further disseminate DoD's CUI, but DFARS clause 252.204–7012 and DFARS clause 252.204–7021 require that the prime contractor to flow down the information security requirement to any subcontractor with which the CUI will be shared. Decisions regarding which DoD information must be shared to support completion of which subcontractor tasks takes place between the prime contractor and the subcontractors chosen to complete the specific tasks.

c. Phasing the Cost To Comply

Comment: Two comments suggested a phased compliance would help offset financial burden while working toward full compliance. One comment expressed concern that Managed Service Providers (MSPs), many of which are small businesses, will not have time to achieve Level 2 certification before their OSA and OSC customers need them to be certified and recommended extending the phased timeline.

Several comments stated that recouping compliance costs could take years, forcing SMBs into financial debt, contract termination, and exclusion from the market for DoD contracts. One commenter expressed concern about implementation of CMMC as a condition of contract award and the implication that compliance costs are incurred prior to receiving a DoD contract.

Response: DoD declined to implement a small entity specific ''phased compliance''. Since December 2017, DFARS clause 252.204–7012 has required contractors to implement the NIST SP 800–171 security requirements to provide adequate security applicable for processing, storing, or transmitting CUI in support of the performance of a DoD contract.

DoD received numerous comments about the use of ESPs, including MSPs, which do not process, store, or transmit CUI. In response to comments, the DoD has reduced the assessment burden on External Service Providers (ESPs). ESP assessment, certification, and authorization requirements in §§ 170.19(c)(2) and (d)(2) have been updated. ESPs that are not CSPs and do NOT process, store, or transmit CUI, do not require CMMC assessment or certification. Services provided by an ESP are in the OSA's assessment scope.

CMMC has taken several steps to keep the cost of compliance with the rule commensurate with the risk to the DoD's information. Level 1 only requires self-assessment, and many contracts with CUI will only require a Level 2 self-assessment. Companies that currently attest that they meet DFARS clause 252.204–7012 should not have difficulty completing a Level 2 self-assessment. In accordance with the rulemaking process, this rule was reviewed by both DoD cost analysts and OMB economists for realism and completeness.

This is a 32 CFR part 170 CMMC Program rule, not an acquisition rule. The 48 CFR part 204 CMMC Acquisition rule will address implementation of CMMC as it pertains to DoD contracts.

d. Detailed Cost Analysis

Comment: A few comments suggested a detailed cost analysis should consider SMBs of various sizes, types, and challenges to ensure compliance is sustainable. One comment asked whether a profit margin analysis was performed, while another asserted that other third-party assessments are less expensive than the estimates for CMMC assessment. Another stated CMMC Level 3 cost estimates are too low and suggested using costs associated with SECRET-level networks for calculation.

Response: The DoD provided an analysis of costs to meet CMMC Level 1 and 2 requirements in the regulatory impact analysis for this rule. The cost estimates provided for this rule represent average costs for companies to comply with CMMC requirements, including the need for self-assessment or independent assessment against the specified standards. Comparing costs with other third-party security audits presumes that the security and assessment requirements are identical, and DoD disagrees with that assumption.

The DoD declined to produce another cost estimate for CMMC assessment and certification. As required by the Rulemaking Guidance, the DoD provided cost estimates and impact analyses in the proposed rule. The analysis included estimated costs for each level and type of assessment or certification for different sized contractor businesses. The cost estimates did not include an analysis of profit margins, which is not required. This rule also does not provide the cost analysis for all actions, personnel, and security measures required to protect CUI information, data, systems, and technical products through the life cycle of the work and data generated. The cost estimates represent derived estimates based on internal expertise and public feedback in accordance with OMB Circular A–4.

Market forces of supply and demand will determine C3PAO pricing for CMMC Level 2 certification assessments. The size and complexity of the network within scope of the assessment impacts the costs as well. CMMC Level 3 assessments against the NIST SP 800–172 Feb2021 baseline are performed free of cost by DoD assessors, which reduces the cost of CMMC Level 3.

The costs associated with a government-owned SECRET-level network are not relevant to the CMMC Program which ensures protection of FCI and CUI.

e. Assistance Programs or Other Relief

Comment: Several commenters proposed that financial assistance, contract incentives, direct reimbursement of assessment costs (in whole or in part), and market rate price caps be considered to lessen financial burden and decrease the entry barrier for SMBs. Several comments also inquired about DoD SMB grant programs to help SMBs cover the cost of CMMC Level 2 certification assessments.

Multiple comments suggested DOD provide actionable guidance through outreach support and assistance along with free or reduced cost cybersecurity services to SMBs, with two referencing the DoD Office of Small Business Programs and one the DoD Procurement Toolbox. One comment, from a large business with SMB suppliers, requested clearer guidance and support for flow down to sub-tier suppliers and SMB supply chains.

One comment stated firms who receive a low number of CUI documents (30 docs in 3-years on 10 computers) do not justify the cost of becoming CMMC compliant, and added the cost is nearly as much as protection for classified documents. One commenter suggested NIST SP 800–171 R2 security requirements would not apply to their specific characteristics, *i.e.,* a very small

business with minimal internet connectivity, no remote access, no public access, no mobile devices, no remote work, and no known cybersecurity issues. The comment asserted that the company posed minimal risk to CUI and should be excused from adhering to CMMC program requirements based on cost burden.

One comment proposed eliminating third party assessment costs and relying only on self-certification to address the cost burdens. One comment noted that free market pricing and a short supply of C3PAOs combined with excessive waiting times may result in SMB attrition.

Response: It is not within in scope of this rule to address how companies recover assessment costs. The CMMC rule makes no change to the cost allowability parameters described in FAR 31.201–2 Determining Allowability.

Contractors are required to comply with all terms and conditions of DoD contracts, to include terms and conditions relating to cybersecurity protections and assessment requirements, as implemented by this rule. This holds true when a contract clause is flowed down to subcontractors.

Several of the commenters' recommendations have potential benefit for the contractor and sub-contractor communities; however, they are beyond the scope of the rule. These recommendations included creation or expansion of:

grants and assistance programs, financial support for small business, the DoD [Procurement] Toolbox, the DoD Office of Small Business Programs, contract incentives and free or reduced cost DoD cybersecurity services.

DoD understands the burden on small business. Nonetheless, DoD must enforce CMMC requirements uniformly across the Defense Industrial Base for all contractors who process, store, or transmit CUI. The requirements necessary to protect a single document are the same as to protect many documents, therefore scaling by amount of CUI expected is not a viable approach.

Solicitations for DoD contracts that will involve the processing, storing, or transmitting of FCI or CUI on any nonfederal system, regardless of the size or configuration of the nonfederal system, will specify the required CMMC Level (1, 2 or 3) and assessment type (self-assessment or independent third-party assessment). That requirement applies, regardless of the number of computers or components in a nonfederal information system.

DoD's original implementation of security requirements for adequate safeguarding of CUI relied upon self-attestation by contractors. Since that time, the DoD Inspector General and DCMA found that contractors did not consistently implement mandated system security requirements for safeguarding CUI and recommended that DoD take steps to assess a contractor's ability to protect this information.

All contactors or sub-contractors with access to CUI need to be capable of protecting that information to the standard specified in 32 CFR part 2002. If a small business cannot comply with DFARS clause 252.204–7012 and NIST SP 800–171 R2, then that business should not be processing, storing, or transmitting CUI. DoD's programs, technological superiority, and best interests are not served if CUI is not consistently safeguarded by all who process, store, or transmit it.

28. Perceived Cost of CMMC Program

Comment: Several comments expressed disagreement with assumptions supporting the cost estimate, namely that implementation costs to comply with the requirements of FAR clause 52.204–21 and DFARS clause 252.204–7012 predate and are not included as CMMC costs. These comments assert that the cost of CMMC compliance should include those costs, and therefore dwarfs the cost of CMMC certification. They further assert that DoD's position does not account for those contractors who have only recently joined the DIB marketplace or those that aspire to do so. The concern expressed in the comments is that the cost of standing up an infrastructure to achieve and maintain DoD cybersecurity requirements regarding the protection of FCI and CUI, combined with CMMC assessment costs, is prohibitive and will create a lack of diverse suppliers.

Two commenters asserted the CMMC Program expanded application of DFARS clause 252.204–7012 requirements due to a perceived extension of those requirements to additional organizations, such as External Service Providers (ESPs). One of the commenters further speculated that CMMC requirements may decrease the availability of ESPs that are available and suitable to support DIB members as needed to comply with CMMC requirements. Another commenter stated that this scope expansion increases direct implementation and compliance costs above and beyond the CMMC Program's estimated assessment costs. The comment cites the introduction of the terms ''Security Protection Assets'' and ''Security Protection Data'' as extending applicability of those requirements and incurring the additional direct implementation and compliance costs. Lastly, the comment notes these changes will drive costs to ''rip and replace'' existing tools and likely purchase more expensive FedRAMP or CMMC-certified tools.

One comment indicated that, while compliance with NIST SP 800–171 was required by December 31, 2017, compliance with NIST SP 800–171A Jun2018 increases requirements and cost because NIST SP 800–171A Jun2018 emphasizes process and documentation in addition to the intent of the security requirement.

Two comments pointed out that some contractors may need to accelerate remediation efforts and close out POA&Ms under existing DoD contracts that are subject to DFARS clause 252.204–7012 to meet CMMC requirements. These comments requested that since these contractors will now be faced with accelerating close-out of their POA&Ms, which will incur additional costs, that DoD account for those costs in the estimate and potentially allow for recovery of those costs.

One comment asserts that CMMC assessment failures, remediation implementation, and subsequent reassessments will be very costly in both time and money.

Response: 81 FR 72990, October 21, 2016 implemented the DoD's requirement that ''contractors shall implement NIST SP 800–171 as soon as practical, but not later than December 31, 2017.'' Public comments related to costs for implementation were published with that final rule, along with DoD's responses. CMMC cost estimates are derived estimates based on internal expertise and public feedback in accordance with OMB Circular A–4 and are representative of average assessment efforts not actual prices of C3PAO services available in the marketplace. Market forces of supply and demand will determine C3PAO pricing for CMMC Level 2 certification assessments and how C3PAOs choose to distinguish their service offerings from other C3PAOs, including the timely availability of an assessment team, or re-assessments after an assessment failure. The size and complexity of the network within the scope of the assessment impacts the costs as well. The DoD declines to speculate about how OSCs and C3PAOs negotiate mutually

acceptable terms and conditions for assessment agreements.

OSA implementation of the requirements of FAR clause 52.204–21 and DFARS clause 252.204–7012 long predate CMMC and are not included in CMMC cost estimates, since those requirements are not driven by or attributable to CMMC, even for new or aspiring defense contractors, and have been in force since 2017 on DoD contracts that include the processing, storing, or transmitting of FCI or CUI in the performance of a DoD contract. The DoD has taken measures to make a self-assessment as straight forward as possible and provided guidance to mitigate any variance in assessment scores. Additionally, the DoD has streamlined CMMC requirements to align directly to NIST guidelines and has eliminated unique security practices to ease the burden on smaller companies. DoD must enforce CMMC requirements uniformly across the Defense Industrial Base for all contractors and subcontractors who process, store, or transmit CUI. Creation of a grants and assistance programs are beyond the scope of this rule. DFARS clause 252.204–7012 requires protection of security protection assets and security protection data. Section 1.1 of NIST SP 800–171 R2 states: ''The requirements apply only to components of nonfederal systems that process, store, or transmit CUI, or that provide security protection for such components.'' There is therefore no increase in the scope as described in the rule.

Security protection data requires protection commensurate with the CUI it protects and is based on how and where the security protection data is stored. The FedRAMP requirements for handling security protection data is therefore the same as that for handling CUI. Any impact to the cost of serving Government customers across the DoD is beyond the scope of this rule.

As NIST states in NIST SP 800–171A Jun2018, ''The assessment procedures are flexible and can be customized to the needs of the organizations and the assessors conducting the assessments. Security assessments can be conducted as self-assessments; independent, third-party assessments; or government-sponsored assessments and can be applied with various degrees of rigor, based on customer-defined depth and coverage attributes.'' CMMC Program requirements are designed to ensure compliance with existing standards for protection of FCI and CUI and align directly to NIST guidelines (*i.e.,* NIST SP 800–171 R2 and NIST SP 800–172 Feb2021) and the basic safeguarding requirements (of FAR clause 52.204–21) that apply to all executive agencies. The rule accounts for costs associated with assessment via NIST SP 800–171A Jun2018.

Within the limitations of section § 170.21 Plan of Action and Milestones Requirements, offerors may bid on a contract while continuing to work towards full CMMC compliance. DoD rejects the notion that organizations must ''accelerate'' to meet a requirement in place since 2017. DoD did not intend nor expect that POA&Ms would remain open-ended and unimplemented for years.

The DoD provided an analysis of costs to meet CMMC Level 1 and 2 requirements in the regulatory impact analysis for this rule. Certification is never required for CMMC Level 1, which is a self-assessment requirement. CMMC Level 2 may either be met via self-assessment, or via a C3PAO assessment, depending on the specific requirement cited in the solicitation. It is not within in scope of this rule to address the way companies recover assessment costs.

Verifying compliance with applicable security requirements may increase cost and is necessary for the protection of DoD FCI and CUI. The cost of lost technological advantage over potential adversaries is greater than the costs of such enforcement.

29. CMMC Benefits and Cost Estimates

a. Cost Estimate Assumptions

Comment: Some comments proposed the DoD directly assume the costs for industrial base compliance, increase contract award prices, offer grants and loans, or provide tax credits to offset the costs associated with compliance. One asked for clarification regarding allowable versus unallowable costs. One comment stated the cost estimate was a good guesstimate of the total cost to the USG, but the flow down costs and the price of doing business will be at the Program Office level. The commenter requested the DoD provide a table of Program Office funding requirements to aid Program Managers in reflecting CMMC costs in an Acquisition Strategy and Cost Analysis Requirements Document (CARD).

A few comments asked about the assumptions used to estimate numbers of assessments by category and stated the labor rates for ESPs and C3PAOs were too low, and costs associated with small entities were incorrect. Two comments also suggested the number of hours estimated for self-assessment are too low, and three questioned the accuracy of small and medium sized business labor rates and asserted that the assessment costs for small businesses were not sustainable. One comment suggested that cost data in existing/past contracts should be used as a part of CMMC cost analysis and Section H costs should apply to the current CMMC cost estimate.

One comment claimed it is cost prohibitive for individuals to obtain a CCP or CCA certification, which will hamper the CMMC Program's scalability.

One comment requested the government elaborate on how the estimated 417.83 hours per response was derived for table 39, C3PAOs Level 1 Certification and Assessment, in section § 170.17(a). Another comment asserted that assessments conducted by Defense Technical Risk Assessment Methodology (DTRAM) assessment teams require more manhours than are anticipated for CMMC certification assessments.

One comment stated that while DoD included an estimate for annual senior official affirmations in the Regulatory Impact Analysis, it assumed a minimal number of hours will be required to complete this task which may not be adequate to complete a full compliance review.

One comment stated the DoD self-assessment resource allocations for an ESP for both CMMC Level 1 and Level 2 are estimated 125% to 175% too low based on the belief that a self-assessment should have more rigor than a gap analysis. Specifically, the commenter posed questions on what inputs from potential OSAs were used and identifying the rigor a Certifying Official would require for attestation. Recommendations include that the DoD clearly state its assumptions regarding self-assessment rigor, have OSA legal counsel review assumptions and cost factors, and identify a representative cross-section of stakeholders to determine appropriate rigor assumptions for company's ESPs and new to CMMC self-assessments.

One comment stated that the DoD's assumptions for the level of effort expressed as Director and staff IT specialist hours are too low. Although there are continuous monitoring requirements of NIST 800–171 R2, those requirements do not invoke the level of effort necessary for an executive to make an attestation corresponding to the level of personal risk and corporate liability incurred under the False Claims Act. The comment asserted that DoD's assumptions failed to account for an SMB to acquire and manage technical tools or manage the reaffirmation or an enterprise change management effort.

The comment included several questions regarding the inputs used to determine lack of ongoing management resource requirements for reaffirmation, a risk management application, and inputs across the DIB regarding the level of assurance needed for affirmations to address liability concerns with the False Claims Act. Another recommendation suggested the DoD clearly state the degree of rigor an OSA should assume and revisit the cost assumptions involved to provide the Entity official with assurance for reaffirmation.

One commenter reviewed the CMMC AB's draft CMMC Assessment Process (CAP) document and agreed that 120 hours for a C3PAO's three-person team inclusive of Phases 1, 2 and 3 is appropriate for smaller companies and should be considered a lower bound for C3PAOs deployed resources but suggested the 156 ESP assessment hours should be decreased.

One comment highlighted the following rule text, ''The total estimated Public (large and small entities) and Government costs associated with this rule, calculated in over a 20-year horizon in 2023 dollars at a 7 percent discount rate and a 3 percent discount rate are provided as follows,'' and asked how an organization could become eligible for the 7% discount.

One comment proposed DOD remove CMMC Level 1, or defer CMMC Level 1 implementation for several years, since it does not involve CUI. The comment stated CMMC Level 1 cost estimations and burden of compliance in the rule were greatly understated, that few companies subject to this CMMC level have any idea what is expected of them, and most will struggle with financial, technical, and human resources. Though FAR clause 52.204–21 is widely used in Federal contracts, it has not been successfully communicated that NIST SP 800–171A Jun2018 will be used. The comment concludes stating CMMC Level 1 does not include CUI, therefore making cost and compliance an excessive demand.

Response: Subsidizing costs for the defense industrial base compliance is not within the scope of this rule. The rule has taken several steps to keep the cost of compliance with the rule commensurate with the risk to the DoD's information. In addition, Level 1 only requires self-assessment, and many contracts with CUI will only require a Level 2 self-assessment. Companies that are currently and validly attesting that they meet DFARS clause 252.204–7012 should not have difficulty passing a Level 2 self-assessment.

Cost estimates provided in this rule were based on internal expertise, compliant with OMB Circular A–4, and informed by public feedback. Certain elements of the estimated costs will be influenced by market forces of supply and demand, which will determine C3PAO pricing for CMMC Level 2 certification assessments.

The number of assessments over the phase-in period were estimated using data from the Electronic Data Access system for the contracts containing DFARS clause 252.204–7012 in fiscal years 2019, 2020, and 2021, as well as data calculated for the initial CMMC Program. This data was used in combination with an expected growth factor to estimate DoD contracts and orders in the future. Data also showed the number of awards that were made to small entities and other than small entities. The resulting estimate was phased in over 7 years to allow the ecosystem to grow and accommodate an increasing number of assessments.

The assumptions and analysis of costs are provided in the regulatory impact analysis for this rule and are explained in depth. One of the assumptions is that Non-Small Entities have a team of full-time cybersecurity professionals on staff while Small Entities do not. The assumptions reflect Small Entities will likely obtain support from External Service Providers and have a staff member submit affirmations and SPRS scores for self-assessments (when applicable).

DoD included an analysis of costs to meet CMMC requirements in the regulatory impact analysis for this rule. As described in the estimate included with the rule, the major cost categories for compliance with CMMC requirements are anticipated to include costs for completing a self-assessment (*e.g.,* Level 1 or 2); costs to prepare for and undergo C3PAO assessment (Level 2); costs required to implement the Level 3 security requirements and for preparing to undergo DCMA DIBCAC assessment (Level 3). Market forces of supply and demand will determine C3PAO pricing for CMMC Level 2 certification assessments. The CMMC rule does not make any change to cost allowability as defined in the FAR 31.201–2, Determining Allowability.

As addressed in the Assumptions section of the Regulatory Impact Analysis (RIA), the cost estimates for CMMC Levels 1 and 2 are based only on the assessment, certification, and affirmation activities that a defense contractor, subcontractor, or ecosystem member must take to allow DoD to verify implementation of the relevant underlying security requirements. For CMMC Level 3, cost estimates to implement applicable security requirements are included as they are a new addition to current security protection requirements. Section H costs of existing/past contracts do not apply.

CCP and CCA certification costs are set by the CAICO and are market driven. The hours used in the cost estimations are based on estimates by subject matter experts. The 417.83 hours per response questioned by the commentor ties to C3PAO reporting and recordkeeping requirements for Level 2 certification assessment on small entities as identified in table 36, not Level 1 or table 39 as stated in the comment.

In response to public comments received in the initial 48 CFR CMMC interim final rule public comment period, DoD streamlined the CMMC model to ease the assessment burden. At the same time, estimates were increased for the time and cost of self-assessment based on industry and DIBCAC input. DoD estimates are based on defendable assumptions and documented labor rates. Therefore, DoD declines to modify the self-assessment estimates.

The DoD has streamlined CMMC requirements to align directly to NIST guidelines and eliminated unique security practices to ease the burden on smaller companies, included an analysis of costs to meet CMMC requirements in the regulatory impact analysis for this rule. The DoD declined to modify the estimates, which are intended to be representative and to inform rulemaking.

Verifying compliance with applicable security requirements may increase cost and is necessary for the protection of DoD CUI. The cost of lost technological advantage over potential adversaries is greater than the costs of such enforcement. The value of information (and impact of its loss) does not diminish when the information moves to contractors.

DoD rejected the recommendation to adjust the annual requirement for senior affirmations to a triennial requirement to decrease senior affirmation costs. The requirement for annual affirmations is to ensure the Affirming Official responsible for CMMC requirements are monitoring compliance with the requirements. If compliance is being maintained as required, this should not require more time or cost than provided in the estimates. Further, DFARS clause 252.204–7012 already requires NIST SP 800–171 continuous monitoring via requirement 3.12.3. DoD also declined to make the recommended edits to further delineate a company's internal review of self-assessments and reaffirmations in the cost assumptions.

The cost estimates provided for this rule represent average costs for

companies to comply with the CMMC requirement, including the need for self-assessment or independent assessment against the specified standards. Whether the OSA elects to satisfy those requirements themselves, or by using one ESP for many requirements, or by using several ESPs for individual requirements, is a decision to be made by the OSA. That decision does not change DoDs estimate of average costs to meet CMMC requirements. The DoD declined to recalculate cost estimates using lower costs for ESP assessments.

The 7% discount rate is not a discount for organizations. The discount rate is a part of a formula used in a business impact analysis calculation. When calculating 20 years in the future, a discount rate is used to determine the net present value of money. Discount rates are explained in step seven of OMB Circular A–4: Regulatory Impact Analysis: A Primer. The DoD does not agree with the commenter's assertion that the cost estimates greatly understate the costs and burden to Level 1 compliance. The 15 FAR security requirements that comprise CMMC Level 1 should already have the requirements implemented if an OSA network processes, stores, or transmits FCI. In addition to NIST SP 800–171A Jun2018, the CMMC Level 1 Assessment Guide provides supplemental information to help facilitate implementation and assessment of the Level 1 security requirements.

b. Economic Impact

Comment: One comment suggested the government evaluate the economic impact of implementing the rule's reporting requirements at scale. Another comment expressed the notion that the cost impact analysis does not account for the free market response, referring to the associated cost increases and schedule delays that directly impact the warfighter and taxpayer. The commentor suggested the cost could dwarf both the cost of implementing compliance and achieving certification.

One comment stated the CMMC Level 2 and Level 3 cost burdens for companies that were historically never subjected to such requirements may be disproportionate to the risk their operations pose to the inadvertent disclosure of CUI or FCI. It suggested ensuring requirements be proportional to the subcontractor's activity and risk levels. The comment further mentioned that costs may be passed on to the prime contractor, and DoD should consider providing recovery costs in the price of implementation.

One comment stated the 100% compliance to CMMC Level 2 certification may be financially unachievable and suggests if a risk assessment shows the likelihood of harm is comparatively low, the DoD should direct CMMC Program assessors to use their professional judgments and not require seeking maximum evidence of compliance where there is evidence of sufficiency.

Response: The DoD has already evaluated the reporting requirements and the analysis of the costs is provided in the Regulatory Impact Analysis published with this rule. The DoD declined to respond to speculative or editorial comments about downstream impacts of the market's reaction to CMMC, all of which are beyond the scope of this rule.

The DoD declined the recommendation to restructure CMMC to be proportional to the subcontractor's activity and risk levels. DoD must enforce CMMC requirements uniformly across the Defense Industrial Base for all contractors and subcontractors who process, store, or transmit CUI. The value of information (and impact of its loss) does not diminish when the information moves to contractors and subcontractors.

Assessors exercise judgment in determining when sufficient and adequate evidence has been presented to make an assessment finding. This is consistent with current DIBCAC High Assessments and assessments conducted under the Joint Surveillance Voluntary Assessment (JSVA) program. Furthermore, to reduce burden to small businesses, the CMMC program has implemented flexibility with self-assessment, POA&Ms, and waivers.

c. Cross-Functional Requirements and Artifacts

Comment: Multiple comments maintained that DoD underestimated the cross-functional (Human Resources, Physical Security, Training, etc.) manhours and associated cost to collect artifacts and evidence in preparation for a C3PAO assessment. One comment stated the DoD's overestimation of CMMC Level 1 requirements would correspond to an underestimation of compliance costs. The comment referred to current NIST requirements and asserted that potential revisions would force changes to POA&Ms causing additional costs beyond those included in the estimates. The comment suggested the DoD should determine the range of potential compliance timelines, the use and value of existing and planned POA&Ms, and true certification costs, both for initial compliance as well as ongoing maintenance and oversight.

One commentor claimed too much funding was expended over the past 5 years for the CMMC database system.

Response: OSCs prepare for C3PAO assessments based upon NIST guidelines as addressed in § 170.17. The cost and time estimates represent the time to gather the evidence to address all assessment objectives are derived averages based on internal expertise and public feedback in accordance with OMB Circular A–4 Regulatory Impact Analysis: A Primer. The size and complexity of the network within scope of the assessment impacts the costs as well.

The time estimates represent average derived estimates based on internal expertise and public feedback in accordance with OMB Circular A–4. The size and complexity of the network within scope of the assessment impacts the time estimates as well. The DoD does not concur with the commenter's claim that too much funding has been spent to develop the DoD's database for the CMMC Program.

d. Duplication or Overlap

Comment: One comment asserted CMMC requirements may be duplicative or conflict with existing utility industry compliance requirements that address CUI, since utility companies will not require CMMC Level 3 certification. They proposed the utilities and the DoD collaborate to harmonize requirements to limit the financial burden.

One comment highlighted a concern that cost for companies that have multiple contracts, each requiring different CMMC Program requirements. Concerns were specifically based on the increased costs from CMMC Level 2 to CMMC Level 3 compliancy and assuming costs would be borne by contractors. They expressed similar concerns about costs for FedRAMP certification, given a purported backlog in FedRAMP authorizations.

Response: Addressing the harmonization between the DoD, contractors, and subcontractors is beyond the scope of this rule. These are functions of the DIB Sector Coordinating Council and the DIB Government Coordinating Council. Additionally, non-DoD programs are outside the control and scope of the 32 CFR part 170 CMMC Program rule. The DoD encourages prime contractors to work with its subcontractors to flow down CUI with the required security and the least burden.

DoD is aware organizations may receive multiple contracts that may require different CMMC levels based upon programmatic data security needs. It is beyond the scope of this rule to

dictate how OSAs manage varying contract requirements. Contractors that have achieved a CMMC Level 2 or Level 3 certification automatically meet a stated requirement of a lower CMMC level if the same system/assessment scope will be used in performance of the contract.

30. Alternatives

a. Alternate Programs

Comment: Many comment submissions included lengthy proposals for alternatives to the CMMC program purported to alleviate specific concerns with aspects of CMMC program requirements. In some cases, the concerns were based on a misreading of the rule's content. The DoD has addressed some valid concerns through rule revisions that differ from the recommendations.

One commenter suggested eliminating compliance assessments in favor of establishing a DoD office to conduct penetration testing of each DIB company's network every two years. Other commenters also recommended the DoD establish a secure portal and share CUI with contractors only through that portal, as a way for the DIB to avoid the cost of securing their information systems. One commenter suggested the DoD monitor use of waivers and utilize this secure portal approach when CMMC waivers apply. Similar recommendations included sharing CUI only through password encrypted files or requiring contractors to store CUI in restricted access folders. In similar suggestions, several commenters thought the DoD should provide its contractors with training, GFE and other tools necessary to secure the contractor owned information systems being used to process or store CUI. One such commenter stated that the Government should appropriate funding for secure solutions rather than phasing in compliance assessments. One commenter suggested the DoD consider industry's application of alternate security mechanisms in lieu of CMMC Levels 2 and 3. Another recommended the DoD stand up a voluntary DIB Cyber Protection Program to improve real-time monitoring of the DIB, improve cybersecurity for firms that cannot afford the needed professional staff, and offer data and legal protections to DIB firms. Another such commenter suggested that DoD fund securing the DIB through contract incentives.

One commenter recommended mandating DIB use of the DoD CIO's DIB CS Program or other DoD cybersecurity related services as alternatives to the CMMC program. That comment suggested reassigning Government personnel to provide training for all assessors, to reduce training cost and ensure enough assessors to meet demand. Another commenter made similar recommendations about CISA cybersecurity service offerings.

Response: Many comments included lengthy proposals for alternate approaches to the CMMC program which would alleviate specific concerns with aspects of CMMC program requirements. In some cases, the suggestions were based on a misreading of the rule's content. The DoD has addressed some valid concerns via rule revisions that differ from commenter recommendations.

The DoD notes with interest one commenter's reference to initiatives described in a report to Congress about the breadth of cybersecurity related initiatives within the Department. While the CMMC is an important initiative, it is by no means the Department's only effort to improve DIB cybersecurity. The CMMC Program addresses adequate safeguarding of contractor owned information systems which process, store, or transmit FCI or CUI. Other DoD initiatives related to secure cloud or software development environments are beyond the scope of the CMMC Program.

The DoD did not adopt suggested alternatives, such as policy-based solutions that lack a rigorous assessment component. The DoD determined that sharing CUI only through DoD-hosted secure platforms, in lieu of implementing the CMMC Program, was not a scalable or cost-effective solution. Although the DoD expanded the availability of resources through the DIB Collaborative Information Sharing Environment (DCISE) program, the DoD also declines to rely only on training in lieu of assessment.

The purpose of CMMC is to require defense contractors and subcontractors to undergo an assessment to verify the implementation of prescribed cybersecurity standards. The security requirements are already specified in existing regulations (32 CFR part 2002, DFARS clause 252.204–7012, and FAR clause 52.204–21).

Comments which suggest that enrollment in the DoD's DIB CS Program can be an alternative means of meeting the objectives of CMMC misinterpret the services that the DIB CS Program provides. The DIB CS Program does not provide any mechanism for verifying whether those participants have secured their contractor owned information systems to the standards required by DFARS clause 252.204–7012. Likewise, the recommended NSA cybersecurity offerings also do not provide the same verification mechanism that CMMC will provide. CMMC Program requirements apply to contractor-owned information systems that process, store, or transmit FCI and CUI. Hardware and software approving authorities for GFE are not relevant to this CMMC rule. The DoD declined to adopt the recommendation to provide GFE to DIB contractors to maintain security, ownership of data and support Clinger-Cohen Act compliance.

Some comments received reflect a misinterpretation of the cost estimates that accompany this rule, which are intended to inform the rulemaking process. The cost estimates are not indicative of a funded budget line which could be reprogrammed to fund a new agency to meet the objectives of the CMMC Program. Comments recommending that funding be appropriated (by Congress) to provide the DIB with security solutions are beyond the scope of this rule.

b. Alternate Standards

Comment: One commenter recommended aligning requirements to DoD policies rather than to NIST standards and relying on FISMA compliance assessments in lieu of the CMMC model. Another commenter recommended the DoD and NIST work with other international standards organizations to incorporate CMMC requirements (really NIST standards) into existing ISO/IEC and CMMI standards. In general, these commenters recommended DoD accept alternate assessments conducted against alternate standards by assessors with alternate training and qualifications. They further recommended that DoD issue an RFI seeking recommendation of alternate third-party assessment schemes. One commenter recommended the rule be modified to require that contracts with a CMMC level 3 requirement also require use of a FedRAMP moderate or higher CSP, and that contracts with a CMMC level 2 requirement permit use of CSPs with either FedRAMP Moderate authorization (or higher) or CMMC level 2 or 3 certification assessment.

Response: CMMC is based on the executive branch's CUI Program as the authoritative source, as codified in 32 CFR part 2002. The definition of CUI and general requirements for its safeguarding are included in 32 CFR 2002.4 and 2002.14, respectively. 32 CFR 2002.14(h)(2) specifically requires that ''Agencies must use NIST SP 800–171 when establishing security requirements to protect CUI's confidentiality on non-Federal information systems . . .'' The CMMC

Program makes no change to the CUI program or its implementing policies. Contractually, DFARS clause 252.204–7012, effective since December 2017, requires contractors to implement the NIST SP 800–171 security requirements to provide adequate security applicable for processing, storing, or transmitting CUI in support of the performance of a DoD contract. That requirement applies, regardless of the number of computers or components in a non-Federal information system.

The CMMC Program provides an assessment mechanism to verify that prospective offerors comply with the applicable information security requirements. All executive agencies are required to follow the policies described in 32 CFR 2002.14. DoD aligned CMMC requirements with NIST SP 800–171 R2 because it is enterprise focused and is already required in DoD contracts when DFARS clause 252.204–7012 is applicable. DFARS clause 252.204–7012 and NIST SP 800–171 R2 provide the cybersecurity requirements, whereas CMMC validates implementation of those requirements. CMMC does not duplicate these documents.

The DoD publishes Security Technical Implementation Guides (STIGs) for specific products, primarily to guide secure implementation in DoD systems. The OSA is responsible for creating the implementation guidance they will use to meet the CMMC security requirements. OSAs are free to use the DoD STIGS if they feel they are appropriate. The DoD does not want to limit the choices available to the OSA for implementation guidance. In addition, the DoD declines to create STIGs for all products that might be used in the OSA's environment. Some comments lacked relevance to the rule's content, which is limited to specific CMMC program requirements.

Changes to DFARS clause 252.204–7012 are outside the scope of this rule. DoD declines to modify CMMC Level 2 or Level 3 requirements related to use of Cloud Service Providers (CSP). A CSP is assessed against the FedRAMP Moderate baseline. This is required when a CSP, regardless of the component or type of CSP, processes, stores, or transmits CUI.

The DoD declines to align CMMC requirements to alternate standards or accept compliance with alternate standards in lieu of the NIST SP 800–171 standard mandated by 32 CFR part 2002 for the protection of CUI. CMMI is focused on improving the software development process, while CMMC is focused on verifying the proper implementation of DIB cybersecurity requirements. Incorporating requirements into new or other existing standards would unacceptably delay action to improve DIB cybersecurity. The DoD must take action to improve DIB cybersecurity, regardless of the global state of cybersecurity. DoD's publication of this rule follows completion of OMB's formal rulemaking process, which includes both DoD internal coordination and Interagency coordination. The recommendation for the DoD to establish a voluntary DIB Cyber Protection Program is beyond the scope of this rule.

One commenter recommended administrative edits to identify CMMC levels at a particular place in the preamble description of the program. The preamble is not part of the official regulation. In addition to background and overview information about the proposed or final rule, the preamble includes responses to all comments received during the public comment period on the proposed rule. The certification requirements are in subpart D, §§ 170.15 through 170.18.

c. Alternate Implementation Timelines

Comment: Several commenters suggested that DoD abandon CMMC requirements in favor of simply continuing to rely upon self-assessments, or else allowing contractors to comply with DFARS clause 252.204–7012 requirements absent any assessment (self-conducted or third-party). Of those recommending self-assessment, two commenters limited the suggestion only to companies that self-certified as small businesses and one further recommended that DoD pay for certification assessment of all small businesses. One such commenter based their opinion on an interpretation that text in NIST SP 800–171 R2 identifies the requirements as a model for self-assessment. Another commenter made no suggestion to change assessment requirements, other than to implement them post-award, rather than pre-award.

One comment expressed doubt in the ability of the ecosystem to scale sufficiently to meet the demand for C3PAO assessments and assessor training.

One commenter suggested the rule be revised to eliminate POA&Ms but expand the period during which deficiencies can be reassessed from within 10 days of initial assessment to 60 days for those prospective contractors. Another commenter suggested varying timelines for POA&Ms based on a variety of criteria, including how many DoD contracts are held.

Response: The DoD declined to accept the risk associated with implementing CMMC solely as a post-award requirement. When contracts require contractors to process, store, or transmit CUI, DoD requires that they be compliant with DFARS clause 252.204–7012 and competent to adequately safeguard CUI from the beginning of the period of performance. DoD declines the recommendation to require primes to assume the cost of CMMC for their subcontractors. Arrangements between contractors and subcontractors are negotiated directly between those parties. The DoD does not accept the recommendation to eliminate or change the criteria for POA&Ms or the timeline allowed to remediate open POA&M items. The 180-day period allowed for POA&Ms and the determination of which weighted practices can be placed on a POA&M was a risk-based decision. The determination considers the relative risk DoD is willing to accept when a particular practice is not met and the amount of risk the DoD is willing to accept for those security practices that go ''NOT MET'' for an extended period.

The Department declines to adopt the recommendation to allow DIB members to assist in designing the DoD's mechanism for assessing DIB compliance with DoD's contractual requirements. In developing the CMMC program, the DoD sought and considered DIB input. DoD disagrees with the comment that there is a lack of scalability in the CMMC program. The phased implementation plan described in § 170.3(e) is intended to address any CMMC Ecosystem ramp-up issues, provide time to train the necessary number of assessors, and allow companies the time needed to understand and implement CMMC requirements. The rule has been updated to add an additional six months to the Phase 1 timeline. As with all its programs, the Department intends to effectively oversee the CMMC Program and act as needed to manage its effective implementation. Although the full extent of DoD's oversight process is beyond the scope of this rule, the rule text addresses DoD's authority to waive the application of CMMC requirements when warranted in accordance with all applicable policies, procedures, and approval requirements.

DoD has utilized a phased approach to the rollout to reduce implementation risk. CMMC Program requirements make no changes to existing policies for information security requirements implemented by the DoD. It is beyond the scope of this rule for DoD to determine the order in which organizations are assessed.

d. Alternate Assessors or Assessments (Including Self-Assessment Only)

Comment: One commenter submitted numerous recommendations based on an opinion that skills required for conducting CMMC compliance assessments are like those required for conducting Independent Technical Risk Assessments (ITRAs) on Major Defense Acquisition Programs (MDAPs). Such assessments are conducted by the Office of the Undersecretary of Defense for Research & Engineering (OUSD(R&E)) in accordance with Defense Technical Risk Assessment Methodology (DTRAM) criteria. These criteria extend beyond compliance with cybersecurity requirements and include characteristics such as modular open systems architecture, software, manufacturing, reliability, availability, maintainability, and others. This commenter noted the DoD's Adaptive Acquisition Framework applies to both Information Systems and National Security Systems and suggested that existing acquisition requirements pertaining to ITRA and DTRAM should suffice in lieu of CMMC assessments. The commenter recommended that DoD use existing ITRA teams to perform compliance assessments of contractor-owned information systems. In addition, they recommended aligning requirements to DoD policies rather than to NIST standards. Other comments made similar suggestions to synchronize cybersecurity requirements with DoD policies rather than NIST standards but cited FISMA compliance assessments as the appropriate model rather than the DTRAM.

One comment suggested that C3PAOs be permitted to conduct partial assessments of ESPs, MSPs, and MSSPs. Multiple comments expressed concern with CMMC assessment requirements for OSAs that use ESPs, stating that OSAs would be unlikely to know which components of the services they purchased were covered by a required CMMC Level 2 assessment. This commenter recommended the creation of a separate type of CMMC assessment specifically for ESPs, which they further recommended should be highlighted on the CMMC AB marketplace to assist OSAs in selecting an appropriately vetted ESP. These comments provided an extended description of the specific scoping guidance that should be adding to existing CMMC supplemental documentation, as well as several sample scenarios explaining how requirements for this new type of assessment should be applied. Two comments highlighted that the rule's preamble does not include details of assessment and implementation requirements.

Several commenters recommended the DoD abandon the CMMC ecosystem model and conduct all cybersecurity compliance assessments using DIBCAC assessors, which would reduce cost to the DIB. One such commenter suggested that DIBCAC assessment of C3PAOs, as part of the accreditation process, detracts from DIBCAC's capacity to perform CMMC level 2 assessments for the DIB. Another noted that as Government employees, DIBCAC assessors could exercise judgement to make risk-tolerance decisions that non-Government C3PAOs cannot, including possible acceptance of partial non-compliance.

Response: DoD must enforce CMMC requirements uniformly across the Defense Industrial Base for all contractors and subcontractors who process, store, or transmit CUI. The value of information and impact of its loss does not diminish when the information moves to contractors and subcontractors. The DoD has considered the recommendation and declines to revise the rule text to rely solely on self-assessment or eliminate the 3-year validity period to rely on a one-time certification. It is important that contractors maintain security compliance for systems that process, store, or transmit DoD CUI. Given the evolving cybersecurity threat, DoD's best interests are served by ensuring that CMMC Level 2 assessments remain valid for no longer than a 3-year period, regardless of who performs the assessment.

CMMC Program requirements in this rule are designed to improve compliance with requirements for safeguarding of FCI and CUI. DoD has privity of contract to enforce these requirements and CISA does not. OSAs are free to choose CISA services as part of their implementation of DoD requirements. FISMA is for Federal systems that are used by Government personnel or the public and is therefore an unsuitable surrogate for CMMC requirements. If a contractor provides outsourced IT services to a Federal agency, the system is considered a Federal system and FISMA applies. In contrast, CMMC requirements apply to nonfederal systems that are used internally by contractor personnel.

The DoD disagreed with the commenter's assertions about NIST SP 800–171 R2 and the available assessment methods. DoD's DIBCAC currently performs assessments using the procedures in NIST SP 800–171A Jun2018, and these documents explicitly identify the target audience to include individuals with security assessment responsibilities, such as auditors, assessors, and ''independent verifiers''. The aggregated SPRS reporting and scoring is CUI. The DoD does not wish to make this information public, which might aid adversaries in coordinating their attacks.

The CMMC Program does not alleviate or supersede any existing requirements of the Adaptive Acquisition Framework, nor does CMMC alter any statutory or regulatory requirement for acquisition program documentation or deliverables.

One commenter referenced assessments required during the acquisition process for DoD systems. DoD's policies governing acquisition programs require that Independent Technical Risk Assessments be conducted on Major Defense Acquisition Programs. These assessments provide a view of program technical risk and are not well-suited to the assessment of contractor owned information systems against standards for safeguarding CUI. CMMC assessments are conducted on contractor owned information systems to gauge compliance with FAR and DFARS requirements for safeguarding FCI and CUI that is processed, stored, or transmitted within those contractor-owned information systems. One commenter incorrectly asserts that the CMMC Scoring Methodology does not parallel existing scoring methods, however the CMMC methodology is based on the DoDAM.

The DoD declined to accept the recommended alternative of self-assessment with the potential to require DIBCAC assessment for a sampling of DoD contractors, which is essentially the status quo. Both GAO reporting and other DoD analysis have shown that the DIB has not consistently implemented the NIST SP 800–171 requirements needed to comply with DFARS clause 252.204–7012, even though DoD's objective was for the contactor to implement NIST SP 800–171 as soon as practical, but not later than December 31, 2017.

The DoD reserves the right to decide when reliance on self-assessment will suffice, and when compliance should be assessed through CMMC certification. Based on DoD decision criteria that includes a risk assessment of the type and sensitivity of program information to be shared, Program Managers will identify the appropriate CMMC requirement (*e.g.,* CMMC Level 2 self-assessment or Level 2 certification) in the solicitation.

The government does not have the capacity in house to adequately assess

the 220,00+ companies in the DIB. The DoD cannot assume the workload of directly assessing every DIB contractor. With this final rule, DoD established a scalable way to verify, through assessment, that contractors have implemented required security measures necessary to safeguard DoD information. The DIBCAC's mission is derived from DoD priorities and the Department is actively working to ensure that the DIBCAC is adequately resourced to effectively execute its mission areas. Planned changes to DCMA staffing levels have been considered and are necessary to implement the elements of the CMMC program described in this rule (*i.e.,* Level 3 and C3PAO assessments).

By design, the CMMC Program depends on the supply and demand dynamics of the free market, enabling it to naturally scale and adapt to capacity requirements. The DoD established requirements for each part of the CMMC ecosystem to support a robust compliance assessment mechanism for DoD's contractual requirements to safeguard CUI that is processed, stored, or transmitted in contractor owned information systems. The DoD cannot assume the workload of directly assessing every DIB contractor.

One commenter provided numerous comments expressing concern that OSAs that use ESPs will be unlikely to know which ESP services require CMMC assessment within the OSAs boundary or scope. This commenter recommended an alternate type of CMMC assessment specifically for ESPs. In lieu of adopting that recommendation, the DoD has updated the rule in §§ 170.19(c)(2) and (d)(2) to reduce the assessment burden on ESPs. DoD declined to allow partial CMMC Assessments. ESPs may request voluntary CMMC assessments of their environment and use that as a business discriminator. The marketplace for ESP services will adjust to find the efficient manner for ESPs to support OSA assessments.

e. Alternate Governance

Comment: Rather than abandon the CMMC ecosystem model entirely, some commenters recommended only that DoD revise the CMMC Accreditation Body's roles and responsibilities. Three recommended the DoD eliminate the CMMC AB and take on its responsibilities; of these, one further suggested the DoD publish detailed Security Technical Implementation Guides describing how to implement the applicable NIST requirements. One commenter questioned the reasons for creating a CMMC AB rather than accepting another existing accreditation body or multiple accreditation bodies. One comment expressed doubt in the ability of the ecosystem to scale sufficiently to meet the demand for C3PAO assessments and assessor training.

Multiple comments called for organizations other than the current CMMC AB to run the CMMC ecosystem such as a CMMC Advisory Council or a Civilian Cybersecurity Corps comprised of government and private sector staff. One such comment requested that, unlike the current CMMC AB, the proposed body would be funded and managed by the government. Two commenters recommended the DoD consider accepting other types of conformance assessment such as ISO/IEC 27001:2022(E) and Health Information Trust Alliance (HITRUST) certification. One noted this would require guidance to describe how to address the gaps between standards those assessments are aligned to and those that CMMC are aligned to (*e.g.,* NIST SP 800–171 R2 for CMMC Level 2). This commenter further suggested that DoD accept alternate industry certifications in lieu of the training requirements identified for CMMC Assessors. One commenter suggested the DoD accept FedRAMP authorization to meet CMMC assessment requirements.

Response: DoD considered many alternatives before deciding upon the current CMMC structure. The DoD established requirements for a CMMC Accreditation Body, and this accreditation body will administer the CMMC Ecosystem. The DoD reviewed and assessed the whitepapers that were submitted by RFI respondents and determined that no single respondents could meet all the broad facets required to serve as the CMMC Accreditation Body. Based on this assessment, the DoD published notice of a planned meeting in November 2019 to allow the respondents and other members of the public to hear the senior DoD leadership address DoD perspectives regarding the notional CMMC implementation flow; the notional program structure; the notional CMMC Accreditation Body activities, structure, and relationship with the DoD; and the notional CMMC implementation schedule. The DoD also provided information regarding the Department's planned way forward. The result of the November 2019 meeting was the establishment of the current CMMC Accreditation Body. The relationship between the current CMMC Accreditation Body and the DoD was formalized through a Memorandum of Understanding and then a No-Cost Contract. The DoD cannot assume the risk or the workload of directly managing the CMMC Ecosystem or the other alternatives suggested. The current CMMC Accreditation Body is aligned to the DoD through contractual arrangements.

31. Rulemaking Process

Comment: Some comments were submitted to identify problems with using the Federal eRulemaking Portal (at *www.regulations.gov*) or the **Federal Register** website and did not address content of the proposed rule. One commenter was confused by the identification of the rule as ''Proposed'' rather than final. Another asked whether the rule could be republished with page numbers.

Many comments critiqued the format, heading and section numbering, use of incorporation by reference, or sections contained within the rule, rather than the substance of the content. For example, some comments described the CMMC rule as overly repetitive or containing duplicative sections. Some comments recommended deleting specific sections to shorten or simplify the rule, including ''History of the Program''. Some commenters perceived the preamble to the rule as unnecessary and recommended deleting or shortening that section. In addition, one commenter noted that responses to public comments received against an earlier CMMC rule publication ought to be published with the 48 CFR part 204 CMMC Acquisition rule rather than this 32 CFR part 170 CMMC Program rule. Several commenters simply thought the rule text too verbose and recommended rewriting the content with fewer words and simpler language or using tables to shorten the content. One comment criticized the organization of the documents.

Several comments addressed references to documents outside the rule, or those that are incorporated by reference. One commenter asked how the DoD will recognize when revisions to documents incorporated by reference cause them to be misaligned requirements identified in this rule. Other comments requested that additional documents be incorporated by reference, such as DoD Instructions on CUI and the DISA Cloud Security Technical Reference Architecture. Some commenters complained that the page count of the rule and documents incorporated by reference was too high and asked whether contractors are expected to read them all. Two commenters objected to certain terms in the definitions section pointing to other documents as the source of the

definition. One further suggested that such definitions be revised to simply point to the URL of the source definition.

Some comments recommended moving content from the new 32 CFR part 170 CMMC Program rule to the CMMC supplemental documents or changing citations to reference them rather than the NIST documents that are incorporated by reference. Another asked why the scoring methodology was incorporated into the rule, rather than incorporated by reference. One comment questioned whether the supplemental documents are truly optional, rather than required for compliance with CMMC program requirements. One comment stated a public comment period should be required for all supplemental guidance prior to final publication.

One commenter asked what precipitated implementation of the CFR, which the DoD interpreted as a question about codification of the CMMC program in the CFR. One commenter asked whether the rulemaking process had afforded a certain group the opportunity to coordinate or comment on the rule. Another referenced the separate 48 CFR part 204 CMMC Acquisition rulemaking effort needed to implement the content of this rule and urged the DoD to consider public comments of both rules prior to their publication as final.

One comment specifically suggested the CMMC program be implemented Government-wide. One commenter simply submitted a copy of a CMMC-related article from the February 2024 issue of National Defense Magazine and quoted or extracted from it rather than providing any specific comment or question.

Response: The process for creating Federal regulations generally has three main phases: initiating rulemaking actions, developing proposed rules, and developing final rules. A proposed rule is published for public comment prior to developing the final rule. A final rule must identify its effective date and be published 60 days prior to that date. The structure and formatting requirements for proposed and final rules and the process for submitting public comments are prescribed by the Office of the Federal Register and OMB, respectively, and are outside of DoD's control.

OMB approved publishing the CMMC rule as a Proposed Rule. It has undergone a required notice-and-comment process to give the public an opportunity to submit comments. The Proposed Rule and the comments received informed the final rule. Issues with the **Federal Register** or *www.regulations.gov* functionality for submitting comments via attachment of pdf or other file type were raised with the appropriate help desk and resolved before conclusion of the public comment period. The public comment period for this rule permitted review and feedback from any member of the public.

This rule follows the format and includes all sections required in OMB guidelines for formal rulemaking. The length of this rule is necessary to ensure all affected parties have sufficient information to understand and comply with the rule. **Federal Register** page numbers are visible when viewing the PDF version of the rule published Tuesday, December 26, 2023 (88 FR 89058; *www.govinfo.gov/content/pkg/FR-2023-12-26/pdf/2023-27280.pdf*).

Material published in the **Federal Register** contains numerous sections, including portions that do not amend the CFR. Specifically, the preamble for this rule, is written in a summary format and is not intended to provide the detailed information that is in the regulatory text.

DoD declines to delete reserved sections because the editorial standard for orderly codification is that for every (a) there must be at least a (b), and for every (1) there must be at least a (2), etc. ''Reserved'' meets this standard when there is no additional text required. The DoD declined to make other administrative changes, because the recommendations did not result in a substantive change.

One commenter correctly identified that the initial 32 CFR part 170 CMMC Program proposed rule included discussion and analysis of comments made against prior publication of a 48 CFR CMMC interim final rule. The decision to include that material was made for the public's convenience and to facilitate greater understanding of the 32 CFR part 170 CMMC Program proposed rule and the CMMC Program. Codification of the CMMC Program requires publication of both the 32 CFR part 170 CMMC Program final rule and the 48 CFR part 204 CMMC Acquisition final rule. Each of those final rules will include a discussion and analysis of public comments received during their respective comment periods. The DoD CIO worked in conjunction with OUSD(A&S) to ensure that the 32 CFR part 170 CMMC Program rule and the 48 CFR part 204 CMMC Acquisition rule are in sync.

The preamble is not regulatory text. The preamble includes a response to the significant, relevant issues raised in previous public comments on the original CMMC program. DoD declines to adopt recommendations to move content from the 32 CFR part 170 CMMC Program rule to the supplemental documents, which are not codified. As such, the supplemental documents are provided for optional use, and the regulatory text takes precedence. The CMMC Assessment Process (CAP) guidance is a product of the Accreditation Body and is not codified in the CFR as part of the CMMC rule, and the regulatory text in part 170 takes precedence.

Comments on the CMMC Supplemental Guidance were received as part of the public comment period review. Final versions of these documents were published with this rule. Other supplemental materials published by the Accreditation Body do not convey government direction and are therefore do not require rulemaking. Supplemental documents (*e.g.,* CMMC assessment and scoping guides) are not codified in the CFR as part of the regulatory text. To codify CMMC program requirements, content must be included in the 32 CFR part 170 CMMC Program rule text. DoD developed the CMMC Assessment Guides to provide supplemental information to the public offering added clarity on the intent of the NIST SP 800–171A Jun2018 and NIST SP 800–172A Mar2022 guides. The CMMC Assessment Guides are particularly important for security requirements with organization-defined parameters (ODPs) (*e.g.,* CMMC Level 3). There is no requirement to use the supplemental guidance documents.

Office of the Federal Register (OFR) regulations, at 1 CFR part 51, govern the IBR process. IBR is only available if the applicable regulations are published in the **Federal Register** and codified in the CFR. When incorporated by reference, this material has the force and effect of law, as do all regulations published in the **Federal Register** and codified in the CFR. 1 CFR part 51 requires the specification of a revision to a standard, for example NIST SP 800–171, *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations,* Revision 2, February 2020 (includes updates as of January 28, 2021), which is incorporated by reference in this rule. The DoD will determine when to update this rule after documents incorporated by reference have been revised. Per OFR guidance, § 170.4 points to other sections of part 170 where applicable and repeats definitions for terms incorporated by reference.

Contractors complying with CMMC requirements need to be familiar with those documents that are incorporated

by reference. The definition of subcontractor is not incorporated by reference, but rather points to a definition codified in 48 CFR 3.502–1, as recommended in OMB guidelines for formal rulemaking. DoD has determined that the Defense Information Systems Agency's Cloud Security Technical Reference Architecture does not meet the criteria for approved IBR material. However, the rule has been updated to use a different definition for Cloud Service Provider. The requirements of NARA's CUI program (32 CFR part 2002) and DoD's implementing policies for identifying and managing CUI are beyond the scope of the CMMC rule.

The CFR is the codification of the Federal Government's rules and regulations published in the **Federal Register**. The CFR was created with the passage of the Federal Register Act and amended in 1937 to provide a ''codification'' of all regulations at least once a year. The CFR reflects the tenet that the Federal Government must follow an open public process when rulemaking.

Due to the broad application of CMMC requirements for DoD acquisition support by the defense industrial base, the Department determined that codifying the CMMC Program and its associated requirements in 32 CFR part 170 CMMC Program rule (for national defense and security) was needed in conjunction with the corresponding DFARS contractual requirements codified in 48 CFR part 204 CMMC Acquisition rule.

The DoD has no authority to make CMMC a Federal-wide program. The notice of the required CMMC level is provided at time of solicitation. This does not prohibit contractors from pursuing CMMC assessments prior to receipt of a solicitation.

DoD declines to comment on the reposting of information being reported in the media.

32. Administrative Changes to Terms, References and Notations

Comment: Over 160 comments asked for clarification of terminology or the addition, removal, or modification of a definition. Most requests focused on Security Protection Data and Assets, Senior Officials, Information System, External Service Providers, Cloud Service Providers, Managed Support Providers, Internet of Things, CMMC Security Requirements, Organization Seeking Assessment, and Organization Seeking Certification. Numerous comments recommended the following terms could be clarified, expanded, or defined: ''Defense Industrial Base'', ''personal information'', ''contractor'', ''sub-contractor'', ''Prime Contractor'', ''equipment'', ''contractor information system'', ''Information System'', ''system'' ''Information Resource'', ''CMMC Approved Training Materials (CATM)'', ''CMMC Certified Instructor (CCI)'', ''Provisional Instructor (PI)'', ''cyber incident'', ''Accreditation Body'', ''Assessment Findings Report'', ''Organizationally-Defined'', ''Organizationally-Defined Parameter (ODP)'', ''Periodically'', ''Risk Assessment'', ''Risk Analysis'', Supervisory Control'', Data Acquisition'', ''Operationally Critical Support'', ''System Security Plan (SSP)'', ''TTP'', ''CMMC'', ''COTS'', ''NARA'',''C3PAO'' ''IS'', NSS'', ''Technology Asset'', ''Personnel Assets'', ''Asset Categories'', ''DIBCAC High'', and ''Enterprise''.

Response: All requests for changes to terminology definitions, references, and usage have been reviewed. In response, many terms were updated in § 170.4 Acronyms and definitions. The DoD determined those terms that were not changed to be sufficiently defined and appropriately referenced, and the requested administrative changes would not have resulted in a substantive change.

a. SPA/SPD/Asset

Comment: Numerous comments asked the DoD to expand on the definition, explanation, and guidance for Security Protection Data (SPD) and Security Protection Assets (SPA). Several other comments requested that the rule and supplemental documents add or expand definitions for ''Asset'', including various specific types of assets like ''Technology Assets'', ''Personnel Assets'', ''Organizational Assets'' ''Specialized Assets''. Some comments asked to modify the definition for ''Security Protection Asset'', ''CUI Asset'', ''FCI Asset'', and ''Out-of-Scope Assets''.

Response: The DoD modified the rule to add a definition for ''Security Protection Data (SPD).'' The DoD considered the NIST definitions for ''System Information'' and ''Security Relevant Information'' in the development of the new SPD definition. CMMC does not regulate the OSA's SPD, but instead implements existing regulatory requirements for the safeguarding of CUI. The DoD does not agree with the statement that the ESP definition conflates SPA with CUI assets. The definition of Security Protection Assets is consistent with its application in the NIST SP 800–171 R2 abstract. The phrase ''FCI Assets are part of the Level 1 CMMC Assessment Scope and are assessed against all CMMC Level 1 requirements'' was removed from the rule. The DoD declined to rephrase the term ''CUI Assets.'' The DoD reviewed the recommended edit and declined to make an update to ''Out-of-Scope Assets.'' The definition, as written, provides a clear distinction with Security Protection Assets (SPAs).

b. Senior Official

Comment: Several comments asked for additional definition or guidance about the Senior Official role.

Response: The DoD modified the rule to replace all references to the ''Senior Official'' with ''Affirming Official'' and provided additional clarity on this term. It is beyond the purview of the DoD to define technical qualifications for an OSA Affirming Official.

c. ESP/CSP/MSP

Comment: Some comments asked for additional clarification of the terms related to External Service Providers (ESPs) and Cloud Service Providers (CSPs). Two comments requested the rule add a definition and acronym for ''Managed Service Provider''.

Response: The DoD received numerous comments about the use of ESPs which do not process, store, or transmit CUI. In response to these comments, the DoD modified the rule to reduce the assessment burden on ESPs. An ESP that utilizes staff augmentation, where the OSA provides all processes, technology, and facilities, does not require a CMMC assessment. The rule was also updated to add a definition of ''CSP'' that is based on the NIST SP 800–145 Sept2011 definition of cloud computing. The term ''Managed Service Provider'' is not used in the rule; therefore, the acronym was removed from § 170.4.

d. IoT/OT/ICS

Comment: Several comments recommended DoD clarify the definition of IoT, OT, and ICS. Regarding IoT, one comment requested the rule specify that the exchange of data and information between devices occurs over the internet.

Response: As specified in the rule, IoT, IIoT, and OT, are Specialized Assets, and all requirements associated with Specialized Assets apply to any equipment that processes, stores, or transmits CUI but is unable to be fully secured. The description of Internet of Things (IoT) in the level 2 and level 3 Scoping Guides is consistent with the definition of IOT in § 170.4 and is defined in NIST SP 800–172A Mar2022. Scoping Guide text also provides examples to help clarify what types of devices may be IoT. The definition of

OT is from NIST SP 800–60 V2R1 and the definition of ICS is from NIST SP 800–82r3. Requests for revisions to these definitions should be addressed to NIST. OSAs determine the asset categories and assessment scope based on how and where they will process, store, and transmit FCI and CUI. The DoD declined to comment on individual use cases included in the comments.

e. Program and Security Requirements

Comment: Two comments asked for a definition of ''Security Requirements'' while another asked for the DoD to define the term ''CMMC Program requirements'' in the rule. Three comments addressed concerns with the CMMC security practices numbering scheme in §§ 170.14(c)(i). One comment requested clarification on what constitutes a ''priority'' program. Another commenter stated the term ''all applicable CMMC security requirements'' is ambiguous and many OSAs will only attest to fulfilling the FAR 52.204–21 or NIST SP 800–171 R2 security requirements. The commenter felt this could lead to a significant disconnect at CMMC Level 2 since Level 2 includes security requirements associated with the use of ESPs, as defined in DFARS clause 252.204–7012 paragraphs (*e.g.,* para (b)(2)(ii)(D)) and the DoD CIO FedRAMP Equivalency memorandum.

Response: CMMC Program requirements are all the requirements codified in the 32 CFR part 170 CMMC Program rule. The term ''CMMC Security Requirements'' is defined in § 170.14(c). The CMMC supplemental guidance documents add clarity; however, they are not authoritative and the rule itself takes precedence. The CMMC numbering scheme in the rule is a key element of the model that must pull together the independent numbering schemes of FAR clause 52.204–21 (for Level 1), NIST SP 800–171 R2 (for Level 2), and NIST SP 800–172 Feb2021 (for Level 3). For the CMMC Program, the numbering scheme must also identify the domain and CMMC Level of each security requirement. The term ''priority program'' is not used in the rule; therefore, no definition of this term is needed. A commenter incorrectly associated CMMC Program requirements as CMMC security requirements. To address potential confusion, the rule was updated to define ''CMMC security requirements'' as the 15 Level 1 FAR requirements, the 110 NIST SP 800–171 R2 requirements, and the 24 selected NIST SP 800–172 Feb2021 requirements.

f. OSA and OSC

Comment: Several comments requested clarification of the terms OSA and OSC. One recommended combining them into a single term.

Response: The definitions of Organization Seeking Assessment (OSA) and Organization Seeking Certification (OSC) are provided in § 170.4. It is important to note that OSC is a sub-set of OSA.

g. Process, Store, or Transmit

Comment: Several comments asked about use of the term, ''Process, store or transmit''. One asked about its application to a turnkey cloud based CMMC solution and whether the intent was to consider ''access'' a subset of ''process''. Another recommended using the term ''Handle'' in lieu of this term and noted that this would also require amendments to DFARS clause 252–204–7012. Another comment recommended rephrasing the definition to provide clarity while another asked that the definition of ''Process, store, or transmit'' (§ 170.4(b)) explicitly include residence of data in memory, which has not previously been identified in this context and could raise interpretation issues.

Response: The phrase ''process, store, or transmit'' is more specific than the term ''handle'' and is consistent with DoD contract requirements for Non-Federal Information systems as specified in DFARS clause 252.204–7012. The DoD intended ''Access'' to be included in the ''Process, store, or transmit definition as written in § 170.4(b). An organization offering a turnkey cloud based CMMC solution would be considered an ESP by this rule, and the rule was updated to address assessment and certification requirements of ESPs. The rule definitions are provided for additional clarity of the terms included in the rule and does not nor cannot include every potential instance of the term's application to a contractor's information systems.

h. Clarification of Definitions for FCI and CUI

Comment: Three comments requested clarification of and noted inconsistency between the terms ''FCI'' and ''CUI''. One perceived ''[FCI]'' and ''[CUI]'' as new acronyms and asked why this rule includes them. One comment noted the inconsistent use of the terms ''CUI and FCI'' and ''sensitive unclassified information'' and recommended selecting one term for use throughout the rule. Another comment requested definitions for CMMC be distinguished with formatting or another notation.

Response: FCI is defined in FAR clause 52.204–21. The definition of CUI and general requirements for its safeguarding are included in 32 CFR 2002.4 and 2002.14, respectively. CUI is not a new acronym. The notation ''[FCI]'' is identified in table 2 to § 170.15(c)(1)(ii) to reflect its alignment to the requirements of FAR clause 52.204–21 for basic safeguarding of information. Similarly, ''[CUI]'' has been added to reflect the use of those requirements for CMMC Level 2, which is designed to protect CUI, not FCI. The DoD amended the rule such that ''sensitive unclassified information'' will consistently be replaced with ''FCI and/or CUI'' as appropriate.

i. Use of Terms Information and Data

Comment: One comment noted the terms ''data'', ''technical data'', and ''information'' are used synonymously throughout the rule and supplemental documents. They also noted that neither NARA's CUI Registry nor the NIST SP 800–171 R2 define the word ''information'' and asserted this was a major oversight by NARA ISOO, the CUI Program Executive Agent. The commenter requested this rule adopt the term ''Information'' throughout the rule and only use ''data'' when specifically intended based on its definition. Another commenter requested the term ''Technical Data'' be replaced with the term ''Information''.

Response: As a commenter stated, both the CUI program and NIST use the term ''information''. Suggestions that the DoD work with NARA or NIST to define this term are outside the scope of this rule. Within this rule, data generally refers to individual facts, such as those submitted to eMASS or SPRS; however, data and information may be used interchangeably. DoD declined to make requested administrative edits because they would not result in a substantive change.

j. Source Materials Incorporated by Reference

Comment: Four comments asked for clarification of those documents incorporated by reference, or the specific versions of documents referenced in the rule.

Response: The DoD declined to incorporate by reference the Department's role as data owner. NIST SP 800–53 R5 was incorporated by reference only for use with applicable definitions because it provided the latest definitions available.

The OSA is responsible for determining its CMMC Assessment Scope and its relationship to security domains. Assets are out-of-scope when

they are physically or logically separated from the assessment scope. Contractor Risk Managed Assets are only applicable within the OSA's assessment scope. Table 3 to § 170.19(c)(1) is used to identify the asset categories within the assessment scope and the associated requirements for each asset category. Contractor's risk-based security policies, procedures, and practices are not used to define the scope of the assessment, they are descriptive of the types of documents an assessor will use to meet the CMMC assessment requirements.

To ensure the source of every definition is accounted for, the terms in § 170.4 either cite a reference or are designated as CMMC-custom using the notation ''(CMMC-custom term).'' The rule has been updated to eliminate the CNSS Glossary definitions and replaced them with appropriate NIST definitions.

k. Miscellaneous Other Terms, References and Notations

Comment: Three comments asked about references to the DoD Manual 8570, ''Information Assurance Workforce Improvement Program,'' and one asked if the references should be replaced by the newer DoD Manual 8140.

One commenter suggested DoD add an enhanced definition of ''Security Domain'' domain to the glossary.

One questioned use of the CNSSI–4009 Glossary instead of the NIST Glossary of Terms. One comment requested a change to text quoted from another source. One commenter asserted that the rule includes no reference to ''existing FAR, DFARS, or DoD authoritative sources'' and recommended that they be added in instead referencing NIST publications only.

One comment asked if it is necessary to read and understand all FIPS, NIST SP 800, CNSSI, and ISO/IEC documents incorporated by referenced in § 170.2. One comment requested the references for CMMC Assessment Guides in Appendix A be changed to NIST SP 800–171A Jun2018 and NIST SP 800–172A Mar2022. Two comments noted version numbers are not always provided for two specific document sources. Another comment requested references for supporting information, resources, and training for the DIB.

A commenter asked if the term ''Government Information Systems'' was equivalent to the term ''Federal Information Systems'' while another expressed that the term, ''CMMC Level 2 Final Certification Assessment was confusing given that ''Assessment'' and ''Certification'' are two separate and distinct terms. Another comment noted that the Summary Information section states there is a difference between a POA and a POA&M but recommended both terms be defined for clarity.

One comment stated the ''CMMC Certified Assessor (CCA)'' definition and acronym are not used consistently in the rule and the current CMMC AB's website. Another comment noted that the term, ''related practitioners'' under the definition of CAICO in § 170.4 could be confused with the term ''Registered Practitioners (RP)'' used by the CMMC AB as their designation for consultants.

One comment stated that the DoD must be deliberate in its use of certain terms, especially the words ''must'' and ''shall'', which connote legal requirements, versus words like ''will'', ''expected'', ''can'', ''may'', ''should'', etc., which are permissive (*i.e.,* optional)

One commenter noted the word ''practice'' was replaced multiple times based on a comparison of pre-publication drafts with the formal drafts that were published for public comment.

Another comment asserted that the DoD is falsely describing the CMMC program as addressing ''basic'' cybersecurity requirements when this is the most demanding cybersecurity standard ever produced.

One commenter objected to the CMMC Level 1, 2, and 3 Assessment definitions in § 170.4 referring to the content of corresponding rule sections and suggested that the definitions be deleted from § 170.4 unless they can be succinctly defined without doing so.

Response: The rule has been updated to reference DoD Manual 8140 ''Cyberspace Workforce Qualification and Management Program'' which replaced DoD Manual 8570, ''Information Assurance Workforce Improvement Program.'' DOD Manual 8140.03 is available at: *https://dodcio.defense.gov/Portals/0/Documents/Library/DoDM-8140-03.pdf.*

No changes were made to quotations from sources outside the rule. A definition cited from a source must exactly match the source, it cannot be altered. To address a commenter's misperception that the rule does not reference ''existing FAR/DFARS, or other DoD authoritative sources,'' it should be noted that the CMMC proposed rule includes 54 mentions each of FAR clause 52.204–21 and DFARS clause 252.204–7012. The DFARS clause 252.204–7012 is added to DoD contracts to implement the requirements of NIST SP 800–171, which is the authoritative reference for adequate safeguarding of CUI.

Contractors complying with CMMC need to be familiar with those documents that are incorporated by reference, which address requirement-related topics. NIST SP 800–53 R5 is incorporated by reference only for applicable definitions because DoD chose to use the latest definitions available. The purpose of a reference listed in § 170.2 should be interpreted based on the context in which it is used. For example, the references provided in § 170.4 specify the source of the definition. The references for the CMMC Assessments Guides listed in Appendix A have been updated. These guides are largely derived from NIST SP 800–171 R2, NIST SP 800–171A Jun2018, NIST SP 800–172 Feb2021, and NIST SP 800–172A Mar2022.

The DoD has updated § 170.3 to align with the FAR terminology and now reflects ''Federal Information System'' instead of ''Government Information System''.

The DoD updated the rule to reference the latest version of ''Cloud Security Technical Reference Architecture'' and, where appropriate, to identify a revision number for NIST SP 800–171. Specific details of cybersecurity-related resources and training developed to support the DIB are outside the scope of this rule. As it becomes available, supporting resources and training information will be disseminated. Currently, multiple public resources are available to help educate companies on NIST and CMMC requirements.

The DoD declined to respond to comments based on comparison of pre-publication draft versions of the supplemental guidance documents.

A commenter's claim that DoD views the CMMC program as only addressing ''basic cybersecurity'' is incorrect. Throughout the rule, references to ''basic safeguarding'' mean the requirements of CMMC Level 1, which align directly to the requirements of FAR clause 52.204–21. That FAR clause is titled ''Basic Safeguarding of Covered Contractor Information Systems''. Similarly, the CMMC program establishes a CMMC Level 3 requirement to comply with a subset of requirements from NIST SP 800–172 Feb2021, titled, ''Enhanced Security Requirements for Protecting Controlled Unclassified Information.''

Section 170.4 includes acronyms and definitions used in the rule text. Terms from other authoritative sources are listed in § 170.4 and are properly sourced. 1 CFR part 51 governs drafting of this rule.

The DoD updated the rule throughout to reflect new terminology better differentiating between the activity of

undergoing an assessment and the CMMC Status that may result from that activity. An OSA undergoes one of the following: Level 1 self-assessment; Level 2 self-assessment; Level 2 certification assessment; or Level 3 certification assessment. The result of that assessment activity is either failure to meet minimum requirements or one of the following CMMC Statuses: Final Level 1 (Self); Conditional Level 2 (Self); Final Level 2 (Self); Conditional Level 2 (C3PAO); Final Level 2 (C3PAO); Conditional Level 3 (DIBCAC); or Final Level 3 (DIBCAC).

The official DoD acronym for CCA is ''CMMC Certified Assessor,'' as addressed in § 170.4. All CMMC terms and definitions provided in this 32 CFR part 170 CMMC Program rule are codified and therefore take precedence over definitions and acronym usage from the CMMC website or other sources.

To avoid confusion in the ecosystem with the term ''practitioner'', the DoD modified the definition in § 170.4 to replace the word ''practitioners'' with ''professionals.''

While ''must'' is a more commonly used term than ''shall'', both terms impose a requirement as defined in FAR 2.101 Definitions.

33. Rule Text Modifications

a. Changes to the Preamble

Comment: One commenter recommended that the supplemental Assessment Guides be consolidated with and cross referenced to requirements for the CMMC Levels in the same document. Eighty-three comments requested changes to the preamble section of the rule text. Of those, 17 were incorporated and are summarized below.

Writing Style: Multiple commenters wanted shorter, simpler, and more focused wording starting with changes to the first sentence in the Summary section.

Word Choices: In the ''CMMC 2.0 Overview as Proposed by this Rule'' section several comments objected to the description of FAR clause 52.204–21 requirements as ''elementary'' or ''basic''. One comment asserted that ''may'' is not the correct verb for ''Defense contracts . . . may include applicable requirements . . . ,''. One comment suggested the preamble sentence ''Once CMMC is implemented, the required CMMC level for contractors will be specified in the solicitation,'' be revised to use wording that is more consistent with other parts of the preamble and rule text. One commenter proposed edits to remove passive voice from a sentence in the preamble description of Key Changes Incorporated in the Revised CMMC Program. One commenter requested a change to reference the relevant DFARS clause 252.204–7012, rather than the DFARS subpart 204.73.

Clarifications: Two comments asserted that the description of affirmations requirement could be misinterpreted as suggesting that primes and subcontractors all submit a single affirmation or that one contractor must affirm another's continuing compliance. One comment requested clarification about FedRAMP requirements for Cloud Service Providers. Some comments asked whether POA&Ms must be documented in the System Security Plan. One comment recommended punctuation and grammatical edits and asked for clarification of rule text that discusses the impact of not logically or physically separating contractor-owned information systems that process, store, or transmit FCI (or CUI) from those that do not.

Response: This rule follows the format and includes all sections required in OMB guidelines for formal rulemaking. The DoD lacks authority to modify the template or omit required sections, as requested by some commenters. In addition, one commenter recommended that the supplemental Assessment Guides be consolidated with and cross referenced to requirements for the CMMC Levels in the same document. The DoD interpreted this recommendation as a request to integrate all information in the supplemental guidance into the rule text, which does not align with rulemaking guidelines (1 CFR part 51). No changes were made to consolidate or integrate the supplemental guidance documents, which are not codified and are provided as optional resources to assist OSAs. The regulatory content in the 32 CFR part 170 CMMC Program rule takes precedence.

Some commenters criticized the preamble summary paragraph, and one submitted a preferred rewrite that oversimplified the content so far as to alter the intended meaning. For that reason, the specific revisions were not incorporated. However, the DoD has revised the final rule to begin with a simplified statement of its purpose, as follows: ''With this final rule, DoD establishes a scalable way to verify, through assessment, that contractors have implemented required security measures necessary to safeguard DoD's Federal Contract Information (FCI) and Controlled Unclassified Information (CUI)''.

The DoD strove to streamline the writing style. Note that the preamble is not part of the regulatory text, however, it is a required part of the rulemaking template. The DoD made the following changes to the preamble based on requests for text modifications.

The preamble is updated to change the verb ''will'' to ''should'', where appropriate. The preamble and regulatory text have been updated to clarify that a Plan of Action need not be part of the System Security Plan. The sentence in the preamble overview about FAR clause 52.204–21 requirements has been rewritten to describe them as ''the minimum necessary'' to receive FCI, rather than describing them as ''elementary'' for ''basic'' cybersecurity. Note that the title of the FAR clause 52.204–21 clause is Basic Safeguarding Requirements.

A preamble overview paragraph about Affirming Officials is revised to clarify that CMMC affirmations shall be submitted by the OSA and apply only to the information systems of that organization. DoD's use of the term OSA within the affirmations section is deliberate and conveys that each organization is responsible for affirmations pertaining to their own assessments. A preamble overview paragraph about Cloud Service Providers has been aligned to DFARS clause 252.204–7012 language and specifies that defense contractors must confirm that any CSPs they use to handle CUI must meet FedRAMP Moderate Baseline standards. Wording in the preamble overview of the rule has been edited from ''may include'' to ''require'', to clarify a statement about when DFARS clause 252.204–7012 applies. One sentence in the preamble about the regulatory impact of CMMC Requirements has been edited into two sentences to make clear that solicitations identify CMMC contract requirements, rather than ''for contractors'', and that only contractors handling FCI or CUI must meet the specified CMMC requirements.

The DoD has incorporated a suggested re-wording to simplify the description of CMMC Level 2 assessments in the preamble paragraph describing Key Changes Incorporated in the Revised CMMC Program.

b. Changes to the Regulatory Text

Comment: Of the 52 comments that requested changes to the regulatory text (§§ 170.1 through 170.24), the nine which DoD incorporated are summarized below.

Word choices: In § 170.1(b), two comments posited that the word ''enhance'' is inaccurate in the phrase

''The CMMC Program is designed to enhance protection of FCI and CUI . . .''. In § 170.9(a) one comment noted that C3PAOs do not ''grant'' assessments, they ''conduct'' them. Another asked why, in table 3 to § 170.19(c)(1), the CUI Asset category needs to be assessed against ''CMMC security requirements'' but in table 5 to § 170.19(d)(1), the same category is assessed against ''all CMMC security requirements.'' For § 170.4(b) One comment requested appending ''and to the DoD'' to the definition of Assessment Findings Report.

Paragraph Organization: For Applicability, a comment recommended changing the order of paragraphs in § 170.3 and other text changes to improve clarity.

Reference: One comment noted that the § 170.6(b) phrase ''as provided for under DFARS clauses 252.204–7012 and 7020 . . .'' is in error because the section describes CMMC PMO responsibilities and only DFARS clause 252.204–7020 references DIBCAC assessments of OSAs.

Redundancy: One comment asserted that § 170.9(b)(9) and § 170.9(b)(20) are redundant as both describe that assessment appeals and results are entered into eMASS.

Consistency: One comment pointed out an inconsistency between the text in § 170.18(c)(1)(i) and the Scoping Guide related to whether a CMMC Level 3 Assessment Scope must be the same as, or may be a subset of, the Assessment Scope of the prerequisite CMMC Level 2 certification.

Clarifications: One comment asked whether the stipulation that CCIs must not disclose CMMC data or metrics applies to all data or only ''non-public'' data.

Consistency: One commenter asked for clarification regarding templates and formats required for information uploaded into the CMMC instantiation of eMASS.

Response: The DoD has incorporated a request to delete the word ''enhance'' from § 170.1(b), and the purpose of the CMMC Program now reads that the CMMC Program is designed as a compliance assessment to assist in DoD's enforcement of information safeguarding requirements. Lower level paragraphs in § 170.3 have been reordered for added clarity.

The words ''and to the DoD via CMMC eMASS'' have been added to the end of the Assessment Findings Report definition in § 170.4(b). In addition, § 170.9(b)(17) has been rephrased to stipulate that all assessment data and information uploaded into the CMMC instantiation of eMASS must be compliant with the data standard provided in the eMASS CMMC Assessment Import Templates available on the CMMC eMASS website.

The DoD replaced the word ''granting'' with the word ''conducting'' in the description of C3PAO assessments in § 170.9(a). Sections 170.9(b)(9) and (b)(20) have been modified to eliminate redundancy between the two paragraphs, however the DoD did not concur that §§ 170.9(b)(17) and (18) are redundant and made no change.

Section 170.18(c)(1)(i) was revised to clarify that the CMMC Assessment Scope for Level 3 must be equal to or a subset of the CMMC Assessment Scope for the Level 2 certification assessment of the system in question. Section 170.19 was revised to clarify that, for CMMC Level 2, OSAs will be assessed against all Level 2 requirements. For CMMC Level 3, OSAs will be assessed against all Level 2 and Level 3 requirements.

Section 170.1 has been revised to correct punctuation and improve grammar. The section now conveys more clearly that the CMMC Program is designed as a compliance assessment to assist in DoD's enforcement of information safeguarding requirements. No changes were made regarding use of ''not logically or physically isolated from all such CUI systems''. Specifying a CMMC Assessment Scope is a necessary preparatory step for a CMMC assessment. Assessment requirements are specified in § 170.19. At Levels 2 and 3, logical or physical isolation is the primary mechanism used to separate in-scope from out-of-scope assets. CRMA and Specialized Asset categories only apply to assets that are within the Assessment Scope or boundary.

§ 170.6(b) has been revised to reference DFARS clause 252.204–7020 rather than DFARS clause 252.204–7012. In addition, § 170.05 was revised to reference DFARS clause 252.204–7012, rather than DFARS 204.73, for consistency and clarity.

The title of § 170.16(c)(1) has been updated to specify self-assessment of the OSA. DoD declined to make other administrative changes because they would not result in a substantive change.

§ 170.12(b)(8) has been revised to clarify that CCIs must not disclose CMMC data or metrics that are PPI, FCI, or CUI without prior coordination with and approval from DoD.

c. Changes Recommended but Not Incorporated

Comment: Many comments addressed non-substantive administrative changes or writing style and were not incorporated. Many comments requested substantive changes that were not incorporated, and which are described more fully in the response below.

Response: In addition, thirty-eight other recommendations were not incorporated because they did not result in substantive changes. The DoD declines to delete references or convert narrative text explanations into tables, bullets, or other truncated formats because the intent is to facilitate reader understanding of complex requirements. Other recommended administrative changes which did not result in a substantive change were also not incorporated.

Other changes were not incorporated because the revisions would result in unintended or inaccurate meaning of the text. The following explanation is provided for those unincorporated but substantive recommendations.

The DoD did not change content in the Discussion of Public Comments section that addressed responses to the original 48 CFR CMMC interim final rule, because intervening rule changes made in response to public comments received about the more recent proposed rule(s) supersede text of the earlier rule.

Section 170.3(a)(1) applies to contract awardees. While the rule may impact External Service Providers and Cloud Service providers, the rule is not directly applicable to them. CMMC requirements apply at the time of contract award and thereafter.

DoD declined to change the program name as it is well known in the community, and the tiered approach to the model still embodies a concept of cybersecurity maturity. OSA responsibilities for complying with CMMC are provided throughout the rule and do not need to be repeated.

CMMC is a program that validates implementation via assessment, the rule does not prescribe how to implement.

In the first sentence of the Summary, this rule describes that the CMMC assessment mechanism will cover both existing security requirements for CUI, and new security requirements for certain programs. No additional reference is necessary in the introductory summary because the specific NIST reference documents are mentioned shortly after the summary and throughout the rule text.

DoD declined to revise § 170.2 to use the word ''competent'' because ''competence'' is the word included in the referenced ISO/IEC 17011:2017(E) Abstract.

The rule retains requirements to provide all documentation and records in English because it is necessary for adequate program management and specifying this requirement is required to ensure clarity of interpretation.

The DoD has reviewed § 170.17(c)(2)(ii) and does not agree that a noun is missing. The lead-in paragraph provides the noun, and it is not necessary to repeat the phrase. The DoD disagrees that portions of § 170.18(c)(1) are redundant and therefore did not delete the lower level paragraphs, however revisions were made to clarify that a Level 2 certification assessment is needed prior to Level 3 certification assessment.

Recommended edits to § 170.24(9) that would change the meaning were not accepted. During the assessment process, the Lead Assessor/Assessor must view any prior DoD CIO adjudication of proposed variances to security requirements in the system security plan to ensure correct implementation and render a determination of MET if there have been no changes in the environment.

The DoD did not modify § 170.10 to permit CCAs, CCPs, and CCIs to retrain ''or'' recertify, instead of both, upon significant change to DoD's CMMC Program requirements under this rule. The DoD disagreed with one commenter's assertion that the summary within the preamble to the rule implies CMMC assessments address all DFARS clause 252.204–7012 requirements, therefore no edits were necessary. The rule indicates that the applicable CMMC Level 2 security requirements are those in NIST SP 800–171 R2 as implemented in DFARS clause 252.204–7012.

Revisions suggesting that all objectives identified in NIST SP 800–171A Jun2018 need not be met are not accurate and not incorporated. Each assessment objective in NIST SP 800–171A Jun2018 must yield a finding of MET or NOT APPLICABLE for the overall security requirement to be scored as MET. Assessors exercise judgment in determining when sufficient and adequate evidence has been presented to make an assessment finding. This is consistent with current DIBCAC High Assessments and assessments conducted under the Joint Surveillance Voluntary Assessment Program (JSVAP). A security requirement can be applicable, even with assessment objectives that are N/A. The security requirement is NOT MET when one or more applicable assessment objectives is NOT MET.

Recommendations to address specific contractual matters were not addressed, because this is a 32 CFR part 170 CMMC Program rule and not an acquisition regulation. Any comments related to contract requirements should be provided in response to the 48 CFR part 204 CMMC Acquisition rule.

The CMMC rule does not specify the number of POA&Ms that may be used to address one or more CMMC security requirement that were NOT MET during a CMMC assessment. The OSA may choose to use a single POA&M or multiple POA&Ms.

No edits were made to reference CCAs in § 170.7, which covers responsibilities for only the DIBCAC, and not CCAs. § 170.11 covers responsibilities for CCAs. DoD declined to add verbiage to address the potential revision or cancellation of an ISO/IEC standard because § 170.8 adequately reflects that the Accreditation Body shall achieve full compliance with revised ISO/IEC 17011:2017(E) standards. Standards are not effective until published as final.

The DoD declined to adopt one commenter's suggestion to submit all appeals investigation materials with the final decision into eMASS, however, an updated assessment result, if any, will be input into eMASS. In addition, C3PAOs are required to retain assessment artifacts for 6 years.

DoD did not agree with one commenter's assertion that the preamble description of the CMMC Program is incomplete or inaccurate, or that the rule makes implicit changes to DFARS clause 252.204–7010 reporting requirements for activities subject to the U.S.-International Atomic Energy Agency Additional Protocol. The referenced paragraph, which appears both in the preamble background section and in an overview paragraph of the supplemental documents, accurately portrays the CMMC Program as a compliance assessment model to assist in DoD's enforcement of FCI and CUI safeguarding requirements. No change has been made in either location.

The DoD also declines to specify in the rule the DoD offices that review Tier 3 background investigations or equivalency determinations. No language related to Cloud Service Offerings (CSO) was added in § 170.19 column two. Assets that process, store, or transmit CUI are handled the same way regardless of whether they are from a CSO or otherwise. Therefore, there is no need to call out CSOs in the table.

The DoD minimized use of the passive voice to an extent in this final rule; however, in some places the passive voice is used to emphasize the action occurring rather than the individual or entity performing the action.

There is no version number in the title of the CMMC Program. Terms such as versions 1.0 or 2.0 have previously been used in DoD's public engagements as a colloquial way to communicate differences in content as the program has evolved. This final rule codifies the program and does include changes from the proposed rule. Only those public comments received during the 60-day comment period following the December 26, 2023 publication (88 FR 89058) are addressed in this final rule.

34. Error Corrections

Comment: Numerous administrative comments were received that addressed formatting grammar, punctuation, and typographical errors as well as word usage and acronym errors: Wording discrepancies, redundancies, and inaccuracies were also reported by multiple comments.

Several comments identified inconsistencies between FedRAMP equivalency as stated § 170.16(c)(2)(ii) and as described in the DOD CIO's December 21, 2023, Federal Risk and Authorization Management Program Moderate Equivalency for Cloud Service Provider's Cloud Service Offerings memorandum. One comment requested moving the phrase ''in accordance with all applicable policies, procedures, and requirements'' in § 170.5(d) to an earlier part of the sentence to be grammatically correct.

One comment noted that DFARS provision 252.204–7019 does not stipulate assessments must be a ''self-assessment'' as stated in the CMMC 2.0 Overview as Proposed by this Rule section. Also in the same section, one comment indicated the SSP description should not direct the user to explain how each requirement is implemented, monitored, and enforced.

One comment asked if the reference to NIST SP 900–171A refers to the current version or if a version number should be specified. Three comments indicated issues using embedded links to websites. One comment noted that ''inspection activities'' should be changed to ''assessment activities'' in 170.9(b)(10). One comment asserted that in 170.17(a)(1) the word ''obtaining'' should be deleted in the phrase ''. . . the OSC must achieve either CMMC Level 2 Conditional Certification or Final Certification through obtaining a CMMC Level 2 Certification Assessment . . .''

Response:

Typographical, Grammatical, and Punctuation Errors, and Formatting

The DOD reviewed all reported grammatical, punctuation,

typographical, and acronym-related errors and the preamble, RIA, and rule have been updated to address all confirmed errors. Additionally, the formatting errors in the CMMC Level 2 Asset Categories and Associated Requirements row of table 1 of § 170.19(c)(1), have been corrected. The final rule has been revised to correct document titles as needed.

A commenter provided feedback on the PRA and identified incorrect markings in information collection samples. DoD will work with DISA to ensure the final versions of the eMASS templates contain the proper markings. An OSA's CMMC certification assessment results will be ingested into DoD's CMMC instance using the eMASS CMMC Assessment Import Templates published at *https://cmmc.emass.apps.mil*. The requirements for C3PAOs and DCMA DIBCAC and what is submitted into CMMC eMASS is described in §§ 170.7, 170. 9, 170.17(a)(1)(i), 170.18(a)(1)(i), and 170.19. The documents accompanying the PRA were intended to serve as samples. The comment also contained an incorrect assumption that commercial privileged information ''is not CUI because it is incidental to the performance of the contract.'' The commenter has confused CDI with CUI and is incorrect in the assumption that commercial privileged information is not CUI because of it being incidental to the performance of the contract.

Word Usage

Incorrect uses of ''tri-annually'' have been corrected. Where appropriate the wording has been changed to ''every three years'' for clarity. In the preamble to the rule, the statement ''. . . and triennial affirmation . . .'' has been corrected to indicate the affirmations are an ''annual'' requirement.—DoD has updated the preamble to the rule to the correct certification assessment terminology.

The link on the **Federal Register** website has been corrected and now resolves to the website indicated.

Incorrect or Incomplete References

Several incorrect or incomplete references have also been corrected. § 170.9(b)(1) has been corrected to refer to the authorization in § 170.8(a). One comment asserted that there is no section (c) associated with the reference ''§ 170.17(a)(1) and (c)'' which is in § 170.9(b)(6). The section ''§ 170.17(c) Procedures'' does exist and addresses the procedures associated with a CMMC Level 2 Certification Assessment. Section 170.17(a)(1) addresses the Level 2 Certification Assessment requirements for an OSC. The rule has been updated in § 170.9(b)(6) for clarity.

Commenters accurately noted that § 170.17(a)(1) should refer to the Level 2 requirements in § 170.14(c)(3), and this has been corrected. The reference in § 170.18(c)(5)(ii) has been updated to say, ''that maps to the NIST SP 800–171 R2 and a subset of the NIST SP 800–172 Feb2021 requirements''. The rule is updated to replace the instruction ''(insert references L1–3)'' with ''§ 170.19 CMMC scoping.''

Wording Discrepancies, Redundancies, and Inaccuracies

To address a discrepancy between the rule and scoping guidance, the Level 2 Scoping Guide has been updated for clarity and alignment with § 170.16(a) which states that meeting the CMMC Level 2 Self-Assessment requirements also satisfies the CMMC Level 1 Self-Assessment requirements for the same CMMC Assessment Scope. Additionally, the preamble to this rule has been updated to clarify that not all affirmations will occur prior to contract award because POA&M closeout affirmations may occur after contract award.

To address a discrepancy about Level 1 scoring, in § 170.24 the phrase ''; therefore, no score is calculated, and no scoring methodology is needed,'' has been deleted.

The regulatory text was updated to require FedRAMP moderate or FedRAMP moderate equivalency in accordance with DoD Policy. CMMC Program Requirements make no change to existing policies for information security requirements implemented by DoD. The preamble was modified to indicate DFARS provision 252.204–7019 requires an assessment (basic, medium, or high) and not just a self-assessment (basic).

The data input at § 170.17(a)(1)(i)(F) for CMMC eMASS is redundant so it has been removed. In the preamble, the DoD has also removed the inaccurate phrase, ''certified by DoD'', from the statement ''Under CMMC, compliance will be checked by independent third-party assessors certified by DoD.''

DoD has updated language in § 170.18(a)(1)(i)(B) to reflect for each DCMA DIBCAC Assessor conducting the assessment, ''name and government organization information'' will be required for the CMMC instantiation of eMASS.

The DoD has considered the recommendation to change the description of what an SSP should contain and declines to revise the rule text. The NIST SP 800–171 R2 requirement states that an SSP must describe ''. . . how security requirements are implemented . . .'' which is equivalent to going ''. . . through each NIST SP 800–171 security requirement and explain how the requirement is implemented, monitored, and enforced.''

Perceived Errors

DoD declines to make the edit to change ''shall'' to ''will'' in § 170.9(b). The existing language is consistent with standard rulemaking usage. The title for NIST SP 800–171A Jun2018 is the current title used by NIST and does not have a version number, so no change was needed. While not used in the rule text, the term enterprise is used in the description of the CMMC Program in the preamble's Statement of Need for This Rule section: Defense contractors can achieve a specific CMMC Level for its entire enterprise network or an enclave(s), depending upon where the information to protected is processed, stored, or transmitted, therefore enterprise remains in the definitions list.

DoD verified links by clicking on them in the PDF and by copying and pasting the links into a web browser. In both cases links resolved correctly.

The DoD has changed ''all personnel involved in inspection activities'' to ''all personnel involved in assessment activities'' in § 170.9(b)(9).

A comment asserted that there was a rulemaking formatting error in § 170.4(b). DoD is following the Office of the Federal Register standards for this section. In sections or paragraphs containing only definitions, paragraph designations are not used, and the terms are listed in alphabetical order. The definition paragraph begins with the term being defined. If a definition contains subordinate paragraphs, these paragraphs are numbered with paragraph designations beginning with the next appropriate level based on the dedicated definitions section.

The 2nd sentence of § 170.17(a)(1) includes the word ''obtaining'' for clarity.

35. Comments in Favor of the CMMC Program

Comment: Some commenters expressed favorable opinions about the CMMC program as a viable long-term solution to ensure cybersecurity controls are in place. Others commented about specific content of the 32 CFR part 170 CMMC Program proposed rule and the supplemental documents. For example, two commenters specifically complimented the inclusion of an Affirmation requirement and another supported CMMC implementation as a

pre-award requirement. Another commenter appreciated the regulatory text which ''encourages'' contractors to consult with the Government for additional guidance if or when unsure of appropriate CMMC Level to assign a subcontract solicitation. Two commenters applauded the use of already established workforce qualifications while another concurred with the regulatory text permitting CMMC Certified Professionals (CCPs) to participate in assessments with oversight of a CMMC Certified Assessor (CCA). A commenter also expressed appreciation for the regulatory text's alignment to a specific version of the guidelines (*i.e.,* NIST SP 800–171 R2). One commenter appreciated the video that DoD published to accompany and explain the proposed rule. Several comments cited the longstanding requirements of DFARS clause 252.204–7012 and cybersecurity risks of not implementing NIST SP 800–171 R2 as reasons that the 32 CFR part 170 CMMC Program final rule should be implemented as soon as possible.

Response: The Department appreciates that several commenters expressed agreement to and encouragement for the CMMC Program requirement and its associated specific rule text. The DoD recognizes that not all entities impacted by these regulations hold the same view of its requirements and appreciates those that took the time to express both positive and constructive feedback.

Applicability

Once CMMC is implemented in the 48 CFR part 204 CMMC Acquisition rule, the CMMC Program will require DoD to identify the CMMC Level and assessment type as a solicitation requirement and in the resulting contract for any effort that will cause a contractor or subcontractor to process, store, or transmit FCI or CUI on its unclassified information system(s). Once CMMC is implemented in the 48 CFR part 204 CMMC Acquisition rule, contractors handling FCI or CUI will be required to meet the CMMC Level and assessment type specified in the solicitation and resulting contract.

Summary of Program Changes: DFARS Case 2019–D041 implemented DoD's original model for assessing contractor information security protections. The initial CMMC Program was comprised of five progressively advanced levels of cybersecurity standards and required defense contractors and subcontractors to undergo a certification process to demonstrate compliance with the cybersecurity standards associated with a given CMMC Level.

In March 2021, the Department initiated an internal review of CMMC's implementation that engaged DoD's cybersecurity and acquisition leaders to refine policy and program implementation, focusing on the need to reduce costs for small businesses and align cybersecurity requirements to other Federal standards and guidelines. This review resulted in the revised CMMC Program, which streamlines assessment and certification requirements and improves implementation of the CMMC Program. These changes include:

- Eliminating Levels 2 and 4, and renaming the remaining three CMMC Levels as follows:
- Level 1 will remain the same as the initial CMMC Program Level 1;
- Level 2 will be similar to the initial CMMC Program Level 3;
- Level 3 will be similar to the initial CMMC Program Level 5.
- Removing CMMC-unique requirements and maturity processes from all levels;
- For CMMC Level 1, allowing annual self-assessments with an annual affirmation by company leadership;
- Allowing a subset of companies at Level 2 to demonstrate compliance through self-assessment rather than C3PAO assessment.
- For CMMC Level 3, requiring Department-conducted assessments; and
- Developing a time-bound and enforceable POA&M process.

In December 2023, the Department published a proposed rule to amend 32 CFR part 170 in the **Federal Register** (Docket ID DOD–2023–OS–0063, 88 FR 89058), which implemented the DoD's vision for the revised CMMC Program outlined in November 2021. The comment period for the proposed rule concluded on February 26, 2024. Changes have been made to the CMMC Program based on public comment. Significant changes include:

- The Implementation Phase 1 has been extended by an additional six months.
- A new taxonomy was created differentiating the level and type of assessment conducted from the CMMC Status achieved as a result.
- Clarification was added regarding the DoD's role in achievement or loss of CMMC Statuses.
- CMMC Status will be automatically updated in SPRS for OSAs who have met standards acceptance.
- Requirements regarding conflict of interest were updated to expand the cooling-off period for the CMMC Accreditation Body to one year and bounded the timeframe between consulting and assessing for the CMMC Ecosystem to three years.
- A requirement was added for the CMMC Ecosystem members to report adverse information to the CAICO.
- A Provisional Instructor role was added to cover the transitional period that ends 18 months after the effective date of this rule.
- A CCI requirement was added to clarify that a CCI must be certified at the same or higher level than the classes they are instructing.
- A requirement for artifact retention was added to Level 1 self-assessments and Level 2 self-assessments.
- The assessment requirements for ESPs have been reduced.
- The definition of CSP has been narrowed and is now based on NIST SP 800–145 Sept2011.
- The assessment requirements for Security Protection Assets and Security Protection Data have been reduced.
- References to FedRAMP equivalency have been tied to DoD policy.
- Clarified the requirements for CSPs for an OSC seeking a CMMC Status of Level 3 (DIBCAC).
- Clarified that DCMA DIBCAC has the authority to perform limited checks of compliance of assets that changed asset category or changed assessment requirements between the Level 2 and Level 3 certification assessment.
- Clarification was added around the use of VDI clients.
- Provided clarification to distinguish between Plan of Action & Milestones (POA&Ms) and operational plan of action.
- Definitions have been added for: Affirming Official, Assessment objective, Asset, CMMC security requirement, CMMC Status, DoD Assessment Methodology, Enduring Exception, Operational plan of action, Personally Identifiable Information, Security Protection Data (SPD), and Temporary deficiency. Some definitions were also changed to source from NIST documentation instead of Committee on National Security Systems (CNSS) Instruction No. 4009.

Background

A. Statement of Need for This Rule

The Department of Defense (DoD) requires defense contractors to protect FCI and CUI. To verify contractor and subcontractor implementation of DoD's cybersecurity information protection requirements, the Department developed the Cybersecurity Maturity Model Certification (CMMC) Program as a means of assessing and verifying

adequate protection of contractor information systems that process, store, or transmit either FCI or CUI.

The CMMC Program is intended to: (1) align cybersecurity requirements to the sensitivity of unclassified information to be protected, (2) add a self-assessment element to affirm implementation of applicable cybersecurity requirements, (3) add a certification element to verify implementation of cybersecurity requirements, and (4) add an affirmation to attest to continued compliance with assessed requirements. As part of the program, DoD also intends to provide supporting resources and training to the DIB, to help support companies who are working to achieve the required CMMC Status. The CMMC Program provides for assessment at three levels, starting with basic safeguarding of FCI at CMMC Level 1, moving to the broad protection of CUI at CMMC Level 2, and culminating with higher-level protection of CUI against risk from Advanced Persistent Threats (APTs) at CMMC Level 3.

The CMMC Program addresses DoD's need to protect FCI and CUI during the acquisition and sustainment of products and services from the DIB. This effort is instrumental in establishing cybersecurity as a foundation for DoD acquisitions.

Although DoD contract requirements to provide adequate security for covered defense information (reflected in DFARS clause 252.204–7012) predate CMMC by many years, a verification requirement for the handling of CUI to assess a contractor or subcontractor's implementation of those required information security controls is new with the CMMC Program.

The theft of intellectual property and sensitive information from all U.S. industrial sectors from malicious cyber activity threatens economic security and national security. The Council of Economic Advisers estimates that malicious cyber activity cost the U.S. economy between $57 billion and $109 billion in 2016.[24] The Center for Strategic and International Studies estimates that the total global cost of cybercrime was as high as $600 billion in 2017.[25]

Malicious cyber actors have targeted and continue to target defense contractors and the DoD supply chain. These attacks not only focus on the large prime contractors, but also target subcontractors that make up the lower tiers of the DoD supply chain. Many of these subcontractors are small entities that provide critical support and innovation. Overall, the DIB sector consists of over 220,000 companies[26] that process, store, or transmit CUI or FCI in support of the warfighter and contribute towards the research, engineering, development, acquisition, production, delivery, sustainment, and operations of DoD systems, networks, installations, capabilities, and services. The aggregate loss of intellectual property and controlled unclassified information from the DoD supply chain can undercut U.S. technical advantages and innovation, as well as significantly increase the risk to national security. As part of multiple lines of effort focused on the security and resiliency of the DIB, the Department is working with industry to enhance the protection of FCI and CUI within the DoD supply chain. Toward this end, DoD has developed the CMMC Program.

Cybersecurity Maturity Model Certification Program

The CMMC Program provides a comprehensive and scalable certification approach to verify the implementation of requirements associated with the achievement of a cybersecurity level. CMMC is designed to provide increased assurance to the Department that defense contractors can adequately protect FCI and CUI at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain. Defense contractors can achieve a specific CMMC Status for their entire enterprise network or an enclave(s), depending upon where the information to be protected is processed, stored, or transmitted.

The CMMC Program assesses implementation of cybersecurity requirements. The CMMC requirements for safeguarding and security are the same as those required by FAR Subpart 4.19 and DFARS clause 252.204–7012, as well as selected NIST SP 800–172 Feb201 requirements. CMMC Level 1 requires implementation of the safeguarding requirements set forth in FAR clause 52.204–21. CMMC Level 2 requires implementation of the security requirements in NIST SP 800–171 R2. CMMC Level 3 requires implementation of the security requirements in NIST SP 800–171 R2 as well as selected NIST SP 800–172 Feb2021 requirements, with DoD specified parameters. The CMMC security requirements for all three Levels are provided in § 170.14. In general, CMMC assessments do not duplicate efforts from existing DoD assessments. In rare circumstances a re-assessment may be necessary when cybersecurity risks, threats, or awareness have changed.

Under the CMMC Program, CMMC contract requirements include self-assessments and third-party assessments for CMMC Level 2, predicated on program criticality, information sensitivity, and the severity of cyber threat. Based on the type and sensitivity of the information to be protected, a defense contractor must achieve the appropriate CMMC Status and demonstrate implementation of the associated set of information protection requirements.

If the CMMC Status of Level 1 (Self) or Level 2 (Self) is a contract requirement, the defense contractor will be required to self-assess its compliance with the CMMC Level 1 or Level 2 security requirements and submit both the self-assessment results and an affirmation of conformance in SPRS. Level 1 self-assessment and associated affirmation is required annually. Level 2 self-assessment is required every three years with an affirmation following the self-assessment and annually after the Final CMMC Status Date.

If the CMMC Status of Level 2 (C3PAO) is a contract requirement, the Level 2 certification assessment must be performed by an authorized or accredited CMMC Third Party Assessment Organization (C3PAO). When the CMMC Status of Level 3 (DIBCAC) is a contract requirement, the Level 3 certification assessment by DCMA DIBCAC is required following the achievement of the CMMC Status of Final Level 2 (C3PAO). Upon achievement of the CMMC Status of Level 2 (C3PAO) or Level 3 (DIBCAC), the offeror will be issued a Certificate of CMMC Status. The assessment results are documented in SPRS to enable contracting officers to verify the CMMC Status and CMMC Status Date (*i.e.,* not more than three years old) of an offeror prior to contract award. The offeror must also submit an affirmation of conformance in SPRS following the assessment and annually after the Final CMMC Status Date.

CMMC allows the use of a Plan of Action and Milestones (POA&Ms) for specified CMMC Level 2 and Level 3 security requirements. Each POA&M must be closed (*i.e.,* all requirements completed), within 180 days of the initial assessment.

[24] Based on information from the Council of Economic Advisors report: The Cost of Malicious Cyber Activity to the U.S. Economy, 2018.

[25] Based on information from the Center for Strategic and International Studies report on the Economic Impact of Cybercrime; *www.csis.org/analysis/economic-impact-cybercrime.*

[26] Based on information from the Federal Procurement Data System, the average number of unique prime contractors is approximately 212,650 and the number of known unique subcontractors is approximately 8,300. (FPDS from FY18–FY21).

The details of the requirements for self-assessment, certification assessment, and affirmation for each CMMC Level, are provided in §§ 170.15 through 170.18. POA&M requirements and affirmation requirements are provided in §§ 170.21 and 170.22.

DoD's phased implementation of the CMMC Status requirements is described in § 170.3(e). Once CMMC requirements have been implemented in the DFARS, the solicitation and resulting contract will identify the specific CMMC Status required for that procurement. Selection of a CMMC Status will be based upon careful consideration of market research and the likelihood of a robust competitive market of prospective offerors capable of meeting the requirement. In some scenarios, DoD may elect to waive application of CMMC Status requirements to a particular procurement. In such cases, the solicitation will not include a CMMC Status requirement. Such waivers may be requested and approved by the Department in accordance with DoD's internal policies and procedures. For a DoD solicitation or contract that does include CMMC requirements, including those for the acquisition of commercial items (except those exclusively COTS items) valued at greater than the micro-purchase threshold, contracting officers will not make award, or exercise an option on a contract, if the offeror or contractor does not meet the requirements for the required CMMC Status. Furthermore, CMMC requirements are required to flow down to subcontractors as prescribed in the solicitation and resulting contract at all tiers, commensurate with the sensitivity of the unclassified information flowed down to each subcontractor.

B. Legal Authority

5 U.S.C. 301 authorizes the head of an Executive department or military department to prescribe regulations for the government of his or her department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property (*www.govinfo.gov/content/pkg/USCODE-2009-title5/pdf/USCODE-2009-title5-partI-chap3-sec301.pdf*).

Section 1648 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92) [27] directs the Secretary of Defense to develop a consistent, comprehensive framework to enhance cybersecurity for the U.S. Defense Industrial Base (DIB). The CMMC Program is an important part of this framework.

C. Community Impact

This final rule impacts all prospective and actual DoD contractors and subcontractors that are handling or will handle DoD information that meets the standards for FCI or CUI on a contractor information system during performance of the DoD contract or subcontract. This final rule also impacts all companies who are performing or will perform accreditation, training, certification, or assessment functions in connection with implementation of the CMMC Program.

D. Regulatory History

The CMMC Program verifies defense contractor compliance with DoD's cybersecurity information protection requirements. It is designed to protect FCI and CUI that is shared by the Department with, or generated by, its contractors and subcontractors. The cybersecurity standards required by the program are the same as those set forth in FAR clause 52.204–21 (CMMC Level 1), the NIST SP 800–171 R2 guidelines, which is presently required by DFARS clause 252.204–7012 (CMMC Level 2), and additional selected requirements from the NIST SP 800–172 Feb2021 guidelines (CMMC Level 3). The program adds a robust assessment element and provides the Department increased assurance that contractors and subcontractors are meeting these requirements.

In September 2020, the DoD published the 48 CFR CMMC interim final rule to the DFARS in the **Federal Register** (DFARS Case 2019–D041, 85 FR 48513, September 9, 2020), which implemented the DoD's vision for the initial CMMC Program and outlined the basic features of the program (tiered model, required assessments, and implementation through contracts). The 48 CFR CMMC interim final rule became effective on November 30, 2020, establishing a five-year phase-in period.

In March 2021, the Department initiated an internal review of CMMC's implementation, informed by more than 750 CMMC-related public comments in response to the 48 CFR CMMC interim final rule. This comprehensive, programmatic assessment engaged cybersecurity and acquisition leaders within DoD to refine policy and program implementation.

In November 2021, the Department announced plans for a revised CMMC Program, which incorporates an updated program structure and requirements designed to achieve the primary goals of an internal DoD review of the CMMC Program. With the implementation of the CMMC Program, the Department introduced several key changes that build on and refine the original program requirements. These include:

- Streamlining the model from five to three certification levels;
- Allowing all companies at Level 1 and a subset of companies at Level 2 to demonstrate compliance through self-assessments;
- Increased oversight of professional and ethical standards of third-party assessors; and
- Allowing companies, under certain limited circumstances, to make POA&Ms to achieve certification.

In December 2023, the Department published a proposed rule to amend 32 CFR part 170 in the **Federal Register** (Docket ID 2023–OS–0063, 88 FR 89058, December 26, 2023), which implemented the DoD's vision for the revised CMMC Program outlined in November 2021. The comment period for the proposed rule concluded on February 26, 2024.

The CMMC requirements established pursuant to DFARS Case 2019–D041 have not been revised as of the date of publication of this final rule. However, the CMMC Program requirements in this final rule will be implemented in the DFARS, as needed, which may result in changes to the current DFARS text, solicitation provisions, and contract clauses relating to DoD's cybersecurity protection requirements, including DFARS subpart 204.75 and DFARS clause 252.204–7021, Cybersecurity Maturity Model Certification (CMMC) Requirements.

Context of the CMMC Program in Light of Other DoD-Related Work

At present, and prior to the DFARS CMMC Acquisition rule becoming effective, the Department is using the DCMA DIBCAC to conduct CMMC Level 2-like assessments. To date, the DCMA DIBCAC has assessed 357 entities including DoD's major prime contractors. The CMMC Program's assessment phase-in plan, as described in § 170.3 Applicability, does not preclude entities from immediately and voluntarily seeking a CMMC certification assessment prior to the DFARS CMMC Acquisition rule being finalized and the clause being added to new or existing DoD contracts.

The Department estimates 8,350 medium and large entities will require CMMC Level 2 certification assessments. Once the CMMC DFARS coverage is effective, the Department will contractually mandate CMMC Level

[27] *www.govinfo.gov/content/pkg/PLAW-116publ92/pdf/PLAW-116publ92.pdf.*

2 certification assessments on these entities. It is estimated that 135 CMMC Third-Party Assessment Organization (C3PAO)-led assessments will be completed in the first year. The Department estimates 673 C3PAO-led assessments in year 2 followed by 2,252 C3PAO-led assessments in year 3. During the fourth year, the Department estimates,4,452 C3PAO-led assessments will be completed. The DCMA DIBCAC will perform assessments upon DoD's request.

Additionally, the Department may include CMMC Level 2 certification requirements on contracts awarded prior to the CMMC DFARS coverage becoming effective, but doing so will require bilateral contract modification after negotiations.

The CMMC Program has been incorporated in the Department's 2024 Defense Industrial Base Cybersecurity Strategy.[28] The strategy requires the Department to coordinate and collaborate across components to identify and close gaps in protecting DoD networks, supply chains, and other critical resources. Other prongs of the Department's cybersecurity strategy are described in the Department's National Industrial Security Program Operating Manual (NISPOM) which address implementation of the Security Executive Agent Directive (SEAD) 3,[29] including clarifications on procedures for the protection and reproduction of classified information; controlled unclassified information (CUI); National Interest Determination (NID) requirements for cleared contractors operating under a Special Security Agreement for Foreign Ownership, Control, or Influence; and eligibility determinations for personnel security clearance processes and requirements.[30]

In addition, DCMA DIBCAC is responsible for leading the Department's contractor cybersecurity risk mitigation efforts. As part of this work, the DIBCAC assesses the defense industrial base companies to ensure they are meeting contractually required cybersecurity standards. The DIBCAC team ensures contractors have the ability to protect controlled unclassified information for government contracts they are awarded. DIBCAC conducts NIST SP 800–171 assessments in support of DFARS clause 252.204–7012, *Safeguarding Covered Defense Information and Cyber Incident Reporting,* and DFARS clause 204.204–7020, *NIST SP 800–171 DoD Assessment Requirements.* The DFARS 204.204–7020 DIBCAC prioritization process is designed to adjust as DoD's cyber priorities evolve based on ongoing threats. DIBCAC analysts collect and analyze data on DoD contractors to include:

- Mission critical programs, technologies, and infrastructure and the contractors (prime or lower tier) that support DoD capabilities.
- Cyber threats, vulnerabilities, or incidents.
- DoD Leadership requests.

Regulatory Impact Analysis

FAR Subpart 4.19 and DFARS clause 252.204–7012 address safeguarding of FCI and CUI in contractor information systems and prescribe contract clauses requiring protection of FCI and CUI within the supply chain. The FAR and DFARS requirements for safeguarding FCI and CUI predate the CMMC Program by many years, and baseline costs for their implementation are assumed to vary widely based on factors including, but not limited to, company size and complexity of the information systems to be secured. FAR clause 52.204–21 is prescribed at FAR section 4.1903 for use in solicitations and contracts when the contractor or subcontractor at any tier may have FCI residing in or transiting through its information system. This clause requires contractors and subcontractors to apply basic safeguarding requirements and procedures to protect applicable contractor information systems that process, store, or transmit FCI. In addition, DFARS clause 252.204–7012, *Safeguarding Covered Defense Information and Cyber Incident Reporting,* is prescribed at DFARS section 204.7304(c) for use by DoD in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except for solicitations and contracts solely for the acquisition of commercially available off-the-shelf items. This clause applies when a contractor information system processes, stores, or transmits covered defense information and requires contractors and subcontractors to provide ''adequate security'' to safeguard that information when it resides on or transits through a contractor information system, and to report cyber incidents that affect that system or network. The clause states that to provide adequate security, the contractor shall implement, at a minimum, the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 R2, *Protecting CUI in Nonfederal Systems and Organizations.* Contractors are also required to flow down DFARS clause 252.204–7012 to all subcontracts for operationally critical support or for which subcontractor performance will involve covered defense information.

However, neither FAR clause 52.204–21 nor DFARS clause 252.204–7012 provide for DoD assessment of a contractor's implementation of the information protection requirements required by those clauses. The Department developed the CMMC Program to verify implementation of cybersecurity requirements in DoD contracts and subcontracts, by assessing adequacy of contractor information system security compliance prior to award and during performance of the contract. With limited exceptions, the Department intends to require compliance with CMMC as a condition of contract award. Once CMMC is implemented, the required CMMC Status will be specified in the solicitation and resulting contract. Contractors handling FCI or CUI will be required to meet the CMMC Status specified in the contract.

There are three different levels of CMMC assessment, starting with basic safeguarding of FCI at Level 1, moving to the broad protection of CUI at Level 2, and culminating with higher level protection of CUI against risk from Advanced Persistent Threats (APTs) at Level 3. The benefits and costs associated with implementing this final rule, as well as alternative approaches considered, are as follows:

Costs

A Regulatory Impact Analysis (RIA) that includes a detailed discussion and explanation about the assumptions and methodology used to estimate the cost of this regulatory action follows and is available at *www.regulations.gov* (search for ''DoD–2023–OS–0063,'' click ''Open Docket,'' and view ''Supporting Documents'').

Background

The Department of Defense (DoD or Department) requires a secure and resilient supply chain to ensure the development, production, and sustainment of capabilities critical to national security. The DoD supply chain is targeted by adversaries with increasing frequency and sophistication, and to devastating effect. Therefore, implementation of cybersecurity standards and enforcement mechanisms are critically important. Executive Order (E.O.) 14028, ''Improving the Nation's

[28] *https://media.defense.gov/2024/Mar/28/2003424523/-1/-1/1/DOD_DOB_CS_STRATEGY_DSD_SIGNED_20240325.PDF.*

[29] *www.govinfo.gov/content/pkg/FR-2020-12-21/pdf/2020-27698.pdf.*

[30] *www.dcsa.mil/Industrial-Security/National-Industrial-Security-Program-Oversight/32-CFR-Part-117-NISPOM-Rule/.*

Cybersecurity,'' emphasizes the need to strengthen cybersecurity protections for both the Federal Government and the private sector.

Nation-state adversaries attack the U.S. supply chain for a myriad of reasons, including exfiltration of valuable technical data (a form of industrial espionage); disruption to control systems used for critical infrastructure, manufacturing, and weapons systems; corruption of quality and assurance across a broad range of product types and categories; and manipulation of software to achieve unauthorized access to connected systems and to degrade the integrity of system operations. For example, since September 2020, major cyber-attacks such as the SolarWinds,[31] Colonial Pipeline, Hafnium,[32] and Kaseya [33] attacks, have been spearheaded or influenced by nation-state actors [34] and resulted in significant failures and disruption. In context of this threat, the size and complexity of defense procurement activities provide numerous pathways for adversaries to access DoD's sensitive systems and information. Moreover, adversaries continue to evolve their tactics, techniques, and procedures. For example, on April 28, 2022, CISA and the FBI issued an advisory on destructive ''wiperware,'' a form of malware which can destroy valuable information [35]. Protection of FCI and CUI is critically important, and the DoD needs assurance that contactor information systems are adequately secured to protect such information when it resides on or transits those systems.

The Department is committed to working with defense contractors to protect FCI and CUI.

- Federal Contract Information (FCI): As defined in section 4.1901 of the FAR, FCI means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public, such as that on public websites, or simple transactional information, such as that necessary to process payments.
- Controlled Unclassified Information (CUI): 32 CFR 2002.4(h) defines CUI, in part, as information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls, including FCI.

In September 2020, the DoD published 48 CFR CMMC interim final rule (DFARS Case 2019–D041, 85 FR 48513, September 9, 2020), which implemented DoD's vision for the initial Cybersecurity Maturity Model Certification (CMMC) Program and outlined basic program features, to include: 5-level tiered model, CMMC Certified Third Party Assessment Organization (C3PAO) assessments in support of contractor and subcontractor certification, with no allowance for a Plan of Action and Milestones (POA&Ms), and implementation of all security requirements by the time of a contract award. A total of 750 comments were received on the 48 CFR CMMC interim final rule during the public comment period that ended on November 30, 2020. These comments highlighted a variety of industry concerns including concerns relating to the costs for a C3PAO certification, and the costs and burden associated with implementing, prior to award, the required process maturity and 20 additional cybersecurity practices that were included in the initial CMMC Program. The Small Business Administration Office of Advocacy also raised similar concerns on the impact the rule would have on small businesses in the DIB.

Pursuant to DFARS clause 252.204–7012, DoD has required certain defense contractors and subcontractors to implement the security protections set forth in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 R2 to provide adequate security for CUI that is processed, stored, or transmitted on contractor information systems. The CMMC Program provides the Department the mechanism needed to verify that a defense contractor or subcontractor has implemented the security requirements at each CMMC Level and is maintaining that status across the contract period of performance, as required.

In calendar year (CY) 2021 DoD paused the planned CMMC rollout to conduct an internal review of the CMMC Program. The internal review resulted in a refined and streamlined set of requirements that addressed many of the concerns identified in the public comments received relating to the initial CMMC Program. These changes have been incorporated into the revised CMMC Program structure and policies. In July 2022, the CMMC PMO met with the Office of Advocacy for the United States Small Business Administration (SBA) to address the revisions planned to the CMMC Program that are responsive to prior SBA concerns.

The CMMC Program will enhance the ability of the DoD to safely share FCI and CUI with defense contractors and know the information will be suitably safeguarded. Once fully implemented, CMMC will incorporate a set of cybersecurity requirements into acquisition contracts to provide verification that applicable cyber protections have been implemented. Under the CMMC Program, defense contractors and subcontractors will be required to implement certain cybersecurity protection requirements tied to a designated CMMC level and either perform a self-assessment or obtain an independent assessment from either a C3PAO or DCMA DIBCAC as a condition of a DoD contract award. CMMC is designed to validate the protection of FCI and CUI that is shared with and generated by the Department's contractors and subcontractors. Through protection of information by adherence to the requirements verified in the revised CMMC Program, the Department and its contractors will prevent disruption in service and the loss of intellectual property and assets, and thwart access to FCI and CUI by the nation's adversaries.

The CMMC Program is intended to: (1) align cybersecurity requirements to the sensitivity of unclassified information to be protected, and (2) add a certification element, where appropriate, to verify implementation of cybersecurity requirements. As part of the program, DoD also intends to provide supporting resources and training to defense contractors to help support companies who are working to achieve the required CMMC Status. The CMMC Program provides for assessment at three levels: basic safeguarding of FCI at CMMC Level 1, broad protection of CUI at CMMC Level 2, and enhanced protection of CUI against risk from Advanced Persistent Threats (APTs) at CMMC Level 3. The CMMC Program is designed to provide increased assurance to the Department that a defense contractor can adequately protect FCI and CUI in accordance with prescribed security requirements, accounting for information flow down to its subcontractors in a multi-tier supply chain.

The CMMC Program addresses DoD's need to protect FCI and CUI during the acquisition and sustainment of products

[31] *www.gao.gov/assets/gao-22-104746.pdf.*

[32] *www.ic3.gov/Media/News/2021/210310.pdf.*

[33] *www.cisa.gov/uscert/ncas/current-activity/2021/07/04/cisa-fbi-guidance-msps-and-their-customers-affected-kaseya-vsa.*

[34] *www.mitre.org/sites/default/files/publications/pr-18-2417-deliver-uncompromised-MITRE-study-26AUG2019.pdf.*

[35] *www.cisa.gov/uscert/ncas/alerts/aa22-057a.*

and services from the DIB. This effort is instrumental in establishing cybersecurity as a foundation for future DoD acquisition.

Although DoD contract requirements to provide adequate security for covered defense information (reflected in DFARS clause 252.204–7012) predate CMMC by many years, a certification requirement for the handling of CUI to assess a contractor or subcontractor's compliance of those required information security controls is new with the CMMC Program. Findings from DoD Inspector General report [36] indicate that DoD contractors did not consistently implement mandated system security requirements for safeguarding CUI and recommended that DoD take steps to assess a contractor's ability to protect this information. The report emphasizes that malicious actors can exploit the vulnerabilities of contractors' networks and systems and exfiltrate information related to some of the Nation's most valuable advanced defense technologies.

Currently, the FAR and DFARS prescribe contract clauses intended to protect FCI and CUI. Specifically, the clause at FAR 52.204–21, *Basic Safeguarding of Covered Contractor Information Systems*, is prescribed at FAR 4.1903 for use in Government solicitations and contracts when the contractor or a subcontractor at any tier may have FCI residing in or transiting through its information system(s). This clause requires contractors and subcontractors to implement basic safeguarding requirements and procedures to protect FCI being processed, stored, or transmitted on contractor information systems. In addition, DFARS clause 252.204–7012, *Safeguarding Covered Defense Information and Cyber Incident Reporting*, is prescribed at DFARS 204.7304(c) for use in all solicitations and contracts except for solicitations and contracts solely for the acquisition of commercially available off-the-shelf (COTS) items. This clause requires contractors and subcontractors to provide ''adequate security'' to process, store or transmit covered defense information when it resides on or transits a contractor information system, and to report cyber incidents that affect that system or network. The clause states that to provide adequate security, the contractor shall implement, at a minimum, the security requirements in NIST Special Publication (SP) 800–171 R2, *Protecting CUI in Nonfederal Systems and Organizations.* Contractors are also required to flow down DFARS clause 252.204–7012 to all subcontracts that require processing, storing, or transmitting of covered defense information.

However, neither FAR clause 52.204–21 nor DFARS clause 252.204–7012 provide for DoD verification of a contractor's implementation of the basic safeguarding requirements specified in FAR clause 52.204–21 nor the security requirements specified in NIST SP 800–171 R2, implementation of which is required by DFARS clause 252.204–7012, prior to contract award. As part of multiple lines of effort focused on the security and resilience of the DIB, the Department is working with industry to enhance the protection of FCI and CUI within the DoD supply chain. Toward this end, DoD has developed the CMMC Program.

Revised CMMC Program Requirements

The CMMC Program requirements will be implemented through the DoD acquisition and contracting process. With limited exceptions, the Department intends to require compliance with CMMC as a condition of contract award. Once CMMC is implemented, the required CMMC Status will be specified in the solicitation and resulting contract. Contractors handling FCI or CUI will be required to meet the CMMC Status specified in the contract. In accordance with the implementation plan described in § 170.3(e), CMMC Status requirements will apply to new DoD solicitations and contracts, and shall flow down to subcontractors, based on the sensitivity of the FCI and CUI to be processed, stored or transmitted to or by the subcontractor. Before contract award, the offeror must achieve the specified CMMC Status for the contractor information system (*e.g.,* enterprise network, network enclave) that will process, store, or transmit the information to be protected. The contractor or subcontractor will also submit affirmations in the Supplier Performance Risk System (SPRS). An overview of requirements at each level is shown:

Level 1 Self-Assessment

- Level 1 self-assessment requires compliance with basic safeguarding requirements to protect FCI are set forth in FAR clause 52.204–21. CMMC Level 1 does not add any additional security requirements to those identified in FAR clause 52.204–21.
- OSAs will submit the following information in SPRS:

1. the results of a self-assessment of the OSA's implementation of the basic safeguarding requirements set forth in § 170.15 associated with the contractor information system(s) used in performance of the contract; and
2. an initial affirmation of compliance, and then annually thereafter, an affirmation of continued compliance as set forth in § 170.22.
3. the Level 1 self-assessment cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition final rule.

Level 2 Self-Assessment

- Level 2 self-assessment requires compliance with the security requirements set forth in NIST SP 800–171 R2 to protect CUI. CMMC Level 2 does not add any additional security requirements to those identified in NIST SP 800–171 R2.
- OSAs will submit the following information in SPRS:

1. the results of a self-assessment of the OSA's implementation of the NIST SP 800–171 R2 requirements set forth in § 170.16 associated with the covered contractor information system(s) used in performance of the applicable contract.
2. an initial affirmation of compliance, and, if applicable, a POA&M closeout affirmation, and then annually thereafter, an affirmation of continued compliance set forth in § 170.22.
3. the Level 2 self-assessment cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition final rule.

Level 2 Certification Assessment

- Level 2 certification assessment requires compliance with the security requirements set forth in in § 170.17 to protect CUI. CMMC Level 2 does not add any additional security requirements to those selected in NIST SP 800–171 R2.
- A Level 2 certification assessment of the applicable contractor information system(s) provided by an authorized or accredited C3PAO is required to validate implementation of the NIST SP 800–171 R2 security requirements prior to award of any prime contract or subcontract and exercise of option.
- The C3PAO will upload the Level 2 certification assessment results in the CMMC instantiation of eMASS which will feed the information into SPRS.
- OSCs will submit in SPRS an initial affirmation of compliance, and, if necessary, a POA&M closeout affirmation, and then annually following the Final CMMC Status Date, an affirmation of continued compliance as set forth in § 170.22.

The Level 2 certification assessment cost burdens are included in this part

[36] DODIG–2019–105 ''Audit of Protection of DoD CUI on Contractor-Owned Networks and Systems.''

with the exception of the requirement for the OSC to upload the affirmation in SPRS that is included in the 48 CFR part 204 CMMC Acquisition final rule and an update to DFARS collection approved under OMB Control Number 0750–0004, *Assessing Contractor Implementation of Cybersecurity Requirements*. Additionally, the information collection reporting requirements for the CMMC instantiation of eMASS are included in a separate ICR for this part and cover only those requirements pertaining to the CMMC process.

Level 3 Certification Assessment

- Level 3 certification assessment requires the CMMC Status of Final Level 2 (C3PAO) and compliance with the security requirements set forth in § 170.18 to protect CUI. CMMC Level 3 adds additional security requirements to those required by existing acquisition regulations as specified in this rule.
- A Level 3 certification assessment of the applicable contractor information system(s) provided by the DCMA Defense Industrial Base Cybersecurity Assessment Center (DIBCAC) is required to validate implementation of the DoD-defined selected security requirements set forth in NIST SP 800–172 Feb2021. A CMMC Status of Final Level 2 (C3PAO) is a prerequisite to schedule a DCMA DIBCAC Level 3 certification assessment.
- DCMA DIBCAC will upload the Level 3 certification assessment results into the CMMC instantiation of eMASS, which will feed the information into SPRS.
- OSCs will submit in SPRS an initial affirmation of compliance, and, if necessary, a POA&M closeout affirmation, and then annually following the Final CMMC Status Date, an affirmation of continued compliance as set forth in § 170.22.

The Level 3 certification assessment cost burdens are included in this part with the exception of the requirement for the OSC to upload the affirmation in SPRS that is included in the 48 CFR part 204 CMMC Acquisition rule and an update to DFARS collection approved under OMB Control Number 0750–0004, Assessing Contractor Implementation of Cybersecurity Requirements. Additionally, the information collection reporting requirements for the CMMC instantiation of eMASS are included in a separate ICR for this part and cover only those requirements pertaining to the CMMC process. As described, the CMMC Program couples an affirmation of compliance with certification assessment requirements to verify OSA implementation of cybersecurity requirements, as applicable.

The CMMC Program addresses DoD's need to protect FCI and CUI during the acquisition and sustainment of products and services from the DIB. This effort is instrumental in ensuring cybersecurity is the foundation of future DoD acquisitions.

Policy Problems Addressed by the Revised CMMC Program

Implementation of the CMMC Program is intended to solve the following policy problems:

Lack of Verification of Contractor Compliance With Cybersecurity Requirements

Neither FAR clause 52.204–21 nor DFARS clause 252.204–7012 provide for DoD assessment of a defense contractor or subcontractor's implementation of the information protection requirements within those clauses. Defense contractors represent that they will implement the requirements in NIST SP 800–171 R2 upon submission of their offer. Findings from DoD Inspector General report (DODIG–2019–105 ''Audit of Protection of DoD Controlled Unclassified Information on Contractor-Owned Networks and Systems'') indicate that DoD contractors did not consistently implement mandated system security requirements for safeguarding CUI and recommended that DoD take steps to assess a contractor's ability to protect this information. CMMC adds new assessment requirements for contractor implementation of underlying information security requirements, to allow DoD to assess a defense contractor's cybersecurity posture using authorized or accredited C3PAOs. The contractor and subcontractor must achieve the required CMMC Level as a condition of contract award.

Inadequate Implementation of Cybersecurity Requirements

Under DFARS clause 252.204–7012 and DFARS clause 252.204–7020, defense contractors and subcontractors must document implementation of the security requirements in NIST SP 800–171 R2 in a system security plan and may use a plan of action to describe how and when any unimplemented security requirements will be met. For the CMMC Program, the solicitation and resulting contract, will specify the required CMMC Status, which will be determined considering program criticality, information sensitivity, and severity of cyber threat. Although the security requirements in NIST SP 800–171 R2 address a range of threats, additional requirements are needed to significantly reduce the risk posed by APTs. An APT is an adversary that possesses sophisticated levels of expertise and significant resources that allow it to create opportunities to achieve its objectives by using multiple attack vectors (*e.g.,* cyber, physical, and deception). CMMC Level 3 requires implementation of selected security requirements from NIST SP 800–172 Feb2021 to reduce the risk of APT threats.

The CMMC Program will require prime contractors to flow the appropriate CMMC Status requirement down throughout the entire supply chain relevant to a particular contract. Defense contractors or subcontractors that handle FCI, must meet the requirements for CMMC Level 1. Defense contractors that handle CUI must meet the requirements for CMMC Level 2 or higher, depending on the sensitivity of the information associated with a program or technology being developed.

Insufficient Scale and Depth of Resources To Verify Compliance

Today, DoD prime contractors must include DFARS clause 252.204–7012 in subcontracts for which performance will involve covered defense information, but this does not provide the Department with sufficient insights with respect to the cybersecurity posture of all members of a multi-tier supply chain for any given program or technology development effort. The revised CMMC Program requires prime contractors to flow down appropriate CMMC Status requirements, as applicable, to subcontractors throughout their supply chain(s).

Given the size and scale of the DIB, the Department cannot scale its existing cybersecurity assessment capability to conduct on-site assessments of approximately 220,000 DoD contractors and subcontractors every three years. The Department's existing assessment capability is best suited for conducting targeted assessments for the relatively small subset of DoD contractors and subcontractors that support designated high-priority programs involving CUI.

CMMC addresses the Department's scaling challenges by utilizing a private-sector accreditation structure. A DoD-authorized Accreditation Body will authorize, accredit, and provide oversight of C3PAOs which in turn will conduct Level 2 certification assessments of actual and prospective DoD contractors and subcontractors. Defense contractors will directly contract with an authorized or accredited C3PAO to obtain a Level 2

certification assessment. The cost of Level 2 certification assessment activities is driven by multiple factors, including market forces that govern availability of C3PAOs and the size and complexity of the enterprise or enclave under assessment. The Government will perform Level 3 certification assessments. Government resource limitations may affect schedule availability.

Reduces Duplicate or Respective Assessments of Our Industry Partners

CMMC assessment results will be posted in SPRS, DoD's authoritative source for supplier and product performance information. Posting CMMC assessment results in SPRS precludes the need to validate CMMC implementation on a contract-by-contract basis. This enables DoD to identify whether the CMMC requirements have been met for relevant contractor information systems, avoids duplicative assessments, and eliminates the need for program level assessments, all of which decreases costs to both DoD and industry.

Revised CMMC Program Implementation

The DoD is implementing a phased implementation for the revised CMMC Program and intends to introduce CMMC Status requirements in solicitations over a three-year period to provide appropriate ramp-up time. This phased implementation is intended to minimize the financial impacts to defense contractors, especially small businesses, and disruption to the existing DoD supply chain. After CMMC is implemented in acquisition regulation, DoD will include CMMC self-assessment requirements in solicitations and resulting contracts when warranted by the type of information that will be handled by the contractor of subcontractor(s). CMMC Status requirements for Levels 1, 2, and 3 will be included in solicitations and resulting contracts issued after the phase-in period when warranted by any FCI and/or CUI information protection requirements for the contract effort. In the intervening period, Government Program Managers will have discretion to include CMMC Status requirements or exclude them and rely upon existing DFARS clause 252.204–7012 requirements, in accordance with DoD policy. As stated in § 170.20(a), there is qualified standards acceptance between DCMA DIBCAC High Assessment and the CMMC Status of Level 2(C3PAO), which will result in staggering of the dates for new Level 2 certification assessments. The implementation period will consist of four (4) phases as set forth in § 170.3(e), during which time the Government will include CMMC requirements in certain solicitations and contracts. During the CMMC phase-in period, program managers and requiring activities will be required to include CMMC Status requirements in certain solicitations and contracts and will have discretion to include in others.

A purpose of the phased implementation is to ensure adequate availability of authorized or accredited C3PAOs and assessors to meet the demand.

Revised CMMC Program Flow Down

CMMC Level requirements will be flowed down to subcontractors at all tiers as set forth in § 170.23; however, the specific CMMC Status required for a subcontractor will be based on the type of unclassified information and the priority of the acquisition program and/or technology being developed.

Key Changes Incorporated in the Revised CMMC Program

In November 2021, the Department announced the revised CMMC Program, which is an updated program structure with revised requirements. In the revised CMMC Program, the Department has introduced several key changes that build on and refine the original program requirements. These include:

- Streamlining the model from five levels to three levels.
- Exclusively implementing National Institute of Standards and Technology (NIST) cybersecurity standards and guidelines.
- Allowing all companies subject to Level 1, and a subset of companies subject to Level 2 to demonstrate compliance through self-assessments.
- Increased oversight of professional and ethical standards of CMMC third-party assessors.
- Allowing Plans of Action & Milestones (POA&M) under limited circumstances to achieve conditional certification.

As a result of the alignment of the revised CMMC Program to NIST guidelines, the Department's requirements will continue to evolve as changes are made to the underlying NIST SP 800–171 R2, NIST SP 800–171A Jun2018, NIST SP 800–172 Feb2021, and NIST SP 800–172A Mar2022 requirements.

CMMC Assessment

Assessment Criteria

CMMC requires that defense contractors and subcontractors entrusted with FCI and CUI implement cybersecurity standards at progressively more secure levels, depending on the type and sensitivity of the information.

Level 1 Self-Assessment

An annual Level 1 self-assessment and annual affirmation asserts that an OSA has implemented all the basic safeguarding requirements to protect FCI as set forth in § 170.14(c)(2).

An OSA can choose to perform the annual self-assessment internally or engage a third-party to assist with evaluating its Level 1 compliance. Use of a third party to assist with the assessment process is still considered a self-assessment and results in a CMMC Status of Final Level 1 (Self). An OSA achieve the CMMC Status of Level 1 (Self) for an entire enterprise network or for a particular enclave(s), depending upon where the FCI is or will be processed, stored, or transmitted.

Level 2 Self-Assessment

A Level 2 self-assessment and annual affirmation attests that an OSA has implemented all the security requirements to protect CUI as specified in § 170.14(c)(3).

Level 2 Certification Assessment

A Level 2 certification assessment, conducted by a C3PAO, verifies that an OSC is conforming to the security requirements to protect CUI as specified in § 170.14(c)(3). Each OSC information system that will process, store, or transmit CUI in the execution of the contract is subject to the corresponding CMMC Status requirements set forth in the contract.

Level 3 Certification Assessment

Achievement of the CMMC Status of Final Level 2 (C3PAO) for information systems within the Level 3 CMMC Assessment Scope is a prerequisite for initiating a Level 3 certification assessment. A Level 3 certification assessment, conducted by DCMA Defense Industrial Base Cybersecurity Assessment Center (DIBCAC), verifies that an OSC has implemented the CMMC Level 3 security requirements to protect CUI as specified in § 170.14(c)(4). A Level 3 certification assessment must be conducted for each OSC information system that will be used in the execution of the contract that will process, store, or transmit CUI.

Impact and Cost Analysis of the Revised CMMC Program

Summary of Impact

Public comment feedback on the initial CMMC Program indicated that cost estimates were too low. The revised

CMMC Program cost estimates account for that feedback with the following improvements:

- Allowance for outsourced IT services
- Increased total time for the contractor to prepare for the assessment, including limited time for learning the reporting and affirmation processes
- Allowance for use of consulting firms to assist with the assessment process
- Time for a senior level manager to review the assessment and affirmation before submitting the results in SPRS
- Updated government and contractor labor rates that include applicable burden costs

As a result, some costs of the revised CMMC Program may be higher than those included in the initial CMMC Program.

The revised CMMC Program impact analysis includes estimated costs for implementation of the revised CMMC Program requirements across Level 1, Level 2, and Level 3 for the Public (small and other than small entities, including the CMMC Ecosystem as set forth in 32 CFR subpart C) and the Government. In summary, the total estimated Public and Government costs associated with this rule, calculated for a 20-year horizon in 2023 dollars at a 7 percent discount rate and a 3 percent discount rate are provided as follows:

Table 3 - Total Estimated Costs of CMMC Requirements for the Public and the Government (7 percent discount)

Total cost	Public	Government	Total
Annualized Costs	$3,989,182,374	$9,508,593	$3,998,690,967
Present Value Costs	$42,261,454,899	$100,734,168	$42,362,189,067

Table 4 - Total Estimated Costs of CMMC Requirements for the Public and the Government (3 percent discount)

Total cost	Public	Government	Total
Annualized Costs	$4,219,513,555	$9,953,205	$4,229,466,760
Present Value Costs	$62,775,706,830	$148,078,564	$62,923,785,394

Estimating the number of CMMC assessments for unique entities per level per year is complicated by the fact that companies may serve as a prime contractor on one effort but a subcontractor on others, and may also enter into subcontract agreements with more than one prime contractor for various opportunities.

In addition, the CMMC Program relies upon free market influences of supply and demand to propel implementation. Specifically, the Department does not control which defense contractors aspire to compete for which business opportunities, nor does it control access to the assessment services offered by C3PAOs. OSAs may elect to complete a self-assessment or pursue a certification assessment at any time after issuance of the rule, in an effort to distinguish-themselves as competitive for efforts that require an ability to adequately protect CUI. For that reason, the number of CMMC assessments for unique entities per level per year may vary significantly from the assumptions used in generating the cost estimate. The estimates represent the best estimates at this time based on internal expertise and public feedback.

DoD utilized historical metrics gathered for the initial CMMC Program and subject matter expertise from Defense Pricing and Contracting (DPC) and DCMA DIBCAC to estimate the number of entities by type and by assessment level for this analysis. The following table summarizes the estimated profile used in this analysis.

Table 5 - Estimated Number of Entities by Type and Level

Assessment Level	Small	Other than Small	Total	Percent
Level 1 self-assessment	103,010	36,191	139,201	63%
Level 2 self-assessment	2,961	1,039	4,000	2%
Level 2 certification assessment	56,689	19,909	76,598	35%
Level 3 certification assessment	1,327	160	1,487	1%
Total	**163,987**	**57,299**	**221,286**	100%
Percent	74%	26%	100%	

DoD is planning for a phased roll-out of each assessment level across 7 years with the entity numbers reaching a maximum by Year 4 as shown in the tables. The target of Year 4 was selected based on the projected capacity of the CMMC Ecosystem to grow to efficiently support the entities in the pipeline. For modeling efficiency, a similar roll-out is assumed regardless of entity size or assessment level. It is assumed that by year 7 the maximum number of entities is reached. Beyond year 7, the number of entities entering and exiting are expected to net to zero. The following tables reflect the number of new entities in each year and for each level.

Table 6 - *Number of Small Entities Over Phase-In Period

Yr	Level 1 Self-Assess	Level 2 Self-Assess	Level 2 Certification	Level 3 Certification	Total
1	699	20	382	3	1,104
2	3,493	101	1,926	45	5,565
3	11,654	335	6,414	151	18,554
4	22,336	642	12,293	289	35,560
5	22,333	642	12,289	289	35,553
6	22,333	642	12,289	289	35,553
7	20,162	579	11,096	261	32,098
Tot	**103,010**	**2,961**	**56,689**	**1,327**	**163,987**

Table 7 - *Number of Other than Small Entities Over Phase-In Period

Yr	Level 1 Self-Assess	Level 2 Self-Assess	Level 2 Certification	Level 3 Certification	Total
1	246	7	135	1	389
2	1,227	35	673	5	1,940
3	4,094	118	2,252	18	6,482
4	7,848	225	4,317	34	12,424
5	7,846	225	4,317	34	12,422
6	7,846	225	4,317	34	12,422
7	7,084	204	3,898	34	11,220
Tot	**36,191**	**1,039**	**19,909**	**160**	**57,299**

Table 8 - *Number of Total Entities Over Phase-In Period

Yr	Level 1 Self-Assess	Level 2 Self-Assess	Level 2 Certification	Level 3 Certification	Total
1	945	27	517	4	1,493
2	4,720	136	2,599	50	7,505
3	15,748	453	8,666	169	25,036
4	30,184	867	16,610	323	47,984
5	30,179	867	16,606	323	47,975
6	30,179	867	16,606	323	47,975
7	27,246	783	14,994	295	43,318
Tot	**139,201**	**4,000**	**76,598**	**1,487**	**221,286**

Public Costs

Summary of Impacted Awardee Entities

According to data available in the Electronic Data Access system for fiscal years (FYs) 2019, 2020, and 2021, DoD awards an average of 1,366,262 contracts and orders per year that contain DFARS clause 252.204–7012, to 31,338 unique awardees, of which 683,718 awards (50%) are made to 23,475 small entities (75%).[37]

Public Cost Analysis

The following is a summary of the estimated Public costs the revised CMMC Program for other than small[38] entities, per assessment of a contractor information system, at the required periodicity for each CMMC level.

Table 9 - Other Than Small Entities (per Assessment)

Assessment Phase ($)	Level 1 self-assessment[39]	Level 2 self-assessment[39]	Level 2 certification assessment	Level 3 certification assessment
Periodicity	Annual	Triennial	Triennial	Triennial
Plan and Prepare the Assessment	$1,146	$18,015	$26,264	$7,066
Conduct the Assessment	$1,728	$19,964	$80,656	$23,136
Report Assessment Results	$584	$2,712	$2,712	$2,712
Annual Affirmation(s)	$584	*$8,136	*$8,136	*$8,136
Subtotal	$4,042	$48,827	$117,768	$41,050
** POA&M	$0	$0	$0	$3,394
Total (across 3 years)	**$4,042**	**$48,827**	**$117,768**	**$44,444**

*Reflects the 3-year cost to match the periodicity.

**Requirements NOT MET (if needed and when allowed) will be documented in a Plan of Action and Milestones.

The following is a summary of the estimated Public costs of the revised CMMC Program for Small Entities, per assessment of each contractor information system, estimated at one per entity, at the required periodicity for each CMMC level.

Table 10 - Small Entities (per Assessment)

Assessment Phase ($)	Level 1 self-assessment[40]	Level 2 self-assessment[40]	Level 2 certification assessment	Level 3 certification assessment
Periodicity	Annual	Triennial	Triennial	Triennial
Plan and Prepare the Assessment	$1,803	$14,426	$20,699	$1,905
Conduct the Assessment	$2,705	$15,542	$76,743	$1,524
Report Assessment Results	$909	$2,851	$2,851	$1,876
Affirmations	$560	*$4,377	*$4,377	*$5,628
Subtotal	$5,977	$37,196	$104,670	$10,933
**POA&M	$0	$0	$0	$1,869
Total	**$5,977**	**$37,196**	**$104,670**	**$12,802**

*Reflects the 3-year cost to match the periodicity.

**Requirements "NOT MET" (if needed and when allowed) will be documented in a Plan of Action and Milestones.

[37] The number of unique awardees impacted each year is ⅓ of the average number of annual awardees according to the Electronic Data Access system (31,338/3 = 10,446). This estimate does not address new entrants or awardees who discontinue doing business with DoD.

[38] Includes all businesses with the exception of those defined under the small business criteria and size standards provided in 13 CFR 121.201 (See FAR Part 19.102)

[39] The Level I self-assessment and Level 2 self-assessment information collection reporting and recordkeeping requirements will be included in a modification of an existing DFARS collection approved under OBM Control Number 0750–0004, Assessing Contractor Implementation of Cybersecurity Requirements. Modifications to this DFARS collection will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.

[40] The Level 1 self-assessment and Level 2 self-assessment information collection reporting and recordkeeping requirements will be included in a modification of an existing DFARS collection approved under OBM Control Number 0750–0004, Assessing Contractor Implementation of Cybersecurity Requirements. Modifications to this DFARS collection will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.

The total estimated Public (large and small entities) costs associated with this rule, calculated for a 20-year horizon in 2023 dollars at a 7 percent and 3 percent discount rate, per OMB guidance, is provided as follows:

Table 11 - Total Estimated Costs of CMMC Requirements for Large and Small Entities

Public Costs	7% Discount	3% Discount
Annualized Costs	$3,989,182,374	$4,219,513,555
Present Value Costs	$42,261,454,899	$62,775,706,830

Assumptions

In estimating the Public costs, DoD considered applicable nonrecurring engineering costs, recurring engineering costs,[41] assessment costs, and affirmation costs for each CMMC Level. For CMMC Levels 1 and 2, the cost estimates are based only upon the self-assessment, certification assessment, and affirmation activities that a defense contractor, subcontractor, or ecosystem member must take to allow DoD to verify implementation of the relevant underlying security requirements, *i.e.,* for CMMC Level 1, the security requirements set forth in FAR clause 52.204–21, and for CMMC Level 2, the security requirements set forth in NIST SP 800–171 R2. DoD did not consider the cost of implementing the security requirements themselves because implementation is already required by FAR clause 52.204–21, effective June 15, 2016, and by DFARS clause 252.204–7012, requiring implementation by Dec. 31, 2017, respectively; therefore, the costs of implementing the security requirements for CMMC Levels 1 and 2 should already have been incurred and are not attributed to this rule. As such, the nonrecurring engineering and recurring engineering costs to implement the security requirements defined for CMMC Level 1 and Level 2 are not included in this economic analysis. However, cost estimates to implement CMMC Level 3, are included, as that CMMC level will require defense contractors and subcontractors, as applicable, to implement a DoD-defined subset of the security requirements set forth in NIST SP 800–172 Feb2021, a new addition to current security protection requirements.

In estimating the public cost for a defense contractor small entity to comply with CMMC Program requirements for each CMMC level, DoD considered non-recurring engineering costs, recurring engineering costs, assessment costs, and affirmation costs for each CMMC Level. These costs include labor and consulting.

Estimates include size and complexity assumptions to account for typical organizational differences between small entities and other than small entities with respect to the handling of Information Technology (IT) and cybersecurity:

- small entities are likely to have a less complex, less expansive operating environment and IT/Cybersecurity infrastructure compared to larger defense contractors
- small entities are likely to outsource IT and cybersecurity to an External Service Provider (ESP)
- entities (small and other than small) pursuing Level 2 self-assessment are likely to seek consulting or implementation assistance from an ESP to either help them prepare for the assessment technically or participate in the assessment with the C3PAOs.

Estimates do not include the cost to implement (Non-recurring Engineering Costs (NRE)) or maintenance costs (Recurring Engineering (RE)) associated with the security requirements prescribed in current regulations.

For CMMC Levels 1 and 2, cost estimates are based upon assessment, reporting, and affirmation activities that a contractor or subcontractor will need to take to verify implementation of existing security requirements set forth in FAR clause 52.204–21, effective June 15, 2016, to protect FCI, and DFARS clause 252.204–7012 which required implementation of NIST SP 800–171 requirements not later than December 31, 2017, to protect CUI. As such, cost estimates are not included for an entity to implement the CMMC Level 1 or 2 security requirements, maintain implementation of these existing security requirements, or remediate a plan of action for unimplemented requirements.

For CMMC Level 3, the cost estimates factor in the assessment, reporting, and affirmation activities in addition to estimates for NRE and RE to implement and maintain CMMC Level 3 security requirements. In addition to implementing the CMMC Level 2 security requirements, CMMC Level 3 requires implementing selected security requirement set forth in NIST SP 800–172 Feb2021 as described in § 170.14(c)(4) which are not currently required through other regulations. CMMC Level 3 is expected to apply only to a small subset of defense contractors and subcontractors.

The Cost Categories used for each CMMC Level are described:

1. *Nonrecurring Engineering Costs:* Estimates consist of hardware, software, and the associated labor to implement the same. Costs associated with implementing the requirements set forth in FAR clause 52.204–21 and NIST SP 800–171 R2 are assumed to have been already implemented and, therefore, are not accounted for in this cost estimate. As such, these costs only appear in CMMC Level 3. If nonrecurring engineering costs are referenced, they are only accounted for as a one-time occurrence and are reflected in the year of the initial assessment.

2. *Recurring Engineering Costs:* Estimates consist of annually recurring fees and associated labor for technology refresh. Costs associated with implementing the requirements set forth in FAR clause 52.204–21 and NIST SP 800–171 R2 are assumed to have been already implemented and, therefore, are not accounted for in this cost estimate. As such, these costs only appear in CMMC Level 3.

3. *Assessment Costs:* Estimates consist of activities for pre-assessment preparations (which includes gathering and/or developing evidence that the assessment objectives for each requirement have been satisfied), conducting and/or participating in the actual assessment, and completion of any post-assessment work. Assessment costs are represented by notional phases. Assessment costs assume the OSA passes the assessment on the first attempt (conditional—with an allowable POA&M or final). Each phase includes an estimate of hours to conduct the assessment activities including:

(a) Labor hour estimates for a company (and any ESP support) to prepare for and participate in the assessment.

[41] The terms nonrecurring engineering costs and recurring engineering costs are terms of art and do not only encompass actual engineering costs.

(b) C3PAO cost estimates for companies pursuing a certification

- labor hour estimates for authorized or certified assessors to work with the business to conduct the actual assessment
- Assessment Costs broken down into phases
  - Phase 1: Planning and preparing for the assessment
  - Phase 2: Conducting the assessment (self or C3PAO)
  - Phase 3: Reporting of Assessment Results
  - Phase 4: POA&M Closeout (for CMMC Level 3 only, if applicable and allowed)
  - CMMC allows a limited open Plan of Action and Milestones (POA&M) for a period of 180 days to remediate the POA&M, see § 170.21.

4. *Affirmations:* Estimates consist of costs for an OSA to submit to SPRS an initial and, as applicable, any subsequent affirmations of compliance that the contractor information system is compliant with and will maintain compliance with the security requirements of the applicable CMMC Level. If POA&Ms are allowed, an affirmation must be submitted with the POA&M closeout. With the exception of Small Entities for Level 1 and Level 2, it is assumed the task requires the same labor categories and estimated hours as the final reporting phase of the assessment.

The categories and rates used for estimating purposes were compiled by subject matter experts based on current data available from within the DoD contractor database for comparable labor categories. A factor estimate of 30 percent was added to the labor rate per hour to include but are not limited to company-sponsored benefits (fringe) and limited employee-related expenses such as training and certifications. This estimate is based on labor performed by indirect personnel (*i.e.,* personnel who are part of overhead expense); therefore, the 30 percent factor represents an estimate for fringe expense and G&A expenses versus full overhead expense. The categories and rates inclusive of the labor cost plus the additional factor are defined in the table.

Table 12 - Other than Small Entities - Labor Rates Used for Estimate

Code[42]	Rate per Hour[43]	Description	Background / Years' Experience[44]	With Master's Degree[44]
IT5	$ 116.87	Senior Staff IT Specialist	Cyber Background, 10 + years	
IT4	$ 97.49	Staff IT Specialist	Cyber Background, 7-10 years	5-7 years
IT3	$ 81.96	Senior IT Specialist	Cyber Background, 5-7 years	2-5 years
IT2	$ 54.27	IT Specialist	Cyber Background, 2-5 years	0-2 years
IT1	$ 36.32	Associate IT Specialist	Cyber Background, 0-2 years	
MGMT5	$ 190.52	Director	Chief Info. Systems Officer/ Chief Info. Officer	
MGMT4	$ 143.50	Staff Manager	Vice President	
MGMT3	$ 128.64	Senior Manager	Program Manager	
MGMT2	$ 95.96	Manager	5-7 years	
MGMT1	$ 82.75	Associate Manager	1-5 years	
C3PAO[45]	$ 260.28	Cyber Subject Matter Expert	4 years	

Table 13 - Small Entities – Labor Rates Used for Estimate

Code[42]	Rate per Hour[43]	Description	Background / Years' Experience[44]	Master's Degree[44]
MGMT5	$ 190.52	Director	Chief Info. Systems Officer / Chief Info. Officer	
IT4-SB	$ 86.24	Staff IT Specialist	Cyber Background, 7-10 years	5-7 years
ESP / C3PAO[45]	$ 260.28	Cyber Subject Matter Expert	4 years	

[42] IT = Information Technology, MGMT = Management.

[43] IT and MGMT rates represent an estimate for in-house labor and includes the labor rate plus fringe and employee-related expenses.

[44] Background assumes a Bachelor's degree as the minimum education level, additional requirements are noted including required years of experience. A Master's degree may reduce the required years of experience as noted.

[45] The ESP/C3PAO rate represents an estimate for outsourced labor and includes the labor rate, overhead expense, G&A expense, and profit.

CMMC Level 1 Self-Assessment and Affirmation Costs

Other Than Small Entities

- *Nonrecurring and recurring engineering costs:* There are no nonrecurring or recurring engineering costs associated with CMMC Level 1, since it is assumed that the contractor or subcontractor has already implemented the applicable security requirements.[46]
- *Assessments Costs:* It is estimated that the cost to support a CMMC Level 1 self-assessment and affirmation is *$4,042 (as summarized in 4.1.2, table 9). A Level 1 self-assessment is conducted annually, and is based on the assumptions detailed:
- *Phase 1: Planning and preparing for the self-assessment:* $1,146
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - A manager (MGMT2) for 4 hours ($95.96/hr × 4hrs = $384)
- *Phase 2: Conducting the self-assessment:* $1,728
  - A director (MGMT5) for 6 hours ($190.52/hr × 6hrs = $1,143)
  - A staff IT specialist (IT4) for 6 hours ($97.49/hrs × 6hrs = $585)
- *Phase 3: Reporting of self-assessment results into SPRS:* $584
  - A director (MGMT5) for 2 hours ($190.52/hr × 2hrs = $381)
  - A staff IT specialist (IT4) for 2.08 hours ($97.49/hrs × 2.08hrs = $203)
- *Affirmations:* It is estimated that the costs to perform an initial and annual affirmation of compliance with CMMC Level 1 for an ''other than small'' entity is $584
  - A director (MGMT5) for 2 hours ($190.52/hr × 2hrs = $381)
  - A staff IT specialist (IT4) for 2.08 hours ($97.49/hrs × 2.08hrs = $203)
- The Level 1 self-assessment and affirmations cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.
- *Summary:* The following is the annual other than small entities total cost summary for Level 1 self-assessments and affirmations over a ten-year period: (Example calculation, Year 1: *$4,042 per entity × 246 entities (cumulative) = $994,233)

Table 14 –Level 1: Self-Assessment for Other Than Small Entities

Year	Other than Small Entities Per Year	Cumulative Other Than Small Entities	Annual Total Cost (self-assess, affirm)
1	246	246	$994,233
2	1,227	1,473	$5,953,271
3	4,094	5,567	$22,499,565
4	7,848	13,415	$54,218,010
5	7,846	21,261	$85,928,372
6	7,846	29,107	$117,638,733
7	7,084	36,191	$146,269,399
8		36,191	$146,269,399
9		36,191	$146,269,399
10		36,191	$146,269,399
Total	**36,191**		**$872,309,779**

Small Entities

- *Nonrecurring and recurring engineering costs:* There are no nonrecurring or recurring engineering costs associated with CMMC Level 1 since it is assumed the contractor or subcontractor has implemented the applicable security requirements.[47]
- *Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a CMMC Level 1 self-assessment and affirmation is *$5,977 (as summarized in 4.1.2, table 10). A Level 1 self-assessment is conducted annually, and is based on the assumptions detailed:
- *Phase 1: Planning and preparing for the self-assessment:* $1,803
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - An external service provider (ESP) for 4 hours ($260.28 × 4hrs = $1,041)
- *Phase 2: Conducting the self-assessment:* $2,705
  - A director (MGMT5) for 6 hours ($190.52/hr × 6hrs = $1,143)
  - An external service provider (ESP) for 6 hours ($260.28 × 6hrs = $1,562)
- *Phase 3: Reporting of assessment results into SPRS:* $909
  - A director (MGMT5) for 2 hours ($190.52/hr × 2hrs = $381)
  - An external service provider (ESP) for 2 hours ($260.28/hr * 2hrs = $521)
  - A staff IT specialist (IT4–SB) for 0.08 hours[48] ($86.24/hr × 0.08hrs = $7)
- *Affirmation:* initial affirmation post assessment: $ 560
- *Reaffirmations:* It is estimated that the costs to reaffirm a CMMC Level 1 annually for a small entity is $560
  - A director (MGMT5) for 2 hours ($190.52/hr × 2hrs = $381)
  - A staff IT specialist (IT4–SB) for 2.08 hours ($86.24/hr × 2.08hrs = $179)
- The Level 1 self-assessment and affirmations cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.
- *Summary:* The following is the annual small entities total cost summary

[46] CMMC Level 1 consists of the same 15 basic safeguarding requirements specified in FAR clause 52.204–21. This cost analysis assumes that defense contractors and subcontractors already have contracts with FAR clause 52.204–21 and, therefore, have already implemented the 15 basic safeguarding requirements.

[47] Again, it is assumed that that defense contractors and subcontractors have already implemented the 15 basic safeguarding requirements in FAR clause 52.204–21.

[48] A person needs to enter the information into SPRS, which should only take five minutes.

for Level 1 self-assessments and affirmations over a ten-year period: (Example calculation, Year 1: *$5,977 per entity × 699 entities (cumulative) = $4,177,845)

Table 15 – Level 1: Self-Assessment for Small Entities

Year	Small Entities Per Year	Cumulative Small Entities	Annual Total Cost (self-assess, affirm)
1	699	699	$4,177,845
2	3,493	4,192	$25,055,116
3	11,654	15,846	$94,709,771
4	22,336	38,182	$228,209,547
5	22,333	60,515	$361,691,392
6	22,333	82,848	$495,173,237
7	20,162	103,010	$615,679,258
8		103,010	$615,679,258
9		103,010	$615,679,258
10		103,010	$615,679,258
Total	**103,010**		**$3,671,733,942**

All Entities Summary

The following is a summary of the combined costs for both small and other than small entities for Level 1 self-assessments and affirmations over a ten-year period:

Table 16 – Level 1: Self-Assessment for All Entities

Year	Entities Per Year	Cumulative Entities	Total Cost (Self-Assess and Affirmation)
1	945	945	$5,172,077
2	4,720	5,665	$31,008,386
3	15,748	21,413	$117,209,336
4	30,184	51,597	$282,427,557
5	30,179	81,776	$447,619,764
6	30,179	111,955	$612,811,971
7	27,246	139,201	$761,948,657
8	0	139,201	$761,948,657
9	0	139,201	$761,948,657
10	0	139,201	$761,948,657
Total	**139,201**		**4,544,043,721**

CMMC Level 2 Self-Assessment and Affirmation Costs

Other Than Small Entities

- *Nonrecurring and Recurring Engineering Costs:* There are no nonrecurring or recurring engineering costs associated with Level 2 self-assessment since it is assumed the contractor or subcontractor has implemented the NIST SP 800–171 R2 security requirements.
- *Self-Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a Level 2 self-assessment and affirmation is *$43,403. The three-year cost is $48,827 (as summarized in 4.1.2, table 9), which includes the triennial assessment + affirmation, and two additional annual affirmations ($43,403 + $2,712 + $2,712).
- *Phase 1: Planning and preparing for the self-assessment:* $18,015
  - A director (MGMT5) for 30 hours

($190.52/hr × 30hrs = $5,716)
- A manager (MGMT2) for 40 hours ($95.96/hr × 40hrs = $3,838)
- A staff IT specialist (IT4) for 46 hours ($97.49/hr × 46hrs = $4,485)
- A senior IT specialist (IT3) for 26 hours ($81.96/hr × 26hrs = $2,131)
- An IT specialist (IT2) for 34 hours ($54.27/hr × 34hrs = $1,845)

- *Phase 2: Conducting the self-assessment:* $19,964
  - A director (MGMT5) for 24 hours ($190.52/hr × 24hrs = $4,572)
  - A manager (MGMT2) for 24 hours ($95.96/hr × 24hrs = $2,303)
  - A staff IT specialist (IT4) for 56 hours ($97.49/hr × 56hrs = $5,460)
  - A senior IT specialist (IT3) for 56 hours ($81.96/hr × 56hrs = $4,590)
  - An IT specialist (IT2) for 56 hours ($54.27/hr × 56hrs = $3,039)
- *Phase 3: Reporting of self-assessment results into SPRS:* $2,712
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - A manager (MGMT2) for 4 hours ($95.96/hr × 4hrs = $384)
  - A staff IT specialist (IT4) for 16 hours ($97.49/hr × 16hrs = $1,560)
  - A senior IT specialist (IT3) for 0.08 hours ($81.96/hr × 0.08hrs = $7)
- *Affirmation:* initial affirmation post assessment: $ 2,712
- *Reaffirmations:* It is estimated that the cost to perform an annual affirmation for CMMC Level 2 self-assessment is $2,712 (three-year cost is $8,136, or $2,712 × 3):
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - A manager (MGMT2) for 4 hours ($95.96/hr × 4hrs = $384)
  - A staff IT specialist (IT4) for 16 hours ($97.49/hr × 16hrs = $1,560)
  - A senior IT specialist (IT3) for 0.08 hours ($81.96/hr × 0.08hrs = $7)
- The Level 2 self-assessment and affirmations cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.
- *Summary:* The following is the annual other than small entities total cost summary for CMMC Level 2 self-assessments and affirmations over a ten-year period: (Example calculation, Year 2: (*$43,403 assessment per entity × 35 entities) + ($2,712 annual affirmation per entity × 7 entities) = $1,538,092

Table 17 - Level 2: Self-Assessment for Other Than Small Entities

Year	Entities Performing Triennial Self-Assessments including initial affirmation	Entities Performing Annual Affirmation Actions Only	Total Cost
1	7	0	$303,821
2	35	7	$1,538,092
3	118	42	$5,235,473
4	232	153	$10,484,485
5	260	350	$12,234,099
6	343	492	$16,221,701
7	436	603	$20,559,249
8	260	779	$13,397,691
9	343	696	$16,775,017
10	436	603	$20,559,249
Total	**2,470**	**3,725**	**$117,308,877**

Small Entities

- *Nonrecurring and recurring engineering costs:* There are no nonrecurring or recurring engineering costs associated with Level 2 self-assessment since it is assumed the contractor or subcontractor has implemented the NIST SP 800–171 R2 security requirements.
- *Self-Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a Level 2 self-assessment and affirmation for a small entity is *$34,277. The three-year cost is $37,196 (as summarized in 4.1.2, table 10), which includes the triennial assessment + affirmation, plus two additional annual affirmations ($34,277 + $1,459 + $1,459).
- *Phase 1: Planning and preparing for the self-assessment:* $14,426
  - A director (MGMT5) for 32 hours ($190.52/hr x* 32hrs = $6,097)
  - An external service provider (ESP) for 32 hours ($260.28/hr × 32hrs = $8,329)
- *Phase 2: Conducting the self-assessment:* $15,542
  - A director (MGMT5) for 16 hours ($190.52/hr × 16hrs = $3,048)
  - An external service provider (ESP) for 48 hours ($260.28/hr × 48hrs = $12,493)
- *Phase 3: Reporting of self-assessment results into SPRS:* $2,851
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - An external service provider (ESP) for 8 hours ($260.28/hr × 8hrs = $2,082)
  - A staff IT specialist (IT4–SB) for 0.08 hours ($86.24/hr × 0.08hrs = $7)
- *Affirmation:* initial affirmation post assessment: $ 1,459
- *Reaffirmations:* It is estimated that the costs to reaffirm a Level 2 self-assessment annually is $1,459 (three-year costs to reaffirm a Level 2 self-assessment annually is $4,377, or $1,459 × 3):
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - A staff IT specialist (IT4–SB) for 8.08 hours ($86.24/hr × 8.08hrs =

$697)

- The Level 2 self-assessment and affirmations cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.
- *Summary:* The following is the annual small entities total cost summary for Level 2 self-assessments and affirmations over a ten-year period: (Example calculation, Year 2: (*$34,277 self-assessment per entity × 101 entities) + ($1,459 annual affirmation per entity × 20 entities) = $3,491,193)

Table 18 - Level 2: Self-Assessment for Small Entities

Year	Entities Performing Triennial Self-Assessments including initial affirmation	Entities Performing Annual Affirmation Actions Only	Total Cost
1	20	0	$685,547
2	101	20	$3,491,193
3	335	121	$11,659,448
4	662	436	$23,327,706
5	743	997	$26,922,622
6	977	1,405	$35,538,762
7	1,241	1,720	$45,047,546
8	743	2,218	$28,703,951
9	977	1,984	$36,383,471
10	1,241	1,720	$45,047,546
Total	**7,040**	**10,621**	**$256,807,792**

All Entities Summary

The following is a summary of the cost to all entities regardless of size for Level 2 self-assessments and affirmations over a ten-year period:

Table 19 - Level 2: Self-Assessment for All Entities

Year	Entities Performing Triennial Self-Assessments and initial affirmation	Entities Performing Annual Reaffirmations Actions Only	Total Cost
1	27	0	$989,369
2	136	27	$5,029,285
3	453	163	$16,894,921
4	894	589	$33,812,191
5	1,003	1,347	$39,156,721
6	1,320	1,897	$51,760,463
7	1,677	2,323	$65,606,795
8	1,003	2,997	$42,101,642
9	1,320	2,680	$53,158,488
10	1,677	2,323	$65,606,795
Total	**9,510**	**14,346**	**$374,116,669**

CMMC Level 2 Certification Assessment and Affirmation Costs

Other Than Small Entities

- *Nonrecurring and recurring engineering costs:* There are no nonrecurring or recurring engineering costs associated with Level 2 certification assessment since it is assumed the contractor or subcontractor has implemented the NIST SP 800–171 R2 security requirements.
- *Assessment and Initial Affirmation Costs:* It is estimated that the cost to support a Level 2 certification assessment and annual affirmation for an ''other than small'' entity is *$112,345. The three-year cost is $117,768 (as summarized in 4.1.2, table 9), and includes a triennial assessment + affirmation, plus two additional annual affirmations ($112,345 + $2,712 + $2,712, with a minor rounding difference.)
- *Phase 1: Planning and preparing for the certification assessment:* $26,264
  - A director (MGMT5) for 32 hours ($190.52/hr × 32hrs = $6,097)
  - A manager (MGMT2) for 64 hours ($95.96/hr × 64hrs = $6,141)
  - A staff IT specialist (IT4) for 72 hours ($97.49/hr × 72hrs = $7,019)
  - A senior IT specialist (IT3) for 40 hours ($81.96/hr × 40hrs = $3,278)
  - An IT specialist (IT2) for 58 hours ($54.27/hr × 58hrs = $3,148)
  - An associate IT specialist (IT1) for 16 hours ($36.32/hr × 16hrs = $581)
- *Phase 2: Conducting the certification assessment:* $28,600
  - A director (MGMT5) for 32 hours ($190.52/hr × 32hrs = $6,097)
  - A manager (MGMT2) for 32 hours ($95.96/hr × 32hrs = $3,071)
  - A staff IT specialist (IT4) for 72 hours ($97.49/hr × 72hrs = $7,019)
  - A senior IT specialist (IT3) for 72 hours ($81.96/hr × 72hrs = $5,901)
  - An IT specialist (IT2) for 120 hours ($54.27/hr × 120hrs = $6,512)
- *Phase 3: Reporting of certification assessment results:* $2,712
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - A manager (MGMT2) for 4 hours ($95.96/hr × 4hrs = $384)
  - A staff IT specialist (IT4) for 16 hours ($97.49/hr × 16hrs = $1,560)
  - A senior IT specialist (IT3) for 0.08 hours ($81.96/hr × 0.08hrs = $7)
- *Affirmations:* initial affirmation post assessment: $2,712
- *C3PAO Costs:* C3PAO engagement inclusive of Phases 1, 2, and 3 (5-person team) for 200 hours ($260.28/hr × 200hrs = $52,056)
- *Reaffirmations:* It is estimated that the costs to reaffirm a Level 2 certification assessment annually is $2,712 (three-year cost is $8,136 or $2,712 × 3)
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - A manager (MGMT2) for 4 hours ($95.96/hr × 4hrs = $384)
  - A staff IT specialist (IT4) for 8 hours ($97.49/hr × 8hrs = $1,560)
  - A senior IT specialist (IT3) for 0.08 hours ($81.96/hr × 0.08hrs = $7)
- The Level 2 affirmations cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.
- *Summary:* The following is the annual other than small entities total cost summary for Level 2 certification assessments and affirmations over a ten-year period: (Example calculation, Year 2: (*$112,345 assessment per entity × 673 entities) + ($2,712 annual affirmation per entity × 135 entities) = $75,974,425)

Table 20 - Level 2: Certification Assessment for Other Than Small Entities

Year	Entities Performing Triennial Certifications and initial affirmation	Entities Performing Annual Reaffirmation Actions Only	Total Cost
1	135	0	$15,166,590
2	673	135	$75,974,425
3	2,252	808	$255,192,758
4	4,452	2,925	$508,094,016
5	4,990	6,704	$578,785,599
6	6,569	9,442	$763,604,903
7	8,350	11,559	$969,433,559
8	4,990	14,919	$601,067,429
9	6,569	13,340	$774,177,583
10	8,350	11,559	$969,433,559
Total	**47,330**	**71,391**	**$5,510,930,421**

Small Entities

- *Nonrecurring or recurring engineering costs:* There are no nonrecurring or recurring engineering costs associated with Level 2 certification assessment since it is assumed the contractor or subcontractor has implemented the NIST SP 800–171 R2 security requirements.
- *Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a Level 2 certification assessment and affirmation for a small entity is *$101,752. The three-year cost is $104,670 (as summarized in 4.1.2, table 10), and includes the triennial assessment + affirmation plus two additional annual affirmations ($101,752 + $1,459 + $1,459).
- *Phase 1: Planning and preparing for the certification assessment:* $20,699
  - A director (MGMT5) for 54 hours ($190.52/hr × 54hrs = $10,288)
  - An external service provider (ESP) for 40 hours ($260.28/hr × 40hrs =

$10,411)

- *Phase 2: Conducting the certification assessment:* $45,509
- A director (MGMT5) for 64 hours ($190.52/hr × 64hrs = $12,193)
- An external service provider (ESP) for 128 hours ($260.28/hr × 128hrs = $33,316)
- *Phase 3: Reporting of certification assessment results:* $2,851
- A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
- An ESP for 8 hours ($260.28/hr × 8hrs = $2,082)
- A staff IT specialist (IT4–SB) for 0.08 hours ($86.24/hr × 0.08hrs = $7)
- *Affirmations:* cost to post initial affirmation $1,459
- *C3PAO Costs:* C3PAO engagement inclusive of Phases 1, 2, and 3 (3-person team) for 120 hours ($260.28/hr × 120hrs = $31,234)
- *Reaffirmations:* It is estimated that the costs to reaffirm a Level 2 certification assessment annually is $1,459 (three-year cost is $4,377, or $1,459 × 3)
- A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
- A staff IT specialist (IT4–SB) for 8.08 hours ($86.24/hr × 8.08hrs = $697)

- The Level 2 affirmations cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.

- *Summary:* The following is the annual small entities total cost summary for Level 2 certification assessments and affirmations over a ten-year period: (Example calculation, Year 2: (*$101,752 assessment per entity × 1,926 entities) + ($1,459 annual affirmation per entity × 382 entities) = $196,531,451)

Table 21 - Level 2: Certification Assessment for Small Entities

Year	Entities Performing Triennial Certifications and initial affirmation	Entities Performing Annual Reaffirmation Actions Only	Total Cost
1	382	0	$38,869,223
2	1,926	382	$196,531,451
3	6,414	2,308	$656,003,811
4	12,675	8,340	$1,301,872,564
5	14,215	19,089	$1,474,252,306
6	18,703	26,890	$1,942,295,763
7	23,771	32,918	$2,466,768,671
8	14,215	42,474	$1,508,368,920
9	18,703	37,986	$1,958,483,830
10	23,771	32,918	$2,466,768,671
Total	**134,775**	**203,305**	**$14,010,215,209**

All Entities Summary

The following is a summary of the cost to all entities regardless of size for Level 2 certification assessment and affirmation costs over a ten-year period:

Table 22 - Level 2: Certification Assessment for All Entities

Year	Entities Performing Triennial Certifications and initial affirmation	Entities Performing Reaffirmation Actions Only	Total Cost
1	517	0	$54,035,813
2	2,599	517	$272,505,876
3	8,666	3,116	$911,196,569
4	17,127	11,265	$1,809,966,579
5	19,205	25,793	$2,053,037,904
6	25,272	36,332	$2,705,900,665
7	32,121	44,477	$3,436,202,230
8	19,205	57,393	$2,109,436,349
9	25,272	51,326	$2,732,661,414
10	32,121	44,477	$3,436,202,230
Total	**182,105**	**274,696**	**$19,521,145,630**

CMMC Level 3 Certification Assessment and Affirmation Costs

An OSC pursuing Level 3 certification assessment must have a CMMC Status of Final Level 2 (C3PAO), and also must demonstrate compliance with CMMC Level 3, which includes implementation of selected security requirements from NIST SP 800–172 Feb2021 not required in prior rules. Therefore, the Nonrecurring Engineering and Recurring Engineering cost estimates have been included for the initial implementation and maintenance of the required selected NIST SP 800–172 Feb2021 security requirements. The cost estimates account for time for an OSC to implement these security requirements and prepare for, support, participate in, and closeout a Level 3 certification assessment conducted by DCMA DIBCAC. The OSC should keep in mind that the total cost of a Level 3 certification assessment includes the cost of a Level 2 certification assessment as well as the costs to implement and assess the security requirements specific to Level 3. CMMC Level 3 is expected to affect a small subset of the DIB.

Other Than Small Entities, per Entity

- *Nonrecurring Engineering Costs:* $21,100,000.[49]
- *Recurring Engineering Costs:* $4,120,000.
- *Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a Level 3 certification assessment and affirmation for an other than small entity is *$39,021. The three-year cost is $44,445 (as summarized in 4.1.2, table 23), and includes the triennial assessment + affirmation, plus two additional annual affirmations ($39,021 + $2,712 + $2,712).
- *Phase 1: Planning and preparing for the certification assessment:* $7,066
  - A director (MGMT5) for 12 hours ($190.52/hr × 12hrs = $2,286)
  - A manager (MGMT2) for 12 hours ($95.96/hr × 12hrs = $1,152)
  - A staff IT specialist (IT4) for 16 hours ($97.49/hr × 16hrs = $1,560)
  - A senior IT specialist (IT3) for 12 hours ($81.96/hr × 12hrs = $984)
  - An IT specialist (IT2) for 20 hours ($54.27/hr × 20hrs = $1,085)
- *Phase 2: Conducting the certification assessment:* $23,136
  - A director (MGMT5) for 24 hours ($190.52/hr × 24hrs = $4,572)
  - A manager (MGMT2) for 24 hours ($95.96/hr × 24hrs = $2,303)
  - A staff IT specialist (IT4) for 64 hours ($97.49/hr × 64hrs = $6,239)
  - A senior IT specialist (IT3) for 64 hours ($81.96/hr × 64hrs = $5,245)
  - An IT specialist (IT2) for 88 hours ($54.27/hr × 88hrs = $4,776)
- *Phase 3: Reporting of certification assessment results:* $2,712
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - A manager (MGMT2) for 4 hours ($95.96/hr × 4hrs = $384)
  - A staff IT specialist (IT4) for 16 hours ($97.49/hr × 16hrs = $1,560)
  - A senior IT specialist (IT3) for 0.08 hours ($81.96/hr × 0.08hrs = $7)
- *Phase 4: Closing out POA&Ms*[50] *(for CMMC Level 3 if necessary and allowed):* $3,394
  - A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)
  - A senior staff IT specialist (IT5) for 16 hours ($116.87/hr × 16hrs = $1,870)
  - Affirmations: initial affirmation post assessment: $2,712
- *Reaffirmations:* It is estimated that the costs to reaffirm a Level 3 certification assessment annually is $2,712 (three-year cost is $8,136, or $2,712 × 3)
  - A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
  - A manager (MGMT2) for 4 hours ($95.96/hr × 4hrs = $384)
  - A staff IT specialist (IT4) for 16 hours ($97.49/hr × 16hrs = $1,560)
  - A senior IT specialist (IT3) for 0.08 hours ($81.96/hr × 0.08hrs = $7)

The Level 3 affirmations cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.

- *Summary:* The following is the annual other than small entities total cost summary for Level 3 certification assessments and affirmations over a ten-year period. Example calculation, Year 2 (reference per entity amounts shown):
- *($39,021 Certification per entity × 5 entities) + ($2,712 Annual Affirmation per entity × 1 entity) = $197,818, and

[49] DoD utilized subject matter expertise from Defense Pricing and Contracting (DPC) and DCMA DIBCAC to estimate the Nonrecurring and Recurring Engineering Costs.

[50] Costs for closing out POA&Ms are included at Level 3 because the requirement to implement a subset of NIST SP 800–172 Feb2021 security requirements is new with the CMMC rule. These costs are not included at Level 2 because the implementation of all NIST SP 800–171 R2 security requirements are already required.

- $105,500,000 Nonrecurring Engineering cost ($21,100,000 per entity × 5 entities being certified), and
- $24,720,000 Recurring Engineering cost ($4,120,000 per entity × 5 entities being certified) + ($4,120,000 per entity × 1 entity performing affirmations)
- $130,417,818 Total Cost = Certification and Affirmation Cost ($197,818) + Nonrecurring Engineering cost ($105,500,000) + Recurring Engineering cost ($24,720,000), or $145,432,897.

Table 23 - Level 3: Certification Assessment for Other Than Small Entities

Yr	Entities Performing Triennial Certification Including Initial Affirmation	Entities Performing Re-affirmation Actions Only	Triennial Certification and Affirmations Total Cost	Nonrecurring Engineering Cost	Recurring Engineering Cost	Total Cost
1	1	0	$39,021	$21,100,000	$4,120,000	$25,259,021
2	5	1	$197,818	$105,500,000	$24,720,000	$130,417,818
3	18	6	$718,654	$379,800,000	$98,880,000	$479,398,654
4	35	23	$1,428,123	$717,400,000	$238,960,000	$957,788,123
5	39	53	$1,665,578	$717,400,000	$379,040,000	$1,098,105,578
6	52	74	$2,229,811	$717,400,000	$519,120,000	$1,238,749,811
7	69	91	$2,939,280	$717,400,000	$659,200,000	$1,379,539,280
8	39	121	$1,850,016		$659,200,000	$661,050,016
9	52	108	$2,322,031		$659,200,000	$661,522,031
10	69	91	$2,939,280		$659,200,000	$662,139,280
Tot	**379**	**568**	**$16,329,613**	**$3,376,000,000**	**$3,901,640,000**	**$7,293,969,613**

Small Entities

- *Nonrecurring Engineering Costs:* $2,700,000.
- *Recurring Engineering Costs:* $490,000.
- *Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a Level 3 certification assessment for a small entity is *$9,050 The three-year cost is $12,802 (summarized in 4.1.2, table 10), and includes the triennial assessment + affirmation, plus two additional annual affirmations ($9,050 + $1,876 + $1,876):
- *Phase 1: Planning and preparing for the certification assessment:* $1,905
  - *A director (MGMT5) for 10 hours ($190.52/hr × 10hrs* = $1,905)
- *Phase 2: Conducting the certification assessment:* $1,524
  - A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)
- *Phase 3: Reporting of certification assessment results:* $1,876
  - A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)
  - A staff IT specialist (IT4–SB) for 4.08 hours ($86.24/hr × 4.08hrs = $352)
- *Phase 4: Closing out POA&Ms*[51] *(for CMMC Level 3 if necessary and allowed):* $1,869
  - A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)
  - A staff IT specialist (IT4–SB) for 48 hours ($86.24/hr × 48hrs = $345)
- *Reaffirmations:* It is estimated that the costs to reaffirm a Level 3 certification assessment annually is $1,876 (three-year cost is $5,628, or $1,876 × 3)
  - A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)
  - A staff IT specialist (IT4–SB) for 4.08 hours ($86.24/hr × 4.08hrs = $352)
- The Level 3 affirmations cost burden will be addressed as part of the 48 CFR part 204 CMMC Acquisition rule.

Summary: The following is the annual small entities total cost summary for Level 3 certification assessments and affirmations over a ten-year period. Example calculation, Year 2 (reference per entity amounts shown):

- *($9,050 Certification per entity × 45 entities) + ($1,876 Annual Affirmation per entity × 3 entities) = $412,897, and
- $121,500,000 Nonrecurring Engineering cost ($2,700,000 per entity × 45 entities being certified), and

[51] Costs for closing out POA&Ms are included at Level 3 because the requirement to implement a subset of NIST SP 800–172 Feb2021 security requirements is new with the CMMC rule. These costs are not included at Level 2 because the implementation of all NIST SP 800–171 R2 security requirements is already required.

- $23,520,000 Recurring Engineering cost ($490,000 per entity × 45 entities being certified) + ($490,000 per entity × 3 entities performing affirmations)
- $145,432,897 Total Cost = Certification and Affirmation Cost ($412,897) + Nonrecurring Engineering cost ($121,500,000) + Recurring Engineering cost ($23,520,000), or $145,432,897.

Table 24 - Level 3: Certification Assessment for Small Entities

Yr	Entities Performing Triennial Certification Including Initial Affirmation	Entities Performing Re-affirmation Actions Only	Triennial Certification and Affirmations Total Cost	Nonrecurring Engineering Cost	Recurring Engineering Cost	Total Cost
1	3	0	$27,151	$8,100,000	$1,470,000	$9,597,151
2	45	3	$412,897	$121,500,000	$23,520,000	$145,432,897
3	151	48	$1,456,663	$407,700,000	$97,510,000	$506,666,663
4	292	196	$3,010,423	$780,300,000	$239,120,000	$1,022,430,423
5	334	443	$3,853,914	$780,300,000	$380,730,000	$1,164,883,914
6	440	626	$5,156,569	$780,300,000	$522,340,000	$1,307,796,569
7	553	774	$6,456,917	$704,700,000	$650,230,000	$1,361,386,917
8	334	993	$4,885,718		$650,230,000	$655,115,718
9	440	887	$5,646,207		$650,230,000	$655,876,207
10	553	774	$6,456,917		$650,230,000	$656,686,917
Tot	**3,145**	**4,744**	**$37,363,377**	**$3,582,900,000**	**$3,865,610,000**	**$7,485,873,377**

All Entities Summary

The following is a summary of the cost to all entities regardless of size for Level 3 certification assessments and affirmations over a ten-year period:

Table 25 - Level 3: Certification Assessment for All Entities

Yr	Entities Performing Triennial Certification Including Initial Affirmation	Entities Performing Re-affirmation Actions Only	Triennial Certs and Affirmation Total Cost	Nonrecurring Engineering Cost	Recurring Engineering Cost	Total Cost
1	4	0	$66,172	$29,200,000	$5,590,000	$34,856,172
2	50	4	$610,715	$227,000,000	$48,240,000	$275,850,715
3	169	54	$2,175,317	$787,500,000	$196,390,000	$986,065,317
4	327	219	$4,438,546	$1,497,700,000	$478,080,000	$1,980,218,546
5	373	496	$5,519,492	$1,497,700,000	$759,770,000	$2,262,989,492
6	492	700	$7,386,381	$1,497,700,000	$1,041,460,000	$2,546,546,381
7	622	865	$9,396,197	$1,422,100,000	$1,309,430,000	$2,740,926,197
8	373	1,114	$6,735,735	$-	$1,309,430,000	$1,316,165,735
9	492	995	$7,968,238	$-	$1,309,430,000	$1,317,398,238
10	622	865	$9,396,197	$-	$1,309,430,000	$1,318,826,197
Tot	**3,524**	**5,312**	**$53,692,990**	**$6,958,900,000**	**$7,767,250,000**	**$14,779,842,990**

Government Costs

Summary of Impact

The following is a summary of the estimated Government costs calculated for a 20-year horizon in 2023 dollars at a 7 percent and 3 percent discount rate. The Government costs include conducting Level 3 certification assessments, uploading results into the CMMC instantiation of eMASS, and the CMMC PMO costs.

Table 26 – Total Estimated Government Costs of CMMC Requirements for All Entities

Government Costs	7% Discount	3% Discount
Annualized Costs	$9,508,593	$9,953,205
Present Value Costs	$100,734,168	$148,078,564

Government Costs (All Levels)

The estimated Government costs utilize the entity numbers and phased roll-out detailed in the Public cost section. The DIBCAC estimated the detailed hours for all activities and other costs in a manner similar to the details shown in the Public cost section. Labor efforts for the Government are focused on Level 3. For purposes of the cost estimate, Government labor is based on the average of step one, five, and ten for GS–11 through GS–15 labor elements for the Washington DC area. The cost of labor was increased by a factor of approximately 51 percent which includes an estimated fringe factor (fringe factor includes estimated average insurance and pension benefits) plus overhead (overhead factor represents supervision and management of the labor) to arrive at the estimated labor rates. The Government labor in this estimate is performed by DCMA, which is a labor-intensive agency with limited overhead expenses. Therefore, the overall added factor of 51 percent is appropriate versus a typical full overhead factor of 100 percent.

CMMC Database Infrastructure Costs

The Government will develop the operational CMMC instantiation of eMASS. The cost analysis assumes that the nonrecurring engineering (NRE) cost includes the requirements development, architecture design, security, prototyping and testing, and approvals or certifications.[52] Nonrecurring engineering costs is a one-time fee of $4,631,213 and is reflected here as incurred in the initial year of the estimate. The Year 1 amount is based on the actual cost incurred in FY2020 with adjustment for inflation to arrive at base year (BY) 1 dollars (2023).

The recurring engineering (RE) cost includes database management, data analysis, cybersecurity, storage and backups, licensing, and infrastructure.[53]

The cost for recurring engineering in Year 1 ($2,336,038) and Year 2 ($1,804,480) are based on historical

[52] Nonrecurring engineering costs were first incurred in FY20. The cost has inflation applied to put the value in 2023 base year (BY) dollars.

[53] The cost for the recurring engineering cost is based on the costs incurred in FY20 and FY21. The values for Year 1 (FY20) and Year 2 ((FY21) are actual historic values that have inflation applied to them to put them in base year 2023 dollars. Every proceeding years' recurring engineering cost is based on the average of the two historic actual values.

amounts incurred for FY 2020 and FY 2021 with adjustment for inflation to arrive at base year 1 and Year 2 dollars (2023 and 2024). The estimated recurring engineering for Year 3 forward is calculated as the average of the Year 1 and Year 2 amounts (($2,336,038 + $1,804,480)/2 = $2,070,259).

The table summarizes the nonrecurring engineering (NRE) and recurring engineering (RE) costs for Year 1 through Year 5:

Table 27 - Government Costs for CMMC Database Infrastructure (BY23$)

	NRE	RE	Sub-Total Per Year
Year 1	$4,631,213	$2,336,038.92	$6,967,252
Year 2	0	$1,804,480	$1,804,480
Year 3	0	$2,070,259	$2,070,259
Year 4	0	$2,070,259	$2,070,259
Year 5	0	$2,070,259	$2,070,259
Total	**$4,631,213**	**$10,351,296**	**$14,982,509**

Total Government Costs

The following is a summary of the total Government costs over a ten-year period:

Table 28 – Estimated CMMC Costs –Government (BY23$)

Year	Government Costs (All Levels**)	CMMC Database Infrastructure (CMMC Instantiation of eMASS)	Total
1	$79,698	$6,967,252	$7,046,950
2	$826,063	$1,804,480	$2,630,543
3	$2,871,167	$2,070,259	$4,941,426
4	$5,713,930	$2,070,259	$7,784,189
5	$6,830,268	$2,070,259	$8,900,527
6	$9,083,729	$2,070,259	$11,153,988
7	$11,533,002	$2,070,259	$13,603,261
8	$7,670,055	$2,070,259	$9,740,314
9	$9,486,082	$2,070,259	$11,556,342
10	$11,533,002	$2,070,259	$13,603,261

**Government activities associated with all Government costs associated with the CMMC Program.

Total Public and Government Costs

The following is a summary of the total estimated annual Public and Government cost associated with implementation of the CMMC Program over a ten-year period:

Table 29 - Estimated CMMC Costs – Public and Government (BY23$)

Year	Public	Government	Total
1	$95,053,432	$7,046,950	$102,100,382
2	$584,394,262	$2,630,543	$587,024,805
3	$2,031,366,143	$4,941,427	$2,036,307,570
4	$4,106,424,873	$7,784,189	$4,114,209,062
5	$4,802,803,881	$8,900,527	$4,811,704,408
6	$5,917,019,480	$11,153,988	$5,928,173,468
7	$7,004,683,879	$13,603,261	$7,018,287,140
8	$4,229,652,383	$9,740,314	$4,239,392,697
9	$4,865,166,797	$11,556,342	$4,876,723,139
10	$5,582,583,879	$13,603,261	$5,596,187,140

Alternatives

DoD considered and adopted several alternatives during the development of this rule that reduce the burden on defense contractors and still meet the objectives of the rule. These alternatives include: (1) maintaining status quo and leveraging only the current requirements implemented in DFARS provision 252.204–7019 and DFARS clause 252.204–7020 requiring defense contractors and offerors to self-assess utilizing the DoD Assessment Methodology and entering a Basic Summary Score; (2) revising CMMC to reduce the burden for small businesses and contractors who do not process, store, or transmit critical CUI by eliminating the requirement to hire a C3PAO and instead allow self-assessment with affirmation to maintain compliance at CMMC Level 1, and allowing triennial self-assessment with an annual affirmation to maintain compliance for some CMMC Level 2 programs; (3) exempting contracts and orders exclusively for the acquisition of commercially available off-the-shelf items; and (4) implementing a phased implementation for CMMC.

In addition, the Department took into consideration the timing of the requirement to achieve a specified CMMC Status: (1) at time of proposal or offer submission, (2) after contract award, (3) at the time of contract award, or (4) permitting government Program Managers to seek approval to waive inclusion of CMMC Status requirements in solicitations that involve disclosure or creation of FCI or CUI as part of the contract effort. Such waivers will be requested and approved by DoD in accordance with internal policies, procedures, and approval requirements. The Department ultimately adopted alternatives 3 and 4. The drawback of alternative 1 (at time of proposal or offer submission) is the increased risk for contractors since they may not have sufficient time to achieve the required CMMC Status after the release of the solicitation. The drawback of alternative 2 (after contract award) is the increased risk to the Department with respect to the costs, program schedule, and uncertainty in the event the contractor is unable to achieve the required CMMC Status in a reasonable amount of time given their current cybersecurity posture. This potential delay would apply to the entire supply chain and prevent the appropriate flow of CUI and FCI.

Benefits

The Department of Defense expects this final rule to protect DoD and industry from the loss of FCI and CUI, including intellectual property. The theft of intellectual property and FCI and CUI due to malicious cyber activity threatens U.S. economic security and national security. In 2010, the Commander of the U.S. Cyber Command and Director of the National Security Agency estimated the value of U.S. intellectual property to be $5 trillion and that $300 billion is stolen over networks annually.[54] The 2013 Intellectual Property Commission Report provided concurrence and noted that the ongoing theft represents ''the greatest transfer of wealth in history.'' The report also highlighted the challenges of generating an exact figure because Government and private studies tend to understate the impacts due to inadequate data or scope, which is evidenced in subsequent analyses.[55]

The responsibility of Federal agencies to protect FCI or CUI does not change when such information is shared with defense contractors. A comparable level of protection is needed when FCI or CUI is processed, stored, or transmitted on contractor information systems.[56] The protection of FCI, CUI, and intellectual property on defense contractor systems can directly impact the ability of the Federal Government to successfully conduct its essential missions and functions.[57]

Malicious cyber actors have targeted and continue to target the DIB sector that consists of approximately 220,000 small-to-large sized entities that support the warfighter. In particular, actors ranging from cyber criminals to nation-states continue to attack companies and organizations that comprise the Department's multi-tier supply chain including smaller entities at the lower tiers. From at least January 2020, through February 2022, the Federal Bureau of Investigation (FBI), National Security Agency (NSA), and Cybersecurity and Infrastructure Security Agency (CISA) observed regular targeting of U.S. cleared defense contractors (CDCs) by Russian state-sponsored cyber actors. The actors have targeted sensitive, unclassified information, as well as proprietary and export-controlled technology. The acquired information provides significant insight into U.S. weapons platforms development and deployment timelines, vehicle specifications, and plans for communications infrastructure and IT. By acquiring proprietary internal documents and email

[54] *www.govinfo.gov/content/pkg/CHRG-113hhrg86391/html/CHRG-113hhrg86391.htm.*

[55] *www.nbr.org/program/commission-on-the-theft-of-intellectual-property/.*

[56] *www.cybernc.us/fci-cui/.*

[57] GAO Report to Congress, Defense Contractor Cybersecurity Stakeholder Communication and Performance Goals Could Improve Certification Framework, December 2021.

communications, adversaries may be able to adjust their own military plans and priorities, hasten technological development efforts, inform foreign policymakers of U.S. intentions, and target potential sources for recruitment.[58]

In addition to stealing intellectual property for military gains, Russia may conduct cyber-attacks against the U.S. for retaliatory purposes. On March 21, 2022, the Biden-Harris Administration stated intelligence indicates that the Russian Government and Russian-aligned cybercrime groups have threatened to conduct cyber operations in retaliation for perceived cyber offensives against the Russian Government or the Russian people.[59]

The aggregate loss of intellectual property and CUI from the DoD supply chain severely undercuts U.S. technical advantage, limits and disrupts business opportunities associated with technological superiority, and ultimately threatens our national defenses and economy. By incorporating heightened cybersecurity into acquisition programs, the CMMC Program provides the Department assurance that contractors and subcontractors are meeting DoD's cybersecurity requirements and provides a key mechanism to adapt to an evolving threat landscape. This is critically important to the Department because defense contractors are the target of increasingly frequent and complex cyberattacks by adversaries and non-state actors. Dynamically enhancing DIB cybersecurity to meet these evolving threats and safeguarding the information that supports and enables our warfighters is a top priority for the Department. The CMMC Program is a key component of the Department's DIB cybersecurity effort.

CMMC provides uniform and improved DoD cybersecurity requirements in three (3) levels, using the security requirements in NIST SP 800–171 R2 and a selected subset of those in NIST SP 800–172 Feb2021. With this rule, the Department is publishing supplemental guidance documents to assist the public and in particular, small businesses, with CMMC implementation, increasing the likelihood of successful implementation and strengthening cybersecurity across the DIB. CMMC decreases the burden and cost on companies protecting FCI by allowing all companies at Level 1, and a subset of companies at Level 2, to demonstrate compliance through self-assessments. CMMC allows companies, under certain limited circumstances, to make a Plan of Action & Milestones (POA&M) to provide additional time to achieve a Final CMMC Status. These key updates to CMMC benefit the DoD and our national interest by providing:

- improved safeguarding of competitive advantages through requirements flow-down to the defense contractor supply chain and protections for proprietary information and capabilities, and
- increased efficiency in the economy and private markets as a result of the streamlining of cybersecurity requirements, the resulting improvements in cybersecurity, and accountability across the supply chain.

In summary, the CMMC Program enforces and validates implementation of DoD's required cyber protection standards for companies in the DIB, preserving U.S. technical advantage. In addition, CMMC increases security for the most sensitive CUI by applying additional requirements at Level 3. Implementation of CMMC will help protect FCI and CUI upon which DoD systems and critical infrastructure rely, making it vital to national security. CMMC is focused on securing the Department's supply chain, including the smallest, most vulnerable innovative companies. The security risks that result from the significant loss of FCI and CUI, including intellectual property and proprietary data, make implementation of the CMMC Program vital, practical, and in the public interest.

III. Regulatory Compliance Analysis

A. Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' as Amended by Executive Order 14094, ''Modernizing Regulatory Review''

These Executive Orders direct agencies to assess all costs, benefits, and available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety effects, distributive impacts, and equity). These Executive Orders emphasize 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 determined this final rule is significant as defined by Section 3(f)(1) for purposes of Executive Order 12866, as amended by Executive Order 14094.

B. Congressional Review Act (5 U.S.C. 801 et seq.)

As defined by 5 U.S.C. 804(2), a major rule is a rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—(a) an annual effect on the economy of $100,000,000 or more; (b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. This rule has been designated a major rule as it is expected to have annual effect on the economy of $100M dollars or more.

C. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense Chief Information Officer certified that this rule is subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would, if promulgated, have a significant economic impact on a substantial number of small entities.

DoD has considered previous comments from Small Business Administration (SBA) regarding the impact and cost to small businesses to implement CMMC. In July 2022, the CMMC PMO met with the Office of Advocacy for the U.S. SBA to address the revisions planned in CMMC that are responsive to prior SBA concerns, with which the SBA was satisfied.

An Initial Regulatory Flexibility Analysis that includes a detailed discussion and explanation about the assumptions and methodology used to estimate the cost of this regulatory action on small entities follows and is available at *www.regulations.gov* (search for ''DoD–2023–OS–0063,'' click ''Open Docket,'' and view ''Supporting Documents'').

This final regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 603.

D. Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 604(a).

Reasons for the Action

This final rule is necessary to create a secure and resilient supply chain, by addressing threats to the U.S. economy and national security from ongoing malicious cyber activities and preventing theft of hundreds of billions

[58] *www.cisa.gov/news-events/cybersecurity-advisories/aa22-047a.*

[59] *www.whitehouse.gov/briefing-room/statements-releases/2022/03/21/statement-by-president-biden-on-our-nations-cybersecurity/.*

of dollars of U.S. intellectual property. The President's Executive Order (E.O.) 14028, ''Improving the Nation's Cybersecurity,'' [60] emphasized that industrial security needs strengthening to ensure investments are not lost through intellectual property theft or among other supply chain risks.

Currently, the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) prescribe contract clauses intended to protect Federal Contract Information (FCI) and Controlled Unclassified Information (CUI) within the Department of Defense (DoD) supply chain. Specifically, the clause at FAR clause 52.204–21, Basic Safeguarding of Covered Contractor Information Systems, is prescribed at FAR 4.1903 for use in Government solicitations and contracts when the contractor or a subcontractor at any tier may have FCI residing in or transiting through its information system. The FAR clause focuses on ensuring a basic level of cybersecurity hygiene and is reflective of actions that a prudent businessperson would employ.

In addition, DFARS clause 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, is prescribed in DFARS 204.7304 (c) for use in DoD solicitations and contracts that require processing, storing, or transmitting of CUI in contractor owned information systems. DFARS clause 252.204–7012 requires defense contractors and subcontractors to provide ''adequate security'' to process, store or transmit CUI on information systems or networks, and to report cyber incidents that affect these systems or networks. The clause states that to provide adequate security, the contractor shall implement, at a minimum, the security requirements in ''National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 R2, Protecting CUI in Nonfederal Systems and Organizations.'' Contractors are also required to flow down DFARS clause 252.204–7012 to all subcontracts that involve CUI.

However, neither FAR clause 52.204–21 nor DFARS clause 252.204–7012, provide for DoD verification of a contractor's implementation of basic safeguarding requirements specified in those clauses prior to contract award. DFARS clause 252.204–7020, *NIST SP 800–171 DoD Assessment Requirements,* applies to contractor information systems that are subject to NIST SP 800–171 requirements pursuant to DFARS clause 252.204–7012. DFARS provision 252.204–7019 and DFARS clause 7020 require offerors and contractors (including subcontractors) respectively to score their implementation of NIST SP 800–171 requirements for each contractor information system that is relevant to the offer or contract and to submit, at minimum, summary level self-assessment scores in the Supplier Performance Risk System (SPRS) for a minimum of a Basic Assessment, which is a contractor self-assessment. The SPRS submission includes the NIST SP 800–171 version against which the assessment was conducted, all industry Commercial and Government Entity (CAGE) code(s) associated with the information system(s) addressed by the required system security plan, the date of assessment, the summary level score, and the date all NIST SP 800–171 R2 requirements are expected to be implemented based on the associated plan(s) of action in accordance with NIST SP 800–171 R2. Accordingly, and upon submission of an offer, when applicable, the contractor must verify that a summary level score(s) of a current NIST SP 800–171 DoD Assessment is posted in SPRS for all contractor information systems relevant to the offer to signify appropriate implementation of NIST SP 800–171 R2 requirements.

Findings from DoD Inspector General report (DODIG–2019–105 ''Audit of Protection of DoD CUI on Contractor-Owned Networks and Systems'') indicate that DoD contractors did not consistently implement mandated system security requirements for safeguarding CUI. That report included recommendations for DoD take steps to assess a contractor's ability to protect this information. The report emphasizes that malicious actors can exploit vulnerabilities in contractors' information systems and exfiltrate information related to some of the Nation's most valuable advanced defense technologies. Due to these shortcomings and the associated risks to national security, the Department developed the Cybersecurity Maturity Model Certification (CMMC) Program to assess contractor and subcontractor implementation of DoD's required cybersecurity standards.

The CMMC Program verifies compliance with DoD cyber protection standards by defense contractors and subcontractors and is designed to protect FCI and CUI that is shared by the Department with its contractors and subcontractors, and when developed by a contractor in the course of contract performance but not shared. The program incorporates a set of cybersecurity requirements into acquisition contracts and provides the Department increased assurance that contractors and subcontractors are meeting these requirements. The CMMC Program has three key features:

- *Tiered Model:* CMMC requires that companies demonstrate, through assessment that they have implemented cybersecurity requirements. The type of assessment and requirements against which it is conducted are selected based on the information that must be safeguarded. The program also sets forth the requirements for flow down of CMMC requirements to subcontractors.
- *Assessment Requirement:* CMMC assessments allow the Department to verify the implementation of cybersecurity requirements.
- *Implementation through Contracts:* Once CMMC is fully implemented, DoD contractors that handle FCI and CUI on their non-Federal information systems will be required to achieve a particular CMMC Status as a condition of contract award.

In September 2020, the DoD published the 48 CFR CMMC interim final rule in the **Federal Register** (DFARS Case 2019–D041) that implemented the DoD's initial vision for the CMMC Program and outlined the key features of the program. The 48 CFR CMMC interim final rule became effective on November 30, 2020.

In March 2021, the Department initiated an internal review of CMMC's implementation, informed by more than 750 public comments in response to the 48 CFR CMMC interim final rule. This comprehensive, programmatic assessment engaged cybersecurity and acquisition leaders within DoD to refine policy and program implementation.

In November 2021, the Department announced an updated program structure with revised requirements designed to achieve the primary goals identified by DoD's internal review of the CMMC Program. With the implementation of the revised CMMC program, the Department introduced several key changes that build on and refine the original program requirements. These include:

- Streamlining the CMMC model from five levels to three levels.
- Exclusively implementing National Institute of Standards and Technology (NIST) cybersecurity guidelines.
- Allowing all companies subject to CMMC Level 1 requirements and subset of companies subject to CMMC Level 2 requirements to demonstrate CMMC compliance through self-assessments.
- Increased oversight of professional and ethical standards of third-party assessors.

[60] *www.gsa.gov/technology/it-contract-vehicles-and-purchasing-programs/technology-products-services/it-security/executive-order-14028.*

• Allowing Plans of Action & Milestones (POA&M) under limited circumstances to achieve conditional certification.

In July 2022, the CMMC Program Management Office (PMO) met with the Office of Advocacy for the U.S. SBA to address the revisions planned for CMMC and again met in July 2023 to review the proposed 32 CFR part 170 CMMC Program rule updates that are responsive to prior SBA concerns. As a result of the alignment of CMMC requirements to NIST guidelines, the Department's requirements continue to evolve as changes are made to the underlying NIST SP 800–171 R2 and NIST SP 800–172 Feb2021 requirements. Such changes will not be effective as CMMC requirements unless and until made effective through rulemaking.

Objectives of, and Legal Basis for, the Rule

Legal Basis: 5 U.S.C. 301; Sec. 1648, Public Law 116–92, 133 Stat. 1198.

The objective of this final CMMC Program rule is to provide the Department with increased assurance that a defense contractor can adequately protect FCI and CUI commensurate with the risk, also accounting for information flow down to its subcontractors in a multi-tier supply chain. This rule meets the objective by providing a mechanism to assess contractor and subcontractor implementation of DoD's cyber security protection requirements for FCI and CUI. Implementation of the CMMC Program is intended to address the following policy issues:

(a) Verification of a Contractor's Cybersecurity Posture

Effective June 2016, FAR clause 52.204–21 Basic Safeguarding of Contractor Information Systems, requires Federal contractors and subcontractors to implement 15 basic safeguarding requirements, as applicable, to protect contractor information systems that process, store, or transmit FCI.

December 31, 2017, was the DoD deadline for contractors to implement, as applicable, the cybersecurity protection requirements set forth in NIST SP 800–171 Re2, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations, in accordance with requirements of DFARS clause 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting. NIST SP 800–171A Jun2018 states, ''For the CUI security requirements in NIST Special Publication 800–171 Rev 2, nonfederal organizations describe in a system security plan, how the specified requirements are met or how organizations plan to meet the requirements.'' [61] The NIST process provides contractors with a tool to assess their security posture and decide if or when to mitigate the risks based upon the organizational risk tolerance. When the DoD implemented the NIST SP 800–171 requirements with a not-later-than date of December 2017, the policy intent was to permit contractors some flexibility to remediate lagging NIST requirements, and document them in plans of action, and resolve those deficiencies within a reasonable period. An unintended consequence of this flexibility was that some contractors far exceeded the intention to secure systems that must adequately safeguard CUI in a timely manner and instead created open-ended plans of action with undefined closure dates. The effect was to delay full compliance with safeguarding requirements for years. As a result, the DoD's implementation of the NIST SP 800–171 requirements, as mandated by 32 CFR part 2002, has not been fully effective or validated. This necessitates implementation of the CMMC Program to enforce a finite timeline for full compliance of contractual requirements.

Findings from DoD Inspector General report (DODIG–2019–105 ''Audit of Protection of DoD Controlled Unclassified Information on Contractor-Owned Networks and Systems'') indicated that DoD contractors did not consistently implement mandated system security requirements for safeguarding CUI and recommended that DoD take steps to assess a contractor's ability to protect this information.

CMMC adds an assessment requirement to verify defense contractors and subcontractors have implemented the applicable security requirements prior to award. CMMC also adds requirements at each CMMC level for contractors and subcontractors to affirm initial compliance with the specified CMMC security requirements and provide annual affirmations thereafter.

(b) Comprehensive Implementation of Cybersecurity Requirements

Although the security requirements in NIST SP 800–171 R2 address a range of threats, they do not sufficiently address Advanced Persistent Threats (APTs). An APT is an adversary that possesses sophisticated levels of expertise and significant resources, which allow it to create opportunities to achieve its objectives by using multiple attack vectors (*e.g.,* cyber, physical, and deception). To address APTs, NIST has published NIST SP 800–172 Feb2022. CMMC Level 3 certification assessment provides for government assessment of a contractor's implementation of a defined subset of NIST SP 800–172 Feb2021 Enhanced Security Requirements with DoD predefined parameters and specifications.

(c) Scale and Depth

Today, DoD prime contractors must include DFARS clause 252.204–7012 in subcontracts for which performance will involve covered defense information, but this does not provide the Department with sufficient insights with respect to the cybersecurity posture of all members of a multi-tier supply chain for any given program or technology development effort. The revised CMMC Program requires prime contractors to flow down CMMC requirements, as applicable, to subcontractors throughout their supply chain(s).

Given the size of the Defense Industrial Base (DIB), the Department cannot scale its existing cybersecurity assessment workforce to conduct on-site assessments of approximately 220,000 DoD contractors and subcontractors every three years. The Department's existing assessment capability is best suited for conducting targeted assessments for the relatively small subset of DoD contractors and subcontractors that support designated high-priority programs.

CMMC addresses the Department's scaling challenges by utilizing a private-sector accreditation structure. The DoD-recognized Accreditation Body will authorize, accredit, and provide oversight of CMMC Third-Party Assessment Organizations (C3PAO) which in turn will conduct CMMC Level 2 certification assessments of actual and prospective DoD contractors and subcontractors. Organizations Seeking Certification (OSCs) will directly contract with an authorized or accredited C3PAO to undergo a Level 2 certification assessment to achieve a CMMC Status of Conditional and Final Level 2 (C3PAO). The cost of CMMC Level 2 activities is driven by multiple factors, including market forces that govern availability of C3PAOs and the size and complexity of the enterprise or enclave under assessment. The Government will perform Level 3 certification assessments. Government resource limitations may affect schedule availability.

[61] *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-171A.pdf.*

(d) Reduces Duplicate or Repetitive Assessments of Our Industry Partners

CMMC assessment results and contractor affirmations of compliance will be posted in Supplier Performance Risk System (SPRS), DoD's authoritative source for supplier and product performance information. Posting CMMC assessment results in SPRS precludes the need to validate CMMC implementation on a contract-by-contract basis. This enables DoD to identify whether the CMMC assessment requirements have been met for relevant contractor information system(s), avoids duplicative assessments, and eliminates the need for program level assessments, all of which results in decreased costs to both DoD and industry.

Significant Issues Raised by Public Comments

The CMMC proposed rule was published in the **Federal Register** on December 26, 2023, to initiate the mandatory 60-day public review and comment period for this rule and the supporting documents that ended on 26 February 2024. From the volume of comments received on the CMMC rule documents, from or concerning Small Businesses, the following significant issues were raised.

1. *Cost.* Some comments identified that the proposed rule does not address how the CMMC Program will be funded, or how the costs of certification and compliance will be shared between the DoD and the contractors. This may raise questions about the affordability and sustainability of the CMMC program, especially for small businesses. Commenters suggested that the DoD conduct and publish a comprehensive cost assessment for each level of CMMC certification and explore ways to reduce the financial burden on the contractors, such as providing incentives, subsidies, loans, grants, tax credits or reimbursements. Several comments presented the opinion that the cost estimates in the preamble/rule did not adequately address all possible costs to become compliant with regulations and attain a certification *i.e.,* ongoing Recurring Engineering and Non-Recurring Engineering costs. Others commented that the mandate to comply with requirements, attain verification of compliance, and the inability to recoup costs prior to completing compliance will be barriers to entry and will drive many small businesses out of the DoD market. Concern was also expressed regarding the cost of failing an assessment and not being able to recoup costs fast enough, through increased Overhead and G&A [General and Administrative] rates. Another concern was raised that IR&D [Independent Research and Development] spending will be negatively impacted due to the diversion of funds to Cybersecurity compliance. Some shared concerns about the potential for overmarking CUI data, that will drive a higher than necessary demand for CMMC certification and create an overburdened Ecosystem, thereby preventing timely certification and incentivizing ''price gouging'' by assessors. Several suggested that the Government regulate the prices for assessment services. Many commenters also suggested the DoD needed to find ways to reduce the financial burdens on small businesses through direct payment for compliance, tax incentives, increased profits, or increased flexibility to comply with requirements, *i.e.,* by reducing requirements for small businesses or providing more time to comply after contract award. Commenters also felt the handling of CUI by small businesses was too difficult, and recommended prime contractors should be responsible for handling all CUI. If a small business needs CUI to execute its work, the prime or the Government should provide an environment for the small business to complete its work.

DoD Response. In recognition of the pervasive cyber threat both to DoD and to the DIB, CMMC Program requirements are designed to ensure compliance with existing standards for protection of FCI and CUI. These cybersecurity requirements align directly to NIST guidelines (NIST SP 800–171 R2 and NIST SP 800–172 Feb2021) and the basic safeguarding requirements in FAR clause 52.204–21 that apply to all executive agencies. Since December 2017, DFARS clause 252.204–7012 has required contractors to implement the NIST SP 800–171 security requirements to provide *adequate security* as applicable for processing, storing, or transmitting CUI on non-Federal information systems, as needed in support of the performance of a DoD contract.

The executive branch's CUI Program is codified in 32 CFR part 2002 and establishes policy for designating, handling, and decontrolling information that qualifies as CUI. The definition of CUI and general requirements for its safeguarding are included in 32 CFR 2002.4 and 2002.14. 32 CFR 2002.14(h)(2) specifically requires that Agencies must use NIST SP 800–171 when establishing security requirements to protect CUI's confidentiality on non-Federal information systems . . .'' Contractually, DFARS clause 252.204–7012 requires contractors to implement the NIST SP 800–171 R2 security requirements, and that requirement applies, regardless of the number of computers or components in a non-Federal information system or the size of the contractor or subcontractor, as applicable. DoD's original implementation of security requirements for adequate safeguarding of CUI relied upon self-attestation by contractors. Since that time, the DoD Inspector General and the DCMA found contractors did not consistently implement mandated system security requirements for safeguarding CUI and recommended DoD take steps to assess a contractor's ability to protect this information. The DoD has streamlined requirements to reduce the burden of compliance on contractors. Analysis of costs to meet CMMC requirements is provided in the regulatory impact analysis for this rule. As described in the estimate included with the rule, the major cost categories for compliance with CMMC requirements include costs for completing a self-assessment (*e.g.,* Level 1 or 2); costs to prepare for and undergo Level 2 certification assessment; and costs required to implement the Level 3 security requirements and for preparing to undergo DCMA DIBCAC assessment (Level 3). CMMC Level 3 certification assessments against the NIST SP 800–172 Feb2021 baseline are performed free of cost by DoD assessors, which reduces the overall cost of achieving CMMC Status of Level 3 (DIBCAC). Notably, certification is never required for CMMC Level 1, and the requirement can be satisfied through self-assessment. When CMMC Level 2 requirements apply, they may be met via self-assessment, or a certification assessment conducted by a C3PAO, depending on the specific CMMC requirement cited in the solicitation or resulting contract. When the CMMC Program requirements are effective, solicitations for DoD contracts that will involve the processing, storing, or transmitting of FCI or CUI on any non-Federal system, notwithstanding the size or configuration of the non-Federal system, will specify the required CMMC Level (1, 2 or 3) and assessment type (self-assessment or certification assessment). An assumption for the cost estimates is that Non-Small Entities have a full-time team of cybersecurity professionals on staff while Small Entities do not. The assumptions, explained in the regulatory impact analysis, reflect Small Entities will likely obtain support from External Service Providers and have a staff member submit affirmations and SPRS scores for self-assessments. All

these costs, except the open market cost of a C3PAO, are directly controllable by the organization seeking assessment. The CMMC rule does not make any change to cost allowability as defined in FAR 31.201–2 Determining Allowability. The DoD declined to modify the estimates, which are intended to be representative and to inform rulemaking. The cost estimates represent average derived estimates based on internal expertise and public feedback in accordance with OMB Circular A–4 and represent average costs for companies to comply with the CMMC requirements. This rule does not provide the cost analysis for all actions, personnel, and security measures required to protect CUI information, data, systems, and technical products through the life cycle of the work and data generated. The size and complexity of the network within scope of the assessment impacts the costs as well. As required by rulemaking guidance, the DoD provided cost estimates and impact analyses. An analysis of profit margins is not required. Additionally, this rule and the required cost analysis and resulting cost estimates were reviewed by DoD cost analysts and OMB economists for realism and completeness.

Some public comments received reflect a misinterpretation of the cost estimates that accompany this rule, which are representative of average assessment efforts, and do not include actual prices of C3PAO services available in the marketplace. Market forces of supply and demand will determine C3PAO pricing for CMMC Level 2 certification assessments.

Costs associated with meeting the requirements of existing DFARS clause 252.204–7012 are not captured in the CMMC rule documentation. Please refer to 81 FR 72990, October 21, 2016, for DoD's final rule implementing the DoD's requirement that ''contractors shall implement NIST SP 800–171 as soon as practical, but not later than December 31, 2017.'' Public comments related to implementation costs were published with that final rule, along with DoD's responses. Within the limitations of section § 170.21 Plan of Action and Milestones Requirements, offerors may bid on contract opportunities while continuing to work towards full compliance.

Verifying compliance with applicable security requirements may increase costs and is necessary for the adequate protection of DoD FCI and CUI. The cost of lost technological advantage over potential adversaries is far greater than the costs of such enforcement. The value of information and impact of its loss does not diminish when the information is shared with contractors.

At the time of contract award, the DoD may not have visibility into whether the prime contractor's decision to further disseminate DoD FCI and CUI. However, FAR clause 52–204–21, DFARS clause 252.204–7012, and DFARS clause 252.204–7021 require the prime contractor to flow down these clauses and the included information security requirement to any subcontractor that will process, store, or transmit FCI or CUI, as applicable. Decisions regarding DoD's information that must be shared to support completion of the contract tasks, including those performed by subcontractors, takes place between the prime contractor and their subcontractors. The DoD cannot dictate business practices between prime contractors and their subcontractors, who should work together to determine the necessary flow down of FCI and CUI, only as needed in performance of the contract, and ensuring compliance with the CMMC security requirements and in consideration of minimizing the burden. While DoD understands the burden on small business, it must enforce CMMC requirements uniformly across the Defense Industrial Base for all contractors who process, store, or transmit FCI and CUI. The requirements necessary to protect a single document are the same as to protect many documents.

Although CMMC compliance may add to an organization's cost, no member of the DIB can assume the status-quo in today's ever-changing cybersecurity environment. Increasing costs to protect the nation's data and industries from emerging threats is simply a component of doing business anywhere in the world. Processing, storing, or transmitting sensitive Government information comes with a handling cost that needs to be built into each organization's business model. All contractors or sub-contractors with access to CUI need to be capable of protecting that information to the standards specified in 32 CFR part 2002. If a small business cannot comply with the requirements of DFARS clause 252.204–7012 and NIST SP 800–171 R2, then that business should not receive CUI or process, store, or transmit CUI. If the DoD information flowed by the prime to a subcontractor is only FCI, then only a CMMC Level 1 self-assessment is required for the subcontractor prior to the flow of information under contract. DoD's programs, technological superiority, and best interests are not served if FCI and CUI are not consistently and adequately safeguarded by all who process, store, or transmit it.

2. *Cost Benefit.* Some commenters suggested it would be more cost effective for DoD to provide an environment or a DoD managed portal for the handling of CUI. A significant concern expressed was that companies have delayed complying with DoD cybersecurity standards until the CMMC rule was released and they could understand what level of compliance they will require. Several commenters felt DoD underestimated the costs and should have include the implementation cost of the requirements in this rule as well. One commenter was confused about how the discount rates were applied. Another commenter suggested that DoD provide flexibility to allow small businesses to not meet all the requirements and still be allowed to handle CUI and another expressed concerns regarding the cost of compliance and the degradation of the DIB that will be unable to afford compliance.

DoD Response: The DoD declined to adopt the alternatives suggested in the comments, such as policy-based solutions that lack a rigorous assessment component or sharing CUI only through DoD-hosted secure platforms. The current DFARS clause 252.204–7012 requires protection of Security Protection Assets (SPA) and Security Protection Data (SPD). Section 1.1 of NIST SP 800–171 R2 states: ''The requirements apply only to components of nonfederal systems that process, store, or transmit CUI, or that provide security protection for such components.'' There is therefore no increase in the scope because of the CMMC Program as described in the rule.

SPD requires protection commensurate with the CUI it protects and is based on how and where the SPD is stored. The FedRAMP requirements for handling SPD are therefore the same as that for handling CUI.

The CMMC rule made no change to the FAR cost allowability or cost accounting standards. The 7% discount rate is not a discount for organizations; it is a part of a formula used in the regulatory impact analysis (RIA) calculations. When calculating 20 years in the future, a discount rate is used to determine the net present value of money. The cost estimate represents derived estimates based on internal expertise and public feedback in accordance with OMB Circular A–4: Regulatory Impact Analysis: A Primer. Step 7 in the manual explains discount rates.

As written, this rule amply provides for the flexibility sought by the

commenter. Rule section § 170.21 specifically addresses the flexibility to have a Plan of Action and Milestones (POA&M) to delay meeting certain requirements subject to CMMC assessment for up to 180 days.

In addition, DFARS clause 252.204–7012 already permits contractors to request DoD CIO permission to utilize alternative security measures to those prescribed by NIST SP 800–171. If an OSC previously received a favorable adjudication from the DoD CIO for an alternative security measure, the DoD CIO adjudication must be included in the system security plan to receive consideration during an assessment. Implemented security measures adjudicated by the DoD CIO as equally effective are assessed as MET if there have been no changes in the environment.

3. *CMMC Model.* Some commenters claimed that the requirement for all subcontractors of Level 3 prime contractors to be at least Level 2 certified, regardless of what work they do, will generate more demand for Level 2 assessments than the Department is anticipating. Since much of DoD's contract dollars flow through a relatively small number of companies, it is likely those companies will have at least one CMMC Level 3 project. The result would be Level 2 certification requirements being flowed down to nearly the entirety of the DIB. Some commenters believed this to be an unintended consequence of implementing the enhanced protection of CMMC Level 3.

DoD Response: It is possible the commenters misunderstood § 170.23 Application to subcontractors in the rule. § 170.23(a)(4) states: ''If a subcontractor will process, store, or transmit CUI in performance of the subcontract and the associated prime contractor has a requirement for the CMMC Status of Level 3 (DIBCAC), then the CMMC Status of Level 2 (C3PAO) is the minimum requirement for the subcontractor.'' The commenter's phrase ''regardless of what work they do'' does not acknowledge the fact that the Level 2 certification assessment is required for subcontractors who process, store, or transmit CUI.

It is also possible that the commenter interpreted that a Level 2 self-assessment is adequate for subcontractors working with a prime that has a contractual requirement for a Level 3 certification assessment. In this case, a CMMC Status of Final Level 2 (Self) is not adequate. A CMMC Status of Final Level 3 (DIBCAC) signifies that the prime first achieved a CMMC Status of Final Level 2 (C3PAO) as the risk to their CUI was deemed high enough to require Level 2 certification assessment. Since this same information may be shared with subcontractors who process, store, or transmit CUI, the subcontractor must also achieve CMMC Status of Final Level 2 (C3PAO).

The decision to rely upon a CMMC Level 2 self-assessment in lieu of a certification assessment is a Government risk-based decision based upon the nature of the effort to be performed and CUI to be shared. The size of the company with access to the CUI is not a basis for this determination. The value of information and impact of its loss does not diminish when the information moves to contractors of smaller size.

4. *Assessment.* Commenters questioned whether CMMC will accept reciprocity with other compliance methodologies. Another questioned what would drive a company to seek a reassessment of their environment. Other commenters suggested that we allow small businesses 365 days to close their POA&M requirements, as well as suggesting that pre-assessment materials do not need to be uploaded into eMASS, and that the hashing requirements should be simplified. Other suggestions made were to allow Program Managers to relax requirements based on a risk decision and allow assessors to make judgement calls on what evidence constitutes compliance with the requirement. One commenter requested the DoD publish an overview of the assessment methodology that includes the defined frequency guidelines. Additionally, one commenter requested that access to Procurement Integrated Enterprise Environment (PIEE) and Supplier Performance Risk System (SPRS) be made easier for small contractors.

DoD Response: CMMC requirements apply to DoD contracts, and not to contracts issued by other agencies. Flow down of CMMC requirements from a prime contractor to its subcontractors shall apply, as addressed in § 170.23(a) of this rule.

DoD intends to allow qualified standards acceptance of a DIBCAC High Assessment using NIST SP 800–171 R2 for CMMC Status of Final Level 2 (C3PAO) as addressed in § 170.20.

CMMC Level 2 self-assessment, Level 2 certification assessment, and Level 3 certification assessment are valid for a defined CMMC Assessment Scope as outlined in § 170.19 CMMC Scoping. A new CMMC assessment may be required if significant architectural or boundary changes are made to the previous Assessment Scope. Examples include, but are not limited to, expansions of networks or mergers and acquisitions. Operational changes within an Assessment Scope, such as adding or subtracting resources within the existing assessment boundary that follow the existing SSP do not require a new assessment, but rather are covered by the annual affirmations to the continuing compliance with requirements.

The DoD did not accept the recommendation to change the criteria for POA&Ms or the timeline allowed to remediate open POA&M items. The 180-day timeline and the determination of the weighted practices that may be included in a POA&M were risk-based decisions. The determination factored the relative risk DoD is willing to accept when a particular practice is Not Met and the amount of risk the DoD is willing to accept for those security practices that remain ''NOT MET'' for an extended period. Unlike the original CMMC Program, the revised CMMC Program accepts some risk with the use of limited POA&Ms.

There is value to the DoD in having the pre-assessment information in CMMC eMASS for overall program management and oversight. The information indicates that an assessment is either scheduled or in-process. The CMMC PMO seeks to track CMMC Program adoption, and the pre-assessment information allows reporting on upcoming assessments. Based on the DoD's cost analysis, the cost to upload pre-assessment material is minimal. The rule and Hashing Guide have been updated to add clarity that only reporting a single hash is required, and the name of the hash algorithm used needs to be stored in CMMC eMASS. Each Assessment Objective in NIST SP 800–171A Jun2018 must yield a finding of MET or NOT APPLICABLE for the overall security requirement to be scored as MET. Assessors exercise judgment in determining when sufficient and adequate evidence has been presented to make an assessment finding. This is consistent with current DIBCAC High Assessments and assessments conducted under the Joint Surveillance Voluntary Assessment (JSVA) program.

A security requirement can be applicable, even with assessment objectives that are N/A. The security requirement is NOT MET when one or more applicable assessment objectives is NOT MET. The requirements of each Level of the CMMC Model are defined in sections §§ 170.15 through 170.18 and the scoring of assessments is described in § 170.24. The assessment frequency required is every year for a CMMC Status of Final Level 1 (Self),

and every 3 years for a CMMC Statuses of Final Level 2 (Self), Final Level 2 (C3PAO), and Final Level 3 (DIBCAC), or when changes within the CMMC Assessment Scope invalidate the assessment.

The phased implementation plan for CMMC described in § 170.3(e) is intended to address ramp-up issues, provide time to train the necessary number of assessors, and allow companies the time needed to understand and implement CMMC requirements. The rule has been updated to add an additional six months to the Phase 1 timeline. Phase 2 will start one calendar year after the start of Phase 1.

5. *Scoping.* Commenters expressed concerns about how External Service Providers (ESP) and SPA and SPD are handled with regard to certification. Another commenter expressed concern about the lack of FedRAMP Moderate certified capabilities in the market as well as requesting clarification on the definition of ''Specialized Assets'', specifically regarding equipment in manufacturing that may not fall under the conventional categories of IoT, IIoT, and OT. Another commenter expressed concerns about how Contractor Risk Managed Assets (CRMA) are handled, along with concerns about available FedRAMP certified capabilities. Other comments identified concerns with the responsibility of a company that adopts an ESP and their adherence to security requirements, and the lack of time given in Phase 2 of the CMMC roll-out to garner certification. A question was also asked regarding the Department's assumptions on the rigor a Certifying Officer [Affirming Official in the rule] would require before signing an attestation and the methodology used to determine the resultant actions that must be taken. Another raised a concern regarding how sub-environments are handled as well as end-to-end encryption in handling CUI. Another expressed concern regarding the marking of data as CUI and the potential for overmarking. Some commenters made suggestions that all CUI be held in a special appendix for contracts and only be allowed to be accessed at the prime's facility or through a government hosted secure portal. A commenter also suggested that small businesses should not be made to meet the CMMC Level 3 requirements. Another commenter raised questions about the alternatives that the Department considered in developing the CMMC Program. Another suggestion was to provide uniform web-based training on cybersecurity and that the definition of CUI was unclear, and CUI should stay under the control of the Federal Government and be maintained in a government owned secure portal. A suggestion was also made that DoD establish a Cyber Protection Program that monitors DIB companies and provides real time health reports on the DIB and dynamic intelligence security alerts and recommended actions. A suggestion that NIST establish a special standard for micro-organizations was also provided. Commenters also suggested that the rule was too stringent, and CUI was not marked well or flowed down to subcontractors appropriately.

DoD Response: The Department is committed to overseeing the CMMC Program and will take appropriate measures to ensure its efficient execution. Presently, the Department has no intention of mandating that contracting offices adopt presumptive measures that would reduce the number of small contracts subject to Level 2 certification assessment, nor does it plan to impose affirmative requirements on prime contracts to utilize enclaves.

Prior to conduct of an assessment, the OSC engages with the C3PAO assessor. It is during this time that classification of assets should be established, and the results of these discussions documented in pre-planning materials. This is an example of the pre-assessment and planning material submitted by the C3PAO as required in § 170.9(b)(8) and the CMMC Assessment Scope submitted to eMASS as required in § 170.17(a)(1)(i)(D). The DoD considered the NIST definitions for System Information and Security Relevant Information in the development of the CMMC definition for SPD. This rule does not regulate an OSA's SPD, but instead implements existing regulatory requirements for the safeguarding of CUI, as defined in 32 CFR 2002.14(h)(2) and implemented by DFARS clause 252.204–7012. The DFARS clause 252.204–7012 requires protection of security protection assets and security protection data through its specification of NIST SP 800–171. Section 1.1 of NIST SP 800–171 R2 states: ''The requirements apply only to components of nonfederal systems that process, store, or transmit CUI, or that provide security protection for such components.'' There is therefore no increase in the scope as described in the rule, and no revisions to cost estimates are required.

The DoD received numerous comments about the requirements for CMMC when an ESP is used. In response to these comments, the DoD revised the rule to reduce the assessment burden on External Service Providers (ESPs) by updating the ESP assessment, certification, and authorization requirements in §§ 170.19(c)(2) and (d)(2).

The use of an ESP, its relationship to the OSA, and the services provided need to be documented in the OSA's System Security Plan and described in the ESP's service description and customer responsibility matrix (CRM), which describes the responsibilities of the OSA and ESP with respect to the services provided.

An ESP is considered a Cloud Service Provider (CSP) when it provides its own cloud services based on a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing that can be rapidly provisioned and released with minimal management effort or service provider interaction on the part of the OSA. ESPs that are CSPs, and process, store, or transmit CUI, must meet the FedRAMP requirements in DFARS clause 252.204–7012. ESPs that are CSPs and do *not* process, store, or transmit CUI, are not required to meet FedRAMP requirements in DFARS clause 252.204–7012.

An ESP that is not an CSP and processes, stores, or transmits CUI, is considered an extension of the OSA's environment and the ESP services used to meet OSA requirements are within the scope of the OSA's CMMC assessment. As part of that environment, the ESP will be assessed against all applicable requirements and accountable for all users who have access to CUI as part of the ESP's service, not just OSA employees. ESPs that are not CSPs and do NOT process, store, or transmit CUI, do not require CMMC assessment.

Nothing in the rule precludes an ESP, that is not a CSP, from voluntarily requesting a C3PAO assessment, and a C3PAO from performing such an assessment, if the ESP makes that business decision. Similarly, the ESP can request a Level 3 certification assessment from the DCMA DIBCAC if they have successfully met all the requirements during a Level 2 certification assessment.

ESPs can be part of the same corporate/organizational structure but still be external to the OSA such as a centralized SOC or NOC which supports multiple business units. An ESP that is used as staff augmentation and the OSA provides all processes, technology, and facilities does not need a CMMC assessment.

An ESP (not a CSP) that provides technical support services to its clients would be considered an MSP, since it does not host its own cloud platform

offering. An ESP may utilize cloud offerings to deliver services to clients without being a CSP. An ESP that manages a third-party cloud service on behalf of an OSA would not be considered a CSP.

6. *POA&M.* Commenters expressed concern regarding the limited nature of POA&Ms in CMMC as well as the timeline and lack of flexibility in remediating the POA&Ms.

DoD Response. The DoD did not accept the recommendation to change the criteria in § 170.21 for POA&M requirements or the timeline allowed to remediate open POA&M items. The 180-day timeline and the determination of which weighted practices can be placed on a POA&M were risk-based decisions. The determination factored into account for the relative risk DoD is willing to accept when a particular practice is not met and the amount of risk the DoD is willing to accept for those security practices that remain ''NOT MET'' for the extended period of time. The phased implementation plan in § 170.3(e) is intended to address ramp-up issues, provide time to train the necessary number of assessors, and allow companies the time needed to understand and implement CMMC requirements. DoD has updated the rule to add an additional six months to the Phase 1 timeline, now one year. Phase 2 will start one calendar year after the start of Phase 1.

7. *Incorporation by Reference.* Commenters expressed concern about the confusion between the NIST 800–171 R2 being included in the CMMC rule and not the recently published Rev 3.

DoD Response. The Office of the Federal Register regulations (1 CFR part 51) require the specification of a revision to a standard. Specifying a revision benefits the CMMC Ecosystem by ensuring it moves forward from one NIST standard to the next in an organized manner. The DoD cites NIST SP 800–171 R2 in this final rule for a variety of reasons, including the time needed for industry preparation to implement and time needed to prepare the CMMC Ecosystem to perform assessments against subsequent revisions. DoD is unable to incorporate suggestions that CMMC assessments be aligned to whichever NIST revision is current at the time of solicitation. Comments on the specifics on NIST SP 800–171 Revision 3 should be directed to NIST.

8. *Affirmation.* Commenters expressed confusion regarding the definition of the Affirming Official as well as how the affirmation process works *i.e.,* is the affirmation for each company or the whole supply chain. One commenter also expressed confusion regarding whether an affirmation was required at each certification level annually.

DoD Response. The rule was modified to include a definition for *Affirming Official* in § 170.4.

The DoD considered the recommended text revisions and modified the text for added clarity about affirmations. DoD's use of the term OSA within the affirmations section is deliberate and conveys that each organization is responsible for affirmations pertaining to their own assessments. To help clarify the point in question, § 170.22(a)(1) addresses Affirming Official and has been revised to clarify that CMMC affirmations shall be submitted by the OSA and apply only to the information systems of that organization.

The DoD deems that the requirement to annually affirm continuing compliance with the CMMC requirements at the designated CMMC Level and following the procedures in § 170.22 is not a significant additional burden. The requirement for annual affirmations takes the place of an annual recertification and ensures the Affirming Official responsible for CMMC requirements is monitoring compliance.

9. *Alternatives.* Several commenters provided suggestions for alternative means to implement verification of compliance with cybersecurity standards. These suggestions included the following:

- Provide flexibility for the CMMC AB to allow a C3PAO partial assessment of perspective Managed Service Providers.
- Allow small businesses to continue performing self-assessments and self-certify along with increasing the support provided to small business from DC3 to expand paying for consultants to assist with compliance as well as paying for small businesses assessments,
- Integrate cybersecurity and traditional counterintelligence measures, establishing a secure software development environment in a cloud that DoD hosts, as well as providing a secure environment in which small businesses could operate.
- Require Prime contractors to assume the cost of CMMC for their supply chain.
- Only assess a sampling of the Defense Industrial Base.
- Increase the Certification validity time period from 3 to 10 years.
- Shift the requirement to post award.
- Re-evaluate the program to reduce requirements to make it easier.
- Stay with only the DCMA DIBCAC performing assessments on the DIB.

DoD Response: DoD considered many alternatives before deciding upon the current CMMC structure. To date, alternative methods of assessment have proven inadequate and necessitated the establishment of CMMC. The DoD determined the requirements for a CMMC Accreditation Body, and this accreditation body will administer the CMMC Ecosystem.

DoD must enforce CMMC requirements uniformly across the DIB for all contractors and subcontractors who process, store, or transmit CUI. The value of information and the impact of its loss does not diminish when the information moves to contractors and subcontractors.

The DoD notes with interest the commenter's reference to initiatives in a report to Congress describing the breadth of cybersecurity related initiatives within the Department. While the CMMC Program is an important initiative, it is by no means the Department's only effort to improve DIB cybersecurity. The CMMC Program addresses the adequate safeguarding of contractor owned information systems which process, store, or transmit FCI or CUI. Other DoD initiatives related to secure cloud or software development environments are beyond the scope of the CMMC Program.

The DoD declined to accept the recommended alternative of relying exclusively on self-assessment with the potential to require a DIBCAC assessment for only a sampling of DoD contractors, which is essentially the status quo. Both GAO reporting and other DoD analysis have shown that the DIB has not consistently implemented the NIST SP 800–171 requirements needed to comply with DFARS clause 252.204–7012, notwithstanding DoD's stated objective in this clause is for compliance ''as soon as practical, but not later than December 31, 2017.''

The DoD declined to accept the risk associated with implementing CMMC as a post-award requirement. When contracts require contractors to process, store, or transmit CUI, DoD requires that they be compliant with DFARS clause 252.204–7012 and competent to adequately safeguard CUI from the beginning of the period of performance.

DoD declined the recommendation to require primes to assume the cost of CMMC compliance for their subcontractors.

The aggregated SPRS reporting and scoring is CUI. The DoD does not plan to make this information public at this time, as it may aid adversaries in coordinating their attacks.

The Department declined to adopt the recommendation to allow DIB members to assist in designing the DoD's mechanism for assessing DIB compliance with DoD's contractual requirements. In developing the CMMC program, the DoD sought and considered DIB input.

DoD disagreed with the comment that there is a lack of scalability in the CMMC Program. The phased implementation plan described in § 170.3(e) is intended to address ramp-up issues within the CMMC Ecosystem, provide time to train the necessary number of assessors, and allow companies the time needed to understand and implement CMMC requirements.

The rule was updated to add an additional six months to the Phase 1 timeline, now one year. Further extension of the implementation period or other solutions may be considered in the future to mitigate any C3PAO capacity issues, but the Department has no such plans at this time.

As with all DoD programs, the Department intends to effectively oversee the CMMC Program and take the actions needed to manage its effective implementation. Although the full extent of DoD's oversight process is beyond the scope of this rule, the rule text does address DoD's authority to waive the application of CMMC requirements when warranted.

The DoD disagrees with commenters' assertions about NIST SP 800–171 R2 and the available assessment methods. The NIST SP 800–171 R2 standard was chosen since it is enterprise focused and already required in DoD contracts when DFARS clause 252.204–7012 is applicable.

DCMA DIBCAC currently performs assessments against NIST SP 800–171 R2, which identifies the target audience to include individuals with security assessment responsibilities, such as auditors, assessors, and ''independent verifiers.''

The Department does not have the organic capacity to adequately assess the 220,000+ companies in the DIB. The DoD will not assume the workload of directly assessing every DIB contractor.

In this final rule, DoD established a scalable way to verify, through assessment, that contractors have implemented required security measures necessary to safeguard DoD's information.

It is important that contractors maintain security compliance for systems that process, store, or transmit DoD CUI. Given the evolving cybersecurity threat, DoD's best interests are served by ensuring that Level 2 self-assessment and certification assessments remain valid for no longer than a 3-year period, regardless of who performs the assessment.

10. *Applicability.* Commenters expressed frustration with exempting Commercial- Off-The-Shelf (COTS) products and procurements under the micro-purchase threshold from CMMC certification, and not providing exemptions for Native American, small, disadvantaged businesses, and Small Business Innovative Research contracts. They also expressed concerns about perceived threatened penalties and lack of recognition of recurring costs to Level 1 assessments. A commenter also recommended reversing the phased approach to require Level 3 requirements be implemented first.

DoD Response: Some comments pertain to the 48 CFR part 204 CMMC Acquisition rule, including applicability of the CMMC clause to COTS procurements and those below the micro-purchase threshold. Such comments are not within the scope of this 32 CFR part 170 CMMC Program rule, which outlines program requirements rather than contracting procedures.

This rule has no disproportionate impact on Native American owned businesses. Once identified as a requirement, the CMMC Program requirements will apply uniformly to all prospective contractors.

DoD must enforce safeguarding requirements uniformly across the DIB for all contractors and subcontractors who process, store, or transmit CUI. The value of information and impact of its loss does not diminish when the information moves to DoD contractors and DoD subcontractors, regardless of their status as Native American or small disadvantaged businesses.

The purpose of the CMMC Program is to ensure that DoD contracts that require contractors to safeguard FCI and CUI (*i.e.,* contracts that include FAR clause 52.204–21 and DFARS clause 252.204–7012) will be awarded to contractors with the ability to protect that information appropriately. Accordingly, all contractor owned information systems that process, store, or transmit FCI or CUI in the performance of a contract are subject to the requirements of FAR clause 52.204–21 and NIST SP 800–171 as implemented by DFARS clause 252.204–7012.

The CMMC Program rule does not include ''threatened penalties.'' If a requirement of a DoD contract is not met, then standard contractual remedies applicable to that contract may apply.

The phased implementation plan described in § 170.3(e) is intended to address ramp-up issues, provide time to train the necessary number of assessors, and allow companies the time needed to understand and implement CMMC requirements.

The self-assessment requirements build on the existing DFARS clause 252.204–7020 requirement as part of basic safeguarding of CUI. CMMC Level 3 requires advanced implementation, and the phase-in period provides additional time for an OSC to achieve the higher standard.

11. *Flow down.* Commenters expressed concern that the CMMC rule language was not clear enough regarding when self-assessments are allowed. One commenter believed requiring prime contractors to validate the compliance of those they transmit CUI to was too onerous and that the rule language was not clear on how to determine what level of CUI is being passed.

DoD Response: DoD policies guide Program Managers to appropriately apply CMMC Status requirements in DoD solicitations and resulting contracts, to include when Level 2 self-assessment rather than Level 2 certification assessment is appropriate.

The commenter misinterprets the text of § 170.23, which states: *If* a subcontractor will process, store, or transmit CUI in performance of the subcontract *and* the associated prime contractor has a requirement for a CMMC Status of Level 2 (C3PAO), *then the* CMMC Status of Level 2 (C3PAO) is the minimum requirement for the subcontractor.

CMMC flow down requirements are designed to apply consistent assessment requirements to all contractors, whether prime or subcontractor and regardless of company size, who are required to adequately safeguard CUI. The DoD cannot dictate DIB business practices and encourages prime contractors to carefully consider the necessity of sharing CUI information and to work with its subcontractors to flow down CUI with the required security and the least burden.

Defense contractors may share information about their CMMC Status with other DIB members to facilitate effective teaming arrangements when competing for DoD contract opportunities.

In addition, CMMC requirements apply for prime contractors and their subcontractors as outlined in § 170.23. For additional information about flow down of contractual requirements, see the 48 CFR part 204 CMMC Acquisition rule, RIN 0750–AK81, Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041).

12. *International.* Commenters expressed concern about international partners' use of cloud services that do not have FedRAMP or GovCloud equivalency. Also concerns that the draft language [in the proposed rule] did not explain reciprocity of cybersecurity standards between the U.S. and International Partners. One commenter recommended exempting foreign businesses from assessment requirements.

DoD Response: A domestic or international business seeking a contract that includes DFARS clause 252.204–7012, and using a cloud service provider to process, store, or transmit covered defense information in performance of that DoD contract, must meet FedRAMP authorization or equivalency requirements. As the FedRAMP program and FedRAMP equivalency are available to international organizations, foreign partners do not need to develop their own FedRAMP program.

The DoD leverages FedRAMP to provide the requirements for the adoption of secure cloud services across the Federal Government by providing a standardized approach to security and risk assessment for cloud technologies and Federal agencies.

The Implementation of CMMC Program requirements described in § 170.3(e) of the rule does not promote assessments of any contractors over any other contractors. All companies, regardless of size, location, or nationality, will have access to authorized C3PAOs for certification assessments. The rule does not preclude non-U.S. citizens or foreign-owned C3PAOs from operating in the U.S. Additionally, U.S.-owned C3PAOs may operate in a foreign nation.

Section 170.20 states that OSCs that have completed a DCMA DIBCAC High Assessment aligned with CMMC Level 2 Scoping will be given the CMMC Status of Final Level 2 (C3PAO). International standards acceptance is not addressed in this rule.

Any consideration of reciprocity between foreign partner protected information and CUI and FCI would require a formal government to government international arrangement or agreement and is outside the scope of this 32 CFR part 170 CMMC Program rule.

Any discussion of exemptions for foreign businesses are outside the scope of the 32 CFR part 170 CMMC Program rule and may be addressed through government-to-government international arrangements or agreements.

The *Discussion of Public Comments and Resulting Changes* section in the preamble of the final rule addresses all public comments received during the mandatory 60-day public comment period for the proposed rule and supporting documents.

Response to Comments From Chief Counsel for Advocacy of the SBA

On December 26, 2023, the Department of Defense (DoD) published a proposed rule entitled Cybersecurity Maturity Model Certification (CMMC) Program, 88 CFR 89058. This proposed rule intends to create a mechanism by which the DoD can certify that contractors and subcontractors are in compliance with the stated cybersecurity guidelines. The SBA Office of Advocacy (SBA or Advocacy) submitted the following comments and concerns on the proposed rule in a letter addressed to the DoD CIO within the public comment period for the proposed 32 CFR part 170 CMMC Program rule.

''Advocacy is principally concerned with the ability for small businesses to meet and comply with the standards and timelines set out in the CMMC Program without further clarification and guidance documents from the DoD. The current rule does not provide clear guidance on the process to create enclaves, which would allow more small business subcontractors to participate in DoD contracts without meeting the full requirements necessary for the prime contractor. Advocacy seeks clarification on the role of Third-Party Assessment Organizations (C3PAO) and the indemnification a C3PAO has if a contractor or subcontractor is out of compliance.''

''Advocacy concerns also include the process of how and if more C3PAOs can be certified by the DoD to review the numerous contracts that will be subject to certifications. Advocacy urges the DoD to provide clarification about the enforcement mechanisms for breaches of cybersecurity.''

''Lastly, Advocacy reminds the DoD that this rule will impose a high cost of compliance on small businesses and any means to reduce the burden on small businesses will increase the participation of these impacted businesses.''

''The proposed rule would give contractual effect to NIST SP 800–171 and 172, requiring companies to meet the three levels of compliance if the contracts involve FCI or CUI. CMMC attempts to redesign previous iterations of cybersecurity models with a more streamlined process. This proposal would simplify previous systems to create a more streamlined certification system. This rule differs from previous iterations by allowing for businesses to create enclaves within their business models, allowing the business to implement the CMMC standards while not drastically changing every aspect of their business process.''

''*SBA Comment 1:* Under the proposed rule, the CMMC Program will require all DoD contractors and subcontractors who handle Federal contract information (FCI) and Controlled Unclassified Information (CUI) to maintain cybersecurity protections of their systems. CMMC will create three levels of compliance, depending on the level of security necessary for which the contractor has access. Level 1 has 15 requirements focused on logging access to potential FCI. Level 2 includes minimum requirements for contractors handling CUI and adds 110 requirements. Level 3 addresses an additional 24 requirements. Each level will pose varying challenges for small businesses of every kind to comply with the progressing requirements. Advocacy has commented on previous proposals for CMMC concerning the significant impact this will have on small business contractors.''

''Advocacy held outreach meetings with diverse small business stakeholders concerning this rule, both in-person and virtually.—Small businesses expressed concerns with how to compensate the increased costs due to implementing CMMC and asked for clarity on aspects of the proposed CMMC rule. Advocacy has four chief concerns with the proposed rule.''

''Advocacy requests clear and concise guidance for small business contractors and subcontractors to create enclaves in order to lessen the burden of compliance on the businesses.''

''The proposed rule states that different business segments or different enclaves of a business can be assessed or certified at different CMMC levels. Creating and implementing enclaves will be most effective when a large prime contractor creates these enclaves to ease the burden on small subcontractors. The rule mentions the use of enclaves but does not provide guidance on how to implement enclaves within a business.''

DoD Response: The Department acknowledges the concerns articulated by the Small Business Administration (SBA) and commits to enhancing training provisions after the rule is final and effective. Moreover, the Department pledges to reinstate outreach endeavors targeting the broader industry and specifically small businesses to facilitate familiarity with CMMC requirements once the rule is final and effective. However, the Department does not intend to formulate specific directives

pertaining to the configuration and segregation of corporate information systems into enclaves. Such determinations must be tailored to individual companies, considering a multitude of unique factors.

External service providers (ESPs) will be a driving force for small businesses' compliance with CMMC requirements. ESPs are vendors that handle security related data or CUI on their own assets and software. The ability of ESPs to create effective and economically feasible services will allow businesses to enclave different operations more easily and avoid unduly costly compliance expenses.

''*SBA Comment 2:* Advocacy recommends that the DoD create a presumption to reduce the number of small contracts that are subject to CMMC Level 2. This can be achieved through varying means, including a positive requirement for prime contractors or the ability for a prime contractor to engage in using enclaves as a positive value marker for their contracts. Further, the agency contracting officer could be required to engage in mitigating efforts if such CMMC related issues arise between a subcontractor and prime contractor.''

DoD Response: The Department is committed to robustly supervising the CMMC Program and will take appropriate measures to ensure its efficient execution. Presently, the Department has no intention to mandate contracting offices adopt presumptive measures that would diminish the number of small contracts subject to CMMC Level 2 assessment, nor does it plan to impose affirmative requirements on prime contracts to utilize enclaves.

''*SBA Comment 3:* Advocacy seeks clarity on the role of C3PAOs and the ability of C3PAOs to meet the demand for CMMC.

''For CMMC Level 2 compliance, a CMMC third-party assessor (C3PAO) will triennially inspect the businesses' compliance with the 110 requirements of CMMC Level 2. Stakeholders raised concerns regarding the role C3PAOs will play in Level 2 certification and sought clarity on the indemnification of issues arising from a certification. Stakeholders raised concerns that if there are an insufficient number of C3PAOs to timely inspect every contractor before the rule is effective, then small businesses will be the last ones to be certified. Advocacy recommends creating a streamlined process to provide organizations with C3PAO certifications. This process would meet the immediate need of contractors to initially certify with a C3PAO that the business meets CMMC Level 2 requirements. Particularly, there should be availability of C3PAOs for small businesses and ensure small business owners are not falling behind.''

DoD Response: In alignment with its standard practice across all programs, the Department is committed to diligent oversight of the CMMC Program and will enact appropriate measures to ensure its successful execution. The phased implementation strategy outlined in § 170.3(e) in the rule is designed to tackle initial challenges, facilitate assessor training, and afford companies sufficient time to comprehend and integrate CMMC prerequisites.

While the Department remains open to considering future adjustments, including potential extensions to the implementation timeline or alternative solutions to address any capacity constraints faced by C3PAOs, no such initiatives are currently under active consideration.

''*SBA Comment 4:* Advocacy asks the DoD to clarify enforcement guidelines/mechanisms.

As proposed, Level 1 contractors would annually attest their compliance with the requirements. While at Level 2, there would be attestations with C3PAO certifications every three years. Stakeholders raised questions about the practical steps the DoD will take in enforcement actions for breaches. Further, stakeholders raised concerns regarding the availability of remediating steps in the instance of failure to meet a CMMC requirement. Advocacy recommends the agency create guidance documents for small business contractors to better understand the legal effects of the CMMC.''

DoD Response: Regarding enforcement, as the CMMC is slated for implementation as a precondition for contract award consideration, non-compliance with CMMC requirements will result in disqualification from contract award; or post-award, could result in standard contractual and other remedies for failure to timely and satisfactorily address outstanding POA&Ms to fully implement CMMC requirements and meet contractual obligations.

''*SBA Comment 5:* Advocacy highlights the need for DoD to create rules that encourage and improve small business participation in contracting programs. Advocacy reiterates the importance of small businesses in Federal contracting. [Excerpt from footnote 21: ''Small businesses make up 99.9 percent of all U.S. businesses as well as 73 percent of companies in the defense industrial base, and last year small businesses were awarded over 25 percent of all DoD prime contracts. As the economic engine of our nation, small businesses create jobs, generate innovation, and are essential, daily contributors to national security and the defense mission.] Creating accessible, commercially viable, and secure cyber systems is critical for the future of national security. Small businesses wish to continue to be a powerful driver of national defense contracting. Advocacy heard small business stakeholders from across the country express their strong commitment to protecting our country from cyber-attacks and recognize the critical need for CMMC and other cybersecurity measures.

''Small businesses urge DoD to create flexibilities such as using Plan of Action and Milestones (POA&Ms) when this rule goes into effect initially, allowing small businesses to ramp up to full compliance with their respective CMMC level.''

DoD Response: Department acknowledges the concerns voiced by the SBA regarding the participation of small businesses in contracting programs and the importance of fostering their involvement in Federal contracting, particularly within the defense industrial base. Recognizing the significant role small businesses play in national security and defense missions, the Department is committed to diligently addressing these concerns.

While the Department values the input provided by small business stakeholders and understands the desire for flexibilities, including the use of POA&Ms during the initial implementation phase, it must carefully balance multiple factors to ensure the effectiveness and integrity of the CMMC Program.

''*SBA Comment 6:* Advocacy's chief concerns surround a lack of clarity on key aspects of the proposed rule. Advocacy requests clarification from DoD as to how to create enclaves within businesses. Encouraging the use of ESPs and incentivizing large prime contractors to keep all subcontractors from being subject to high levels of cybersecurity will be key in keeping small businesses engaged in DoD contracting. Guidance documents for small businesses (especially aimed at the smallest of small businesses) and ESPs will create an easier ramp for small business compliance. Advocacy requests clarity from DoD regarding the role of C3PAOs and encourages the DoD to ensure small businesses can obtain certification from C3PAOs in a timely manner. Further, the DoD should clarify the enforcement and procedural repercussions for a failure to meet various CMMC levels. Lastly, the DoD

should set achievable goals as CMMC is implemented, ensuring that current small businesses contracting with the agency can continue work with the government while ensuring our nation's defense.''

DoD Response: The DoD acknowledges the SBA advocacy chief's concerns and will make additional training resources available following finalization of this rule. The DoD deems that the level of detail on the topics identified is appropriate for codification in the 32 CFR part 170 CMMC Program rule. The DoD will resume outreach efforts with the aim of promoting CMMC familiarization among small businesses once the rule is final and effective and any constraints on such engagements no longer apply. However, DoD caveats that providing any specific instructions for configuring corporate information systems into enclaves is beyond the guidance that DoD intends to provide, as such decisions are unique to each company.

The role of C3PAOs is thoroughly described in § 170.9 CMMC Third-Party Assessment Organizations (C3PAOs) and in the supplemental documents.

In terms of enforcement, since CMMC will be implemented as a pre-award requirement, the repercussions of failure to meet CMMC requirements will include failure to be selected for contract award, or standard contractual and other remedies for failure to timely and satisfactorily close-out a POA&M and meet or maintain the contractual CMMC requirements.

As with all of DoD programs, the Department intends to effectively oversee the CMMC Program and take the appropriate actions needed to manage its effective implementation. The phased implementation plan described in § 170.3(e) was extended by six months and is intended to address ramp-up issues, provide time to train the necessary number of assessors, and allow companies the time needed to understand and implement CMMC requirements.

Small Business Entities Impacted

This rule will impact small businesses that do business with the Department of Defense, except those competing on contracts or orders that are exclusively for COTS items or when receiving contracts or orders valued at or below the micro-purchase threshold. According to the Federal Procurement Data System (FPDS) there is an average of *29,260 unique small business contractors: FY 2019 (31,189), FY 2020 (29,166) and FY 2021 (27,427).*

Cost Assumptions and Analysis for CMMC

Complete details on CMMC requirements and associated costs, savings, and benefits of this rule are provided in the Regulatory Impact Analysis referenced in the preamble. Key Components of the model are described in §§ 170.14 through 170.24.

(a) Assumptions for the updated CMMC Program Cost Analysis

In estimating the public cost for a small DIB company to achieve CMMC compliance or certification at each CMMC level, DoD considered non-recurring engineering costs, recurring engineering costs, assessment costs, and affirmation costs for each CMMC Level.[62] These costs include labor and consulting.

Estimates include size and complexity assumptions to account for organizational differences and how it handles Information Technology (IT) and cybersecurity:

- small entities have a less complex, less expansive operating environment and Information Technology (IT)/ Cybersecurity infrastructure compared to larger DIB companies.
- small entities outsource IT and cybersecurity to an External Service Provider (ESP) entities (large or small) pursuing CMMC Level 2 self-assessment will seek consulting or
- implementation assistance from an ESP to either help them prepare for the assessment technically or participate in the assessment with the C3PAOs.

Estimates do not include implementation (Non-recurring Engineering Costs (NRE)) or maintenance costs (Recurring Engineering (RE)) for requirements prescribed in current regulations.

For CMMC Levels 1 and 2, cost estimates are based upon assessment, reporting and affirmation activities which a contractor will take to validate conformance with existing cybersecurity requirements from the FAR clause 52.204–21 (effective June 15, 2016) to protect FCI, and the DFARS clause 252.204–7012 which required contractor implementation of NIST SP 800–171 not later than December 31, 2017, to protect CUI. As such, costs estimates are not included for an entity to implement security requirements, maintain existing security requirements, or remediate a Plan of Action for unimplemented requirements.

For CMMC Level 3, the estimates factor in the assessment, reporting and affirmation activities in addition to estimates for NRE and RE to implement and maintain CMMC Level 3 requirements. CMMC Level 3 requirements are a subset of NIST SP 800–172 Feb2021 Enhanced Security Requirements as described in § 170.30 of the CMMC rule and are not currently required through other regulations. CMMC Level 3 is expected to apply only to a small subset of DIB contractors.

The Cost Categories used for each CMMC Level are described below:

1. Nonrecurring Engineering Costs: Estimates consist of hardware, software, and the associated labor to implement the same. Costs associated with implementing the requirements defined in FAR clause 52.204–21 and NIST SP 800–171 R2 are assumed to have been implemented and are therefore not accounted for in this cost estimate. As such, these costs only appear in CMMC Level 3. Where nonrecurring engineering costs are referenced, they are only accounted for as a one-time occurrence and are reflected in the year of the initial assessment.

2. Recurring Engineering Costs: Estimates consist of annually recurring fees and associated labor for technology refresh. Costs associated with implementing the requirements defined in FAR clause 52.204–21 and NIST SP 800–171 R2 are assumed to have been implemented and are therefore not accounted for in this cost estimate. As such, these costs only appear in CMMC Level 3.

Assessment Costs: Estimates consist of activities for pre-assessment preparations (which includes gathering and/or developing evidence that the assessment objectives for each requirement have been satisfied), conducting and/or participating in the actual assessment, and completion of any post-assessment work. Assessment costs are represented by notional phases. Assessment costs assume the offeror/contractor passes the assessment on the first attempt (conditional—with an allowable POA&M or final). Each phase includes an estimate of hours to conduct the assessment activities including:

(a) Labor hour estimates for a company (and any ESP support) to prepare for and participate in the assessment.

(b) C3PAO cost estimates for companies pursuing a certification.

—Labor hour estimates for certified assessors to work with the small business to conduct the actual assessment.

[62] DoD estimates of the hours, recurring and non-recurring costs, and labor rates are based upon subject matter expertise from the DOD Chief Information Office, CMMC Program Office, and DoD/DIBCAC.

(c) Assessment Costs broken down into phases.

—Phase 1: *Planning and preparing for the assessment.*

—Phase 2: *Conducting the assessment* (self or C3PAO).

—Phase 3: *Reporting of Assessment Results.*

—Phase 4: *POA&M Closeout* (for CMMC Level 3 only, where allowed, if applicable).

• CMMC allows a limited open Plan of Action and Milestones (POA&M) for a period of 180 days to remediate the POA&M, see § 170.37.

3. Affirmations: Estimates consist of costs for a contractor to submit to SPRS an initial and affirmation of compliance that the covered contractor information system is compliant with and will maintain compliance with the requirements of the applicable CMMC Level. Where POA&Ms are allowed, an affirmation must be submitted with the POA&M closeout. Except for Small Entities for Level 1 and Level 2, it is assumed the task requires the same labor categories and estimated hours as the final reporting phase of the assessment.

(b) Comparison to the Initial CMMC Program Cost Analysis

Public comments on the initial CMMC Program indicated that cost estimates were too low. Updated CMMC Program cost estimates account for that feedback with the following improvements:

• Allowance for outsourced IT services.

• Increased total time for the contractor to prepare for the assessment, including limited time for learning the reporting and affirmation processes.

• Allowance for use of consulting firms to assist with the assessment process.

• Time for a senior level manager to review the assessment and affirmation before submitting the results into SPRS.

• Updated government and contractor labor rates that include applicable burden costs.

As a result, some cost estimates for the updated CMMC Program may be higher than those included in the initial CMMC Program.

(c) Cost Analysis/Estimates by CMMC Level

CMMC Level 1 Self-Assessment and Affirmation Costs for Small Business Entities

• *Nonrecurring and recurring engineering costs:* There are no nonrecurring or recurring engineering costs associated with CMMC Level 1 since it is assumed the contractor has implemented basic safeguarding requirements.[63]

• *Self-Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a CMMC Level 1 assessment and affirmation is * $5,977 (as summarized in table 1). A Level 1self-assessment is conducted annually, and is based on the assumptions detailed below:

—*Phase 1: Planning and preparing for the assessment:* $1,803

• A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)

• An external service provider (ESP)[64] for 4 hours ($260.28 × 4hrs = $1,041)

—*Phase 2: Conducting the self-assessment:* $2,705

• A director (MGMT5) for 6 hours ($190.52/hr × 6hrs = $1,143)

• An external service provider (ESP) for 6 hours ($260.28 × 6hrs = $1,562)

—*Phase 3: Reporting of Assessment Results into SPRS:* $909

• A director (MGMT5) for 2 hours ($190.52/hr × 2hrs = $381)

• An external service provider (ESP) for 2 hours ($260.28/hr * 2hrs = $521)

• A staff IT specialist (IT4) for 0.08 hours[65] ($86.24/hr × 0.08hrs = $7)

—*Affirmation:* initial affirmation post assessment: $560

• *Reaffirmations:* It is estimated that the costs to reaffirm a CMMC Level I annually for a small entity is $560

—A director (MGMT5) for 2 hours ($190.52/hr × 2hrs = $381)

—A staff IT specialist (IT4) for 2.08 hours ($86.24/hr × 2.08hrs = $179)

• *Summary:* The following is the annual small entities total cost summary for CMMC Level 1 self-assessments and affirmations over a ten-year period: (Example calculation, Year 1: *$5,977 per entity (detailed above) × 699 entities (cumulative) = $4,177,845)

[63] Again, it is assumed that that DIB contractors and subcontractors have already implemented the 15 basic safeguarding requirements in FAR clause 52.204–21.

[64] An external service provider is assumed to be an ''Information Assurance Specialist Level 7'' with an hourly rate of $260.

[65] A person needs to enter the information into SPRS, which should only take five minutes.

Table 30 – Total Cost Summary for Small Entities for CMMC Level 1 Self-Assessments and Affirmations

Year	Small Entities Per Year	Cumulative Small Entities	Annual Total Cost (self-assess, affirm)
1	699	699	$4,177,845
2	3,493	4,192	$25,055,116
3	11,654	15,846	$94,709,771
4	22,336	38,182	$228,209,547
5	22,333	60,515	$361,691,392
6	22,333	82,848	$495,173,237
7	20,162	103,010	$615,679,258
8		103,010	$615,679,258
9		103,010	$615,679,258
10		103,010	$615,679,258
Total	**103,010**		**$3,671,733,942**

CMMC Level 2 Self-Assessment and Affirmation Costs for Small Business Entities

The costs below account for a CMMC Level 2 self-assessment of the applicable contractor information system(s) with NIST SP 800–171 R2 requirements based on assumptions defined above.

• *Nonrecurring and recurring engineering costs:* There are no nonrecurring or recurring engineering costs associated with CMMC Level 2 self-assessment since it is assumed the contractor has implemented NIST SP 800–171 R2 requirements.

• *Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a CMMC Level 2 self-assessment and affirmation for a small entity is *$34,277. The three-year cost is $37,196 (as summarized in 4.1.2 above, table 2), which includes the triennial assessment + affirmation, plus two additional annual affirmations ($34,277 + $1,459 + $1,459).

—*Phase 1: Planning and preparing for the self-assessment:* $14,426

• A director (MGMT5) for 32 hours ($190.52/hr ×* 32hrs = $6,097)

• An external service provider (ESP) for 32 hours ($260.28/hr × 32hrs = $8,329)

—*Phase 2: Conducting the self-assessment:* $15,542

• A director (MGMT5) for 16 hours ($190.52/hr × 16hrs = $3,048)

• An external service provider (ESP) for 48 hours ($260.28/hr × 48hrs = $12,493)

—*Phase 3: Reporting of assessment results:* $2,851

• A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)

• An external service provider (ESP) for 8 hours ($260.28/hr × 8hrs = $2,082)

• A staff IT specialist (IT4) for 0.08 hours ($86.24/hr × 0.08hrs = $7)

—*Affirmation*—initial affirmation post assessment: $1,459

• *Reaffirmations:* It is estimated that the costs to reaffirm a CMMC Level 2 self-assessment annually is $1,459 (three-year costs to reaffirm a CMMC Level 2 self-assessment annually is $4,377, or $1,459 × 3):

—A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)

—A staff IT specialist (IT4) for 8.08 hours ($86.24/hr × 8.08hrs = $697)

• *Summary:* The following is the annual small entities total cost summary for CMMC Level 2 self-assessments and Affirmations over a ten-year period: (Example calculation, Year 2: (*$34,277 self-assessment per entity × 101 entities) + ($1,459 annual affirmation per entity × 20 entities) = $3,491,193)

Table 31- Total Cost Summary for Small Entities for CMMC Level 2 Self-assessments and Affirmations

CMMC Level 2: Self-Assessment for Small Entities			
Year	**Entities Performing Triennial Self-Assessments and Initial Affirmation**	**Entities Performing Annual Affirmation Actions Only**	**Total Cost**
1	20	0	$685,547
2	101	20	$3,491,193
3	335	121	$11,659,448
4	662	436	$23,327,706
5	743	997	$26,922,622
6	977	1,405	$35,538,762
7	1,241	1,720	$45,047,546
8	743	2,218	$28,703,951
9	977	1,984	$36,383,471
10	1,241	1,720	$45,047,546
Total	**7,040**	**10,621**	**$256,807,792**

CMMC Level 2 Certification and Affirmation Costs for Small Business Entities

The costs below account for a CMMC Level 2 Certification assessment and affirmation costs of the applicable contractor information system(s) with NIST SP 800–171 R2 requirements based on assumptions defined above. CMMC Level 2 certification assessments require hiring a C3PAO to perform the assessment.

- *Nonrecurring or recurring engineering costs:* There are no nonrecurring or recurring engineering costs associated with CMMC Level 2 C3PAO Certification since it is assumed the contractor has implemented NIST SP 800–171 R2 requirements.
- *Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a CMMC Level 2 C3PAO Certification and affirmation for a small entity is *$101,752. The three-year cost is $104,670 (as summarized in section 3(b) above, table 1), and includes the triennial assessment + affirmation plus two additional annual affirmations ($101,752 + $1,459 + $1,459).

—*Phase 1: Planning and preparing for the assessment:* $20,699
- A director (MGMT5) for 54 hours ($190.52/hr × 54hrs = $10,288)
- An external service provider (ESP) for 40 hours ($260.28/hr × 40hrs = $10,411)

—*Phase 2: Conducting the C3PAO assessment:* $45,509
- A director (MGMT5) for 64 hours ($190.52/hr x 64hrs = $12,193)
- An external service provider (ESP) for 128 hours ($260.28/hr × 128hrs = $33,316)

—*Phase 3: Reporting of C3PAO Assessment Results:* $2,851
- A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)
- An external service provider (ESP) for 8 hours ($260.28/hr × 8hrs = $2,082)
- A staff IT specialist (IT4) for 0.08 hours ($86.24/hr × 0.08hrs = $7)

—*Affirmation*—initial affirmation post assessment: $1,459

—*C3PAO Costs:* C3PAO engagement inclusive of Phases 1, 2, and 3 (3-person team) for 120 hours ($260.28/hr × 120hrs = $31,234)

- *Reaffirmations:* It is estimated that the costs to reaffirm a CMMC Level 2 C3PAO Assessment annually is $1,459 (three-year cost is $4,377, or $1,459 × 3)

—A director (MGMT5) for 4 hours ($190.52/hr × 4hrs = $762)

—A staff IT specialist (IT4) for 8.08 hours ($86.24/hr × 8.08hrs = $697)

- *Summary:* The following is the annual small entities total cost summary for CMMC Level 2 Certifications and Affirmations over a ten-year period: (Example calculation, Year 2: (*$101,752 assessment per entity × 1,926 entities) + ($1,459 annual affirmation per entity × 382 entities) = $196,531,451)

Table 32 – Total Cost Summary for Small Entities for CMMC Level 2 Certifications and Affirmations

CMMC Level 2: Certification for Small Entities			
Year	**Entities Performing Triennial Certifications and Initial Affirmation**	**Entities Performing Annual Affirmation Actions Only**	**Total Cost**
1	382	0	$38,869,223
2	1,926	382	$196,531,451
3	6,414	2,308	$656,003,811
4	12,675	8,340	$1,301,872,564
5	14,215	19,089	$1,474,252,306
6	18,703	26,890	$1,942,295,763
7	23,771	32,918	$2,466,768,671
8	14,215	42,474	$1,508,368,920
9	18,703	37,986	$1,958,483,830
10	23,771	32,918	$2,466,768,671
Total	**134,775**	**203,305**	**$14,010,215,209**

CMMC Level 3 Certification and Affirmation Costs for Small Business Entities

Contractors pursuing CMMC Level 3 certification assessment must have a current Final CMMC Level 2 certification assessment, and demonstrate compliance with CMMC Level 3, which is a subset of security requirements from NIST SP 800–172 Feb2021 that have DoD predefined selections and parameters. CMMC Level 3 requires compliance with security requirements not required in prior rules. Therefore, Nonrecurring Engineering and Recurring Engineering cost estimates have been included for the initial implementation and maintenance of the required subset of NIST 800–172 Feb2021 requirements. The cost estimates below accounts for time for a contractor to implement the security requirements and prepare for, support, and participate in a CMMC Level 3 assessment conducted by DCMA DIBCAC. The contractor should therefore keep in mind that the cost of a Level 3 certification will also incur the cost of a CMMC Level 2 certification assessment by a C3PAO in addition to the costs to assess the requirements specific to Level 3. Inclusion of CMMC Level 3 certification is expected to affect only a small subset of defense contractors or subcontractors in the DIB.

The estimated engineering costs per small entity is associated with the CMMC Level 3.

- *Nonrecurring Engineering Costs:* $2,700,000.
- *Recurring Engineering Costs:* $490,000.
- *Assessment Costs and Initial Affirmation Costs:* It is estimated that the cost to support a CMMC Level 3 C3PAO Certification for a small entity is *$9,050 The three-year cost is $12,802 (summarized in 4.1.2 above, table 2), and includes the triennial assessment + affirmation, plus two additional annual affirmations ($9,050 + $1,876 + $1,876):

—*Phase 1: Planning and preparing for the Level 3 assessment:* $1,905
- A director (MGMT5) for 10 hours ($190.52/hr × 10hrs = $1,905)

—*Phase 2: Conducting the Level 3 assessment:* $1,524
- A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)

—*Phase 3: Reporting of Level 3 assessment results:* $1,876
- A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)
- A staff IT specialist (IT4) for 4.08 hours ($86.24/hr × 4.08hrs = $352)

—*Phase 4: Remediation (for CMMC Level 3 if necessary and allowed):* $1,869
- A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)
- A staff IT specialist (IT4) for 48 hours ($86.24/hr × 48hrs = $345)
- *Affirmation*—initial affirmation post assessment: $1,876
- *Reaffirmations:* It is estimated that the costs to reaffirm a CMMC Level 3 Assessment annually is $1,876 (three-year cost is $5,628, or $1,876 × 3)

—A director (MGMT5) for 8 hours ($190.52/hr × 8hrs = $1,524)

—A staff IT specialist (IT4) for 4.08 hours ($86.24/hr × 4.08hrs = $352)

- *Summary:* The following is the annual small entities total cost summary for CMMC Level 3 Certifications and Affirmations over a ten-year period. Example calculation, Year 2 (reference per entity amounts above):

—*($9,050 Certification per entity × 45 entities) + ($1,876 Annual Affirmation per entity × 3 entities) = $412,897, and

—$121,500,000 Nonrecurring Engineering cost ($2,700,000 per entity × 45 entities being certified), and

—$23,520,000 Recurring Engineering cost ($490,000 per entity × 45 entities being certified) + ($490,000 per entity × 3 entities performing affirmations)

—$145,432,897 Total Cost = Certification and Affirmation Cost

($412,897) + Nonrecurring Engineering cost ($121,500,000) + Recurring Engineering cost ($23,520,000), or $145,432,897.

Table 33 – Total Cost Summary for Small Entities for CMMC Level 3 Certifications and Affirmations

Yr	Entities Performing Triennial Certification including Initial Affirmation	Entities Re-affirmation Actions Only	Triennial Certification and Affirmation Total Cost	Non-recurring Engineering Cost	Recurring Engineering Cost	Total Cost
1	3	0	$27,151	$8,100,000	$1,470,000	$9,597,151
2	45	3	$412,897	$121,500,000	$23,520,000	$145,432,897
3	151	48	$1,456,663	$407,700,000	$97,510,000	$506,666,663
4	292	196	$3,010,423	$780,300,000	$239,120,000	$1,022,430,423
5	334	443	$3,853,914	$780,300,000	$380,730,000	$1,164,883,914
6	440	626	$5,156,569	$780,300,000	$522,340,000	$1,307,796,569
7	553	774	$6,456,917	$704,700,000	$650,230,000	$1,361,386,917
8	334	993	$4,885,718		$650,230,000	$655,115,718
9	440	887	$5,646,207		$650,230,000	$655,876,207
10	553	774	$6,456,917		$650,230,000	$656,686,917
Tot	**3,145**	**4,744**	**$37,363,377**	**$3,582,900,000**	**$3,865,610,000**	**$7,485,873,377**

Projected Reporting, Recordkeeping, and Compliance Requirements

The CMMC Program provides for the assessment of contractor implementation of cybersecurity requirements to enhance confidence in contactor protection of unclassified information within the DoD supply chain. CMMC contractual requirements are implemented under the 48 CFR part 204 CMMC Acquisition rule, with associated rulemaking for the CMMC Program requirements (*e.g.,* CMMC Scoring Methodology, certificate issuance, information accessibility) under the 32 CFR part 170 CMMC Program rule. The 32 CFR part 170 CMMC Program rule includes two separate information collection requests (ICR), one for the CMMC Program and one for CMMC eMASS.

This information collection is necessary to support the implementation of the CMMC assessment process for Levels 2 and 3 certification assessment, as defined in §§ 170.17 and 170.18 respectively.

The CMMC Level 2 certification assessment process is conducted by Certified Assessors, employed by CMMC Third-Party Assessment Organizations (C3PAOs). During the assessment process, Organizations Seeking Certification [66] (OSCs) hire C3PAOs to conduct the third-party assessment required for certification.

The CMMC Level 3 certification assessment process is conducted by the Defense Contract Management Agency (DCMA) Defense Industrial Base Cybersecurity Assessment Center (DIBCAC).

Use of the Information

Level 1 and Level 2 CMMC Self-Assessments. Organizations Seeking Assessment [67] (OSAs) follow procedures as defined in §§ 170.15(a)(1) and 170.16(a)(1) to conduct CMMC Level 1 and Level 2 self-assessments on their information systems to determine conformance with the information safeguarding requirements associated with the CMMC level requirements. The Level 1 and Level 2 self-assessment information collection reporting and recordkeeping requirements will be included in a modification of an existing Defense Federal Acquisition Regulation Supplement (DFARS) collection approved under OMB Control Number 0750–0004, Assessing Contractor Implementation of Cybersecurity Requirements. Modifications to this DFARS collection will be addressed as part of the 48 CFR part 204 CMMC Acquisition final rule.

CMMC Level 2 Certification Assessment

The Level 2 certification assessment information collection burden for reporting and recordkeeping requirements are included in the 32 CFR part 170 CMMC Program rule. The information collection burden for the OSCs to upload affirmations in SPRS is included in the 48 CFR part 204 CMMC Acquisition final rule. Additionally, the information collection burden requirements for the CMMC instantiation of eMASS are addressed in a separate 32 CFR part 170 CMMC Program final rule information collection request (ICR).

OSCs follow procedures as defined in § 170.17 to prepare for CMMC Level 2 certification assessment.

Certified Assessors assigned by C3PAOs follow requirements and procedures as defined in § 170.17 to conduct CMMC assessments on defense contractor information systems to determine conformance with the information safeguarding requirements associated with CMMC Level 2. This is an assessment to validate implementation of the 110 security requirements from NIST SP 800–171 R2.

Prospective C3PAOs must complete and submit the Standard Form (SF) 328 Certificate Pertaining to Foreign Interests (OMB control number 0704–0579) upon request from Defense Counterintelligence and Security Agency (DCSA).

C3PAOs must generate and collect pre-assessment and planning material (contact information for the OSC,

[66] An Organization Seeking Certification (OSC) is an entity seeking to contract, obtain, or maintain CMMC certification for a given information system at a particular CMMC Level. An OSC is also an OSA.

[67] An Organization Seeking Assessment (OSA) is an entity seeking to conduct, obtain, or maintain a CMMC assessment for a given information system at a particular CMMC Level. The term OSA includes all OSCs.

information about the C3PAO and assessors conducting the assessment, the level of assessment planned, the CMMC Model and Assessment Guide versions, and assessment approach), artifact information (list of artifacts, hash of artifacts, and hashing algorithm used), final assessment reports, appropriate CMMC certificates of assessment, and assessment appeal information. C3PAOs submit the data they generate and collect into the CMMC instantiation of eMASS, the information collection required for this submission is addressed in a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program rule. OSCs may have a POA&M at CMMC Level 2 as addressed in § 170.21. C3PAOs perform a POA&M closeout assessment. The C3PAO process to conduct a POA&M Close-out Assessment, where applicable, is the same as the initial assessment with the same information collection requirements.

OSCs must retain artifacts used as evidence for the assessment for the duration of the validity period of the certificate of assessment, and at minimum, for six years from the date of certification assessment as addressed in § 170.17(c)(4). The OSC is responsible for compiling relevant artifacts as evidence and having knowledgeable personnel available during the assessment. The organizational artifacts are proprietary to the OSC and will not be retained by the assessment team unless expressly permitted by the OSC. To preserve the integrity of the artifacts reviewed, the OSC creates a hash of assessment evidence (to include a list of the artifact names, the return values of the hashing algorithm, and the hashing algorithm used) and retains the artifact information for six years. The information obtained from the artifacts is an information collection and is provided to the C3PAO for uploading into the CMMC instantiation of eMASS (addressed in a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program final rule); the artifacts themselves are not an information collection. The OSC process to support a POA&M Close-out Assessment, where applicable, is the same as the initial assessment with the same information collection requirements.

If an OSC does not agree with the assessment results, it may formally dispute the assessment and initiate an Assessment Appeal process with the C3PAO who conducted the assessment. C3PAOs submit assessment appeals using eMASS (addressed in a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program final rule). Appeals are tracked in the CMMC instantiation of eMASS and any resulting changes to the assessment results are uploaded into the CMMC instantiation of eMASS.

C3PAOs maintain records for a period of six years of monitoring, education, training, technical knowledge, skills, experience, and authorization of each member of its personnel involved in inspection activities; contractual agreements with OSCs; any working papers generated from Level 2 certification assessments; and organizations for whom consulting services were provided as addressed in § 170.9(b)(9). The Accreditation Body provides the CMMC PMO with current data on C3PAOs, including authorization and accreditation records and status using the CMMC instantiation of eMASS (addressed in a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program final rule).

The Accreditation Body provides all plans related to potential sources of revenue, to include but not limited to fees, licensing, processes, membership, and/or partnerships to the Government's CMMC PMO as addressed in § 170.8(b)(13).

CAICOs maintain records for a period of six years of all procedures, processes, and actions related to fulfillment of the requirements set forth in § 170.10(b)(9).

CMMC Level 3 Certification Assessment

The Level 3 certification assessment information collection burden for reporting and recordkeeping requirements are included in the 32 CFR part 170 CMMC Program final rule. The information collection burden for OSCs to upload affirmations in SPRS is included in the 48 CFR part 204 CMMC Acquisition final rule. Additionally, the information collection burden requirements for the CMMC instantiation of eMASS are addressed in a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program final rule.

OSCs follow procedures as defined in § 170.18 to prepare for CMMC Level 3 certification assessment.

DCMA DIBCAC Assessors follow requirements and procedures as defined in § 170.18 to conduct CMMC assessments on defense contractor information systems to determine conformance with the information safeguarding requirements associated with CMMC Level 3. This is an assessment to validation the implementation of the 24 selected security requirements from NIST SP 800–172 Feb2021. Because DCMA DIBCAC is a government entity, there are no public information collection requirements.

DCMA DIBCAC must generate and collect pre-assessment and planning material (contact information for the OSC, information about the assessors conducting the assessment, the level of assessment planned, the CMMC Model and Assessment Guide versions, and assessment approach), artifact information (list of artifacts, hash of artifacts, and hashing algorithm used), final assessment reports, appropriate CMMC certificates of assessment, and assessment appeal information. DCMA DIBCAC submits the data it generates and collects into the CMMC instantiation of eMASS (addressed in a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program final rule).

OSCs may have a POA&M at CMMC Level 3 as addressed in § 170.21. DCMA DIBCAC performs a POA&M closeout assessment. The DCMA DIBCAC process to conduct a POA&M close-out assessment, where applicable, is the same as the initial assessment with the same information collection requirements.

OSCs must retain artifacts used as evidence for the assessment for the duration of the validity period of the certificate of assessment, and at minimum, for six years from the date of certification assessment as addressed in § 170.18(c)(4). The OSC is responsible for compiling relevant artifacts as evidence and having knowledgeable personnel available during the assessment. Assessors will not permanently retain assessment artifacts. To preserve the integrity of the artifacts reviewed during the assessment, the OSC creates a hash of assessment evidence (to include a list of the artifact names, the return values of the hashing algorithm, and the hashing algorithm used) and retains the artifact information for six years. The information obtained from the artifacts is an information collection and DCMA DIBCAC uploads the information into the CMMC instantiation of eMASS; the artifacts themselves are not an information collection. The OSC process to support a POA&M close-out assessment, where applicable, is the same as the initial assessment with the same information collection requirements.

If an OSC does not agree with the assessment results, it may formally dispute the assessment and initiate an Assessment Appeal process with DCMA DIBCAC. DCMA DIBCAC submits assessment appeals using eMASS. Appeals are tracked in the CMMC instantiation of eMASS and any resulting changes to the assessment

results are uploaded into CMMC eMASS.

DCMA DIBCAC maintains records for a period of six years of monitoring, education, training, technical knowledge, skills, experience, and authorization of each member of its personnel involved in inspection activities and working papers generated from Level 3 Certification Assessments.

Use of Information Technology

CMMC assessment data and results are collected using information technology. C3PAOs and DCMA DIBCAC electronically upload assessment data and results into the CMMC instantiation of eMASS (addressed in a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program final rule). The CMMC instantiation of eMASS electronically transfers certification results to SPRS. For Level 1 and 2 self-assessments, OSAs upload their assessment data directly into SPRS.

Use of the CMMC instantiation of eMASS provides DoD visibility into the cybersecurity posture of the defense contractor supply chain and is the mechanism to generate reports on the health of the CMMC Ecosystem. SPRS is DoD's authoritative source for supplier and product performance information. Use of this electronic system to collect CMMC information eliminates the need for contractors to respond directly to multiple DoD requiring activities. SPRS serves as a single repository for Government access to CMMC assessment results. Modifications to information collections in SPRS will be addressed in the 48 CFR part 204 CMMC Acquisition final rule.

Non-Duplication

The information obtained through this collection is unique and is not already available for use or adaptation from another cleared source.

Burden on Small Businesses

For Level 1 and 2 self-assessments, OSAs must report annually and triennially, respectively. Level 2 and Level 3 certification assessments must be conducted every three years by a C3PAO or DCMA DIBCAC, respectively. At all levels, an annual affirmation is required. In all cases, the burden applied to small business is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices.

A C3PAO, although not a defense contractor, may also be a small business. Efforts to minimize the burden on C3PAOs include the electronic collection of data using the CMMC instantiation of eMASS and providing Microsoft Excel spreadsheet templates.

Less Frequent Collection

CMMC certifications last up to three years. The assessment frequency for each level was determined by the DoD based on the sensitivity of information processed, stored, or transmitted by the OSA at each level.

DoD Program Managers use the CMMC information in SPRS to confirm the validity status of an OSA's CMMC self-assessment or certification assessment prior to contract award. Rather than taking a contract-by-contract approach to securing Federal Contract Information (FCI) and Controlled Unclassified Information (CUI), the OSA may obtain multiple contracts with a single CMMC self-assessment or certification assessment, thereby reducing the cost to both DoD and industry.

Consultation and Public Comments

The Department consulted with members of the DIB Sector Coordinating Council (SCC), and government organizations including the DCMA DIBCAC and the Missile Defense Agency in determining what data to collect in the CMMC instantiation of eMASS.

The 60-Day **Federal Register** notice information is included in the preamble of the 32 CFR part 170 CMMC Program final rule for public comment.

The CMMC PMO is also working with a records management point-of-contact to ensure records produced from this information collection are retained and disposed of according to a NARA-approved records retention and disposition schedule. Records will be treated as permanent until the appropriate schedule is identified or approved.

Part A & B: Respondent Burden and Its Labor Costs

The Level 1 and Level 2 self-assessment information collection reporting and recordkeeping requirements for the CMMC Program will be included in a modification of an existing DFARS collection approved under OMB Control Number 0750–0004, Assessing Contractor Implementation of Cybersecurity Requirements. Modifications to this DFARS collection will be addressed as part of the 48 part 204 CMMC Acquisition final rule.

Table 34 – Public Respondent Burden and Labor Costs for CMMC Level 2 and Level 3 Certification Assessment

Collection Instrument and Rule Citation	Entity Type	Number of Responses [68]	Hours per Response [69]	Burden Hours	Hourly Rate[70]	Burden Per Response	Total Burden
Level 2 Certification Assessment § 170.17(a)	OSC (& hired C3PAO[71]) - Small	8,098	417.83	3,383,587.34	$239.89	$100,233	$811,688,767
	OSC (& hired C3PAO[71]) - Other Than Small	2,844	833.83	2,371,412.52	$131.44	$109,599	$311,698,462
Level 3 Certification Assessment § 170.18(a)	OSC - Small	190	42.08	7,995.20	$170.48	$ 7,174	$1,363,022
	OSC - Other Than Small	23	384.08	8,833.84	$ 94.53	$36,307	$ 835,063

The public burden costs associated with Level 2 and Level 3 certification assessment information collection reporting and recordkeeping requirements for the CMMC Program are addressed here, except for the eMASS reporting requirements which will be addressed as part of a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program final rule. Respondent burden and cost for these information collection reporting and recordkeeping requirements are as follows:

Respondent Costs Other Than Burden Hour Costs

Non-Recurring and Recurring Engineering estimated costs are included for Level 3 certification assessments. Non-Recurring Engineering reflects a one-time cost consisting of hardware, software, and the associated labor to implement the same. Recurring Engineering reflects annually recurring fees and associated labor for technology refresh. The estimated amounts below are average annual amounts for all entities as indicated.

Travel costs for C3PAO assessors may represent an additional cost for respondents.

Cost to the Federal Government

The government burden costs associated with Level 3 certification assessment information collection reporting and recordkeeping requirements for the CMMC Program are addressed here, except for the eMASS reporting requirements which will be addressed as part of a separate CMMC eMASS ICR for the 32 CFR part 170 CMMC Program rule. Respondent burden and cost for these information collection reporting and recordkeeping requirements are as follows:

Table 35 – Respondent Costs Other Than Burden

Rule Citation	Collection Requirement	Entity Type	Non-Recurring Cost	Recurring Cost	Total Costs
§ 170.18(a)	Level 3 Certification	OSC - Small	$ 513,000,000	$ 93,100,000	$ 606,100,000
		OSC - Other Than Small	$ 485,300,000	$ 94,760,000	$ 580,060,000
	TOTAL				**$ 1,186,160,000**

[68] Respondent is equivalent to an entity; an entity provides one response annually.

[69] Hours per Response represents the estimated burden hours to complete the indicated assessment.

[70] Hourly Rate represents a composite hourly rate derived from the detailed type of labor and associated rates estimated in the CMMC cost estimate model.

[71] The entity type refers to the size of the OSC as either Small or Other Than Small; the entity type does not refer to the size of the C3PAO.

Table 36 – Government Respondent Burden and Labor Costs for Level 3 Certification Assessment

Collection Instrument and Rule Citation	Entity Type	Number of Responses[1]	Hours per Response[2]	Burden Hours	Hourly Rate[3]	Burden Per Response	Total Burden
Level 3 Certification Assessment § 170.18(a)	OSC (& DCMA DIBCAC[4]) - Small	190	117.75	22,372.50	$108.47	$ 12,772	$2,426,745
	OSC (& DCMA DIBCAC[75]) - Other Than Small	23	435.75	10,022.25	$ 81.01	$35,300	$ 811,902

Steps Taken To Minimize Economic Impact

DoD took aggressive steps to minimize the economic impact of this program by streamlining requirements to reduce the number of steps in the process and the number of requirements that needed to be met, and reduced the requirement of 100% compliance, and the number of third-party assessments required.

To further elaborate the DoD established a review body that evaluated the CMMC Program to ensure it was meeting the programmatic requirements to secure Controlled Unclassified Information within the non-Federal networks of the Defense Industrial Base. A special independent team was established to review and provide recommendations on improving the program.

The DoD determined that the CMMC program should only employ the Cybersecurity Standards prescribed by the NIST SP 800–171 that had been required for defense contractors since 2017 as implemented by the DFARS clause 252.204–7012, which resulted in the removal of 20 requirements aligned with cybersecurity maturity. The ESG also recommended simplifying the program structure to require only 3 levels of certification vice the original 5. The program further determined that certifications should not be required at CMMC Level 1 and that self-assessment with an annual affirmation was sufficient for this level. Level 2 CMMC was further evaluated and determined that bifurcation of this level was appropriate, and some CUI would only require a Level 2 self-assessment with annual affirmation, which further reduced the costs for the program. Further the ESG recommended that Plans of Actions and Milestones (POA&Ms) for lower-level requirements that were not met be allowed for a limited period of time. This rule was updated to allow POA&Ms for no more than 180 days to give contractors the ability to achieve contract award without being fully compliant with all requirements of NIST SP 800–171 R2.

And, in another effort to minimize the economic impact the program developed a Phase-in approach to incrementally implement CMMC in four phases over 4 years, with the first year being focused on Self-assessment and compliance with NIST SP 800–171 R2 giving contractors more time to implement the requirements already required in their contracts since 2017. A CMMC waiver process was also included in the program which allows DoD the discretion to waive CMMC Program requirements to a procurement or class of procurements in advance of the solicitation in accordance with all applicable policies, procedures, and approval requirements. This waiver would allow contract award and the contractor would be expected to achieve compliance and certification at a defined time post-award.

The DoD is employing a phased approach to the CMMC rollout to reduce implementation risk. DoD expects that the public has utilized the lead-time prior to the publication of this rule to prepare for CMMC implementation. CMMC Program requirements make no changes to existing policies for information security requirements implemented by the DoD.

The phased CMMC implementation plan described in § 170.3(e) is intended to address CMMC ramp-up issues, provide time to train the necessary number of assessors, and allow companies the time needed to understand and implement CMMC requirements. DoD has updated the rule to add an additional six months to the Phase 1 timeline. Phase 2 will start one calendar year after the start of Phase 1, and Phase 3 will start one calendar year after the start of Phase 2. As with all DoD programs, the Department intends to effectively oversee CMMC, and take appropriate actions needed to manage its effective implementation.

Alternatives

DoD considered and adopted several alternatives during the development of this rule that reduce the burden on defense contractors and still meet the objectives of the rule. These alternatives include:

Maintaining status quo and leveraging only the current requirements implemented in DFARS provision 252.204–7019 and DFARS clause 252.204–7020 requiring defense contractors and offerors to self-assess compliance and utilizing the DoD Assessment Methodology and entering a Basic Summary Score in SPRS.

Revising CMMC to reduce the burden for small businesses and contractors who do not process, store, or transmit CUI by eliminating the requirement to hire a C3PAO and instead allow self-assessment with affirmation to maintain compliance at CMMC Level 1, and allowing triennial self-assessment with an annual affirmation to maintain compliance for some CMMC Level 2 programs.

Exempting contracts and orders exclusively for the acquisition of

[72] Respondent is equivalent to an entity; an entity provides one response annually.

[73] Hours per Response represents the estimated Government burden hours to complete the indicated assessment.

[74] The Hourly Rate represents a composite hourly rate derived from the detailed type of Government labor and associated rates estimated in the CMMC cost estimate model.

[75] The entity type refers to the size of the OSC as either Small or Other Than Small; the entity type does not refer to the size of DCMA DIBCAC.

commercially available off-the-shelf items; and,

Implementing a phased implementation for CMMC.

In addition, the Department took into consideration the timing of the requirement to achieve a specified CMMC level: (1) at time of proposal or offer submission, (2) after contract award, (3) at the time of contract award, or (4) permitting government Program Managers to seek approval to waive inclusion of CMMC requirements in solicitations and resulting contracts that involve disclosure or creation of FCI or CUI as part of the contract effort. Such waivers will be requested and approved by DoD in accordance with internal policies, procedures, and approval requirements.

The Department ultimately adopted alternatives (3) and (4). The drawback of alternative 1 (at time of proposal or offer submission) is the increased risk for contractors since they may not have sufficient time to achieve the required CMMC level after the release of the solicitation and before contract award. The drawback of alternative 2 (after contract award) is the increased risk to the Department with respect to the costs, program schedule, and uncertainty in the event the contractor is unable to achieve the required CMMC level in a reasonable amount of time given its current cybersecurity posture. This potential delay would apply to the entire supply chain and prevent the appropriate flow of CUI and FCI.

CMMC does not require implementation of any additional security protection requirements beyond those identified in current FAR clause 52.204–21 and in NIST SP 800–171 R2 for CMMC Levels 1 and Level 2, respectively. CMMC Level 3 requirements are new and based upon NIST SP 800–172 Feb2021.

Steps Taken To Minimize Additional Cost of Credit

The DoD is not a ''covered agency'' under 5 U.S.C. 604.

E. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

Sections of this rule contain information collection requirements. As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), DoD has submitted information collection packages to the Office of Management and Budget for review and approval. The titles and proposed OMB control numbers are as follows.

- Cybersecurity Maturity Model Certification (CMMC) Enterprise Mission Assurance Support-Service (eMASS) Instantiation Information Collection (OMB control number 0704–0676).
- Cybersecurity Maturity Model Certification (CMMC) Program Reporting and Recordkeeping Requirements Information Collection (OMB Control Number 0704–0677).

In the proposed rule, DoD invited comments on these information collection requirements and the paperwork burden associated with this rule. Five comments were received on the information clearance packages that were not applicable to the information collection requirements; however, the comments were applicable to other aspects of the rule, and they are addressed in the comments section of this preamble. There were no changes to paperwork burden included in the proposed rule that published December 26, 2023 (88 FR 89058) based on public comments received. To review these collections—including all background materials—please visit at *https://www.reginfo.gov/public/do/PRAMain* and use the search function to enter either the title of the collection or the OMB Control Number.

F. Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This final rule will not have a substantial effect on State and local governments.

G. Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct compliance costs on one or more Indian Tribes, preempts Tribal law, or effects the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule will not have a substantial effect on Indian Tribal governments.

List of Subjects in 32 CFR Part 170

Certification, CMMC, CMMC Levels, CMMC Program, Contracts, Controlled unclassified information, Cybersecurity, Federal contract information, Government procurement, Incorporation by reference.

■ Accordingly, the Department of Defense adds 32 CFR part 170 to read as follows:

PART 170—CYBERSECURITY MATURITY MODEL CERTIFICATION (CMMC) PROGRAM

Subpart A—General Information

Sec.
170.1 Purpose.
170.2 Incorporation by reference.
170.3 Applicability.
170.4 Acronyms and definitions.
170.5 Policy.

Subpart B—Government Roles and Responsibilities

170.6 CMMC PMO.
170.7 DCMA DIBCAC.

Subpart C—CMMC Assessment and Certification Ecosystem

170.8 Accreditation Body.
170.9 CMMC Third-Party Assessment Organizations (C3PAOs).
170.10 CMMC Assessor and Instructor Certification Organization (CAICO).
170.11 CMMC Certified Assessor (CCA).
170.12 CMMC Instructor.
170.13 CMMC Certified Professional (CCP).

Subpart D—Key Elements of the CMMC Program

170.14 CMMC Model.
170.15 CMMC Level 1 self-assessment and affirmation requirements.
170.16 CMMC Level 2 self-assessment and affirmation requirements.
170.17 CMMC Level 2 certification assessment and affirmation requirements.
170.18 CMMC Level 3 certification assessment and affirmation requirements.
170.19 CMMC scoping.
170.20 Standards acceptance.
170.21 Plan of Action and Milestones requirements.
170.22 Affirmation.
170.23 Application to subcontractors.
170.24 CMMC Scoring Methodology.
Appendix A to Part 170—Guidance

Authority: 5 U.S.C. 301; Sec. 1648, Pub. L. 116–92, 133 Stat. 1198.

Subpart A—General Information.

§ 170.1 Purpose.

(a) This part describes the Cybersecurity Maturity Model Certification (CMMC) Program of the Department of Defense (DoD) and establishes requirements for defense contractors and subcontractors to implement prescribed cybersecurity standards for safeguarding Federal Contract Information (FCI) and Controlled Unclassified Information (CUI). This part (the CMMC Program) also establishes requirements for conducting an assessment of compliance with the applicable prescribed cybersecurity standard for contractor information systems that: process, store, or transmit FCI or CUI; provide security protections for systems which process, store, or transmit CUI; or

are not logically or physically isolated from systems which process, store, or transmit CUI.

(b) The CMMC Program provides DoD with a viable means of conducting the volume of assessments necessary to verify contractor and subcontractor implementation of required cybersecurity requirements.

(c) The CMMC Program is designed to ensure defense contractors are properly safeguarding FCI and CUI that is processed, stored, or transmitted on defense contractor information systems. FCI and CUI must be protected to meet evolving threats and safeguard nonpublic, unclassified information that supports and enables the warfighter. The CMMC Program provides a consistent methodology to assess a defense contractor's implementation of required cybersecurity requirements. The CMMC Program utilizes the security standards set forth in the 48 CFR 52.204–21; National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171, *Basic Safeguarding of Covered Contractor Information Systems,* Revision 2, February 2020 (includes updates as of January 28, 2021) (NIST SP 800–171 R2); and selected requirements from the NIST SP 800–172, *Enhanced Security Requirements for Protecting Controlled Unclassified Information: A Supplement to NIST Special Publication 800–171,* February 2021 (NIST SP 800–172 Feb2021), as applicable (see table 1 to § 170.14(c)(4) for requirements, see § 170.2 for availability of NIST publications).

(d) The CMMC Program balances the need to safeguard FCI and CUI and the requirement to share information appropriately with defense contractors in order to develop capabilities for the DoD. The CMMC Program is designed to ensure implementation of cybersecurity practices for defense contractors and to provide DoD with increased assurance that FCI and CUI information will be adequately safeguarded when residing on or transiting contractor information systems.

(e) The CMMC Program creates no right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

§ 170.2 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Material approved for incorporation by reference (IBR) is available for inspection at the Department of Defense (DoD) and at the National Archives and Records Administration (NARA). Contact DoD online: *https://DoDcio.defense.gov/CMMC/*; email: *osd.mc-alex.DoD-cio.mbx.cmmc-rule@mail.mil*; or phone: (202) 770–9100. For information on the availability of this material at NARA, visit: *www.archives.gov/federal-register/cfr/ibr-locations* or email: *fr.inspection@nara.gov*. The material may be obtained from the following sources:

(a) National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899; phone: (301) 975–8443; website: *https://csrc.nist.gov/publications/*.

(1) FIPS PUB 200, Minimum Security Requirements for Federal Information and Information Systems, March 2006 (FIPS PUB 200 Mar2006); IBR approved for § 170.4(b).

(2) FIPS PUB 201–3, Personal Identity Verification (PIV) of Federal Employees and Contractors, January 2022 (FIPS PUB 201–3 Jan2022); IBR approved for § 170.4(b).

(3) SP 800–37, Risk Management Framework for Information Systems and Organizations: A System Life Cycle Approach for Security and Privacy, Revision 2, December 2018 (NIST SP 800–37 R2); IBR approved for § 170.4(b).

(4) SP 800–39, Managing Information Security Risk: Organization, Mission, and Information System View, March 2011 (NIST SP 800–39 Mar2011); IBR approved for § 170.4(b).

(5) SP 800–53, Security and Privacy Controls for Information Systems and Organizations, Revision 5, September 2020 (includes updates as of December 10, 2020) (NIST SP 800–53 R5); IBR approved for § 170.4(b).

(6) SP 800–82r3, Guide to Operational Technology (OT) Security, September 2023 (NIST SP 800–82r3); IBR approved for § 170.4(b).

(7) SP 800–115, Technical Guide to Information Security Testing and Assessment, September 2008 (NIST SP 800–115 Sept2008); IBR approved for § 170.4(b).

(8) SP 800–160, Volume 2, Developing Cyber-Resilient Systems: A Systems Security Engineering Approach, Revision 1, December 2021 (NIST SP 800–160 V2R1); IBR approved for § 170.4(b).

(9) SP 800–171, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations, Revision 2, February 2020 (includes updates as of January 28, 2021), (NIST SP 800–171 R2); IBR approved for §§ 170.4(b) and 170.14(a) through (c).

(10) SP 800–171A, Assessing Security Requirements for Controlled Unclassified Information, June 2018 (NIST SP 800–171A Jun2018); IBR approved for §§ 170.11(a), 170.14(d), 170.15(c), 170.16(c), 170.17(c), and 170.18(c).

(11) SP 800–172, Enhanced Security Requirements for Protecting Controlled Unclassified Information: A Supplement to NIST Special Publication 800–171, February 2021 (NIST SP 800–172 Feb2021); IBR approved for §§ 170.4(b), 170.5(a), and 170.14(a) and (c).

(12) SP 800–172A, Assessing Enhanced Security Requirements for Controlled Unclassified Information, March 2022 (NIST SP 800–172A Mar2022); IBR approved for §§ 170.4(b), 170.14(d), and 170.18(c).

(b) International Organization for Standardization (ISO) Chemin de Blandonnet 8, CP 401—1214 Vernier, Geneva, Switzerland; phone: +41 22 749 01 11; website: *www.iso.org/popular-standards.html*.

(1) ISO/IEC 17011:2017(E), Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies, Second edition, November 2017 (ISO/IEC 17011:2017(E)); IBR approved for §§ 170.8(b)(3), 170.9(b)(13), and 170.10(b)(4).

(2) ISO/IEC 17020:2012(E), Conformity assessment—Requirement for the operation of various types of bodies performing inspection, Second edition, March 1, 2012 (ISO/IEC 17020:2012(E)); IBR approved for §§ 170.8(a), (b)(1), (b)(3) and 170.9(b)(2) and (b)(13).

(3) ISO/IEC 17024:2012(E), Conformity assessment—General requirements for bodies operating certification of persons, second edition, July 1, 2012 (ISO/IEC 17024:2012(E)); IBR approved for §§ 170.8(b)(2) and 170.10(a) and (b)(4), (7), and (8).

Note 1 to paragraph (b): The ISO/IEC standards incorporated by reference in this part may be viewed at no cost in ''read only'' format at *https://ibr.ansi.org*.

§ 170.3 Applicability.

(a) The requirements of this part apply to:

(1) All DoD contract and subcontract awardees that will process, store, or transmit information, in performance of the DoD contract, that meets the standards for FCI or CUI on contractor information systems; and,

(2) Private-sector businesses or other entities comprising the CMMC Assessment and Certification Ecosystem, as specified in subpart C of this part.

(b) The requirements of this part do not apply to Federal information systems operated by contractors or subcontractors on behalf of the Government.

(c) CMMC Program requirements apply to all DoD solicitations and contracts pursuant to which a defense contractor or subcontractor will process, store, or transmit FCI or CUI on unclassified contractor information systems, including those for the acquisition of commercial items (except those exclusively for COTS items) valued at greater than the micro-purchase threshold except under the following circumstances:

(1) The procurement occurs during Implementation Phase 1, 2, or 3 as described in paragraph (e) of this section, in which case CMMC Program requirements apply in accordance with the requirements for the relevant phase-in period; or

(2) Application of CMMC Program requirements to a procurement or class of procurements may be waived in advance of the solicitation at the discretion of DoD in accordance with all applicable policies, procedures, and approval requirements.

(d) DoD Program Managers or requiring activities are responsible for selecting the CMMC Status that will apply for a particular procurement or contract based upon the type of information, FCI or CUI, that will be processed on, stored on, or transmitted through a contractor information system. Application of the CMMC Status for subcontractors will be determined in accordance with § 170.23.

(e) DoD is utilizing a phased approach for the inclusion of CMMC Program requirements in solicitations and contracts. Implementation of CMMC Program requirements will occur over four (4) phases:

(1) *Phase 1.* Begins on the effective date of the complementary 48 CFR part 204 CMMC Acquisition final rule. DoD intends to include the requirement for CMMC Statuses of Level 1 (Self) or Level 2 (Self) for all applicable DoD solicitations and contracts as a condition of contract award. DoD may, at its discretion, include the requirement for CMMC Status of Level 1 (Self) or Level 2 (Self) for applicable DoD solicitations and contracts as a condition to exercise an option period on a contract awarded prior to the effective date. DoD may also, at its discretion, include the requirement for CMMC Status of Level 2 (C3PAO) in place of the Level 2 (Self) CMMC Status for applicable DoD solicitations and contracts.

(2) *Phase 2.* Begins one calendar year following the start date of Phase 1. In addition to Phase 1 requirements, DoD intends to include the requirement for CMMC Status of Level 2 (C3PAO) for applicable DoD solicitations and contracts as a condition of contract award. DoD may, at its discretion, delay the inclusion of requirement for CMMC Status of Level 2 (C3PAO) to an option period instead of as a condition of contract award. DoD may also, at its discretion, include the requirement for CMMC Status of Level 3 (DIBCAC) for applicable DoD solicitations and contracts.

(3) *Phase 3.* Begins one calendar year following the start date of Phase 2. In addition to Phase 1 and 2 requirements, DoD intends to include the requirement for CMMC Status of Level 2 (C3PAO) for all applicable DoD solicitations and contracts as a condition of contract award and as a condition to exercise an option period on a contract awarded after the effective date. DoD intends to include the requirement for CMMC Status of Level 3 (DIBCAC) for all applicable DoD solicitations and contracts as a condition of contract award. DoD may, at its discretion, delay the inclusion of requirement for CMMC Status of Level 3 (DIBCAC) to an option period instead of as a condition of contract award.

(4) *Phase 4, full implementation.* Begins one calendar year following the start date of Phase 3. DoD will include CMMC Program requirements in all applicable DoD solicitations and contracts including option periods on contracts awarded prior to the beginning of Phase 4.

§ 170.4 Acronyms and definitions.

(a) *Acronyms.* Unless otherwise noted, the following acronyms and their terms are for the purposes of this part.

AC—Access Control
APT—Advanced Persistent Threat
AT—Awareness and Training
C3PAO—CMMC Third-Party Assessment Organization
CA—Security Assessment
CAICO—CMMC Assessors and Instructors Certification Organization
CAGE—Commercial and Government Entity
CCA—CMMC-Certified Assessor
CCI—CMMC-Certified Instructor
CCP—CMMC-Certified Professional
CFR—Code of Federal Regulations
CIO—Chief Information Officer
CM—Configuration Management
CMMC—Cybersecurity Maturity Model Certification
CMMC PMO—CMMC Program Management Office
CNC—Computerized Numerical Control
CoPC—Code of Professional Conduct
CSP—Cloud Service Provider
CUI—Controlled Unclassified Information
DCMA—Defense Contract Management Agency
DD—Represents any two-character CMMC Domain acronym
DFARS—Defense Federal Acquisition Regulation Supplement
DIB—Defense Industrial Base
DIBCAC—DCMA's Defense Industrial Base Cybersecurity Assessment Center
DoD—Department of Defense
DoDI—Department of Defense Instruction
eMASS—Enterprise Mission Assurance Support Service
ESP—External Service Provider
FAR—Federal Acquisition Regulation
FCI—Federal Contract Information
FedRAMP—Federal Risk and Authorization Management Program
GFE—Government Furnished Equipment
IA—Identification and Authentication
ICS—Industrial Control System
IIoT—Industrial Internet of Things
IoT—Internet of Things
IR—Incident Response
IS—Information System
IEC—International Electrotechnical Commission
ISO/IEC—International Organization for Standardization/International Electrotechnical Commission
IT—Information Technology
L#—CMMC Level Number
MA—Maintenance
MP—Media Protection
MSSP—Managed Security Service Provider
NARA—National Archives and Records Administration
NAICS—North American Industry Classification System
NIST—National Institute of Standards and Technology
N/A—Not Applicable
ODP—Organization-Defined Parameter
OSA—Organization Seeking Assessment
OSC—Organization Seeking Certification
OT—Operational Technology
PI—Provisional Instructor
PIEE—Procurement Integrated Enterprise Environment
PII—Personally Identifiable Information
PLC—Programmable Logic Controller
POA&M—Plan of Action and Milestones
PRA—Paperwork Reduction Act
RM—Risk Management
SAM—System of Award Management
SC—System and Communications Protection
SCADA—Supervisory Control and Data Acquisition
SI—System and Information Integrity
SIEM—Security Information and Event Management

SP—Special Publication
SPD—Security Protection Data
SPRS—Supplier Performance Risk System
SSP—System Security Plan

(b) *Definitions.* Unless otherwise noted, these terms and their definitions are for the purposes of this part.

Access Control (AC) means the process of granting or denying specific requests to obtain and use information and related information processing services; and/or entry to specific physical facilities (*e.g.,* Federal buildings, military establishments, or border crossing entrances), as defined in FIPS PUB 201–3 Jan2002 (incorporated by reference, see § 170.2).

Accreditation means a status pursuant to which a CMMC Assessment and Certification Ecosystem member (person or organization), having met all criteria for the specific role they perform including required ISO/IEC accreditations, may act in that role as set forth in § 170.8 for the Accreditation Body and § 170.9 for C3PAOs. (CMMC-custom term)

Accreditation Body is defined in § 170.8 and means the one organization DoD contracts with to be responsible for authorizing and accrediting members of the CMMC Assessment and Certification Ecosystem, as required. The Accreditation Body must be approved by DoD. At any given point in time, there will be only one Accreditation Body for the DoD CMMC Program. (CMMC-custom term)

Advanced Persistent Threat (APT) means an adversary that possesses sophisticated levels of expertise and significant resources that allow it to create opportunities to achieve its objectives by using multiple attack vectors (*e.g.,* cyber, physical, and deception). These objectives typically include establishing and extending footholds within the information technology infrastructure of the targeted organizations for purposes of exfiltrating information, undermining or impeding critical aspects of a mission, program, or organization; or positioning itself to carry out these objectives in the future. The advanced persistent threat pursues its objectives repeatedly over an extended period-of-time, adapts to defenders' efforts to resist it, and is determined to maintain the level of interaction needed to execute its objectives, as is defined in NIST SP 800–39 Mar2011 (incorporated by reference, see § 170.2).

Affirming Official means the senior level representative from within each Organization Seeking Assessment (OSA) who is responsible for ensuring the OSA's compliance with the CMMC Program requirements and has the authority to affirm the OSA's continuing compliance with the specified security requirements for their respective organizations. (CMMC-custom term)

Assessment means the testing or evaluation of security controls to determine the extent to which the controls are implemented correctly, operating as intended, and producing the desired outcome with respect to meeting the security requirements for an information system or organization, as defined in §§ 170.15 through 170.18. (CMMC-custom term)

(i) *Level 1 self-assessment* is the term for the activity performed by an OSA to evaluate its own information system when seeking a CMMC Status of Level 1 (Self).

(ii) *Level 2 self-assessment* is the term for the activity performed by an OSA to evaluate its own information system when seeking a CMMC Status of Level 2 (Self).

(iii) *Level 2 certification assessment* is the term for the activity performed by a C3PAO to evaluate the information system of an OSC when seeking a CMMC Status of Level 2 (C3PAO).

(iv) *Level 3 certification assessment* is the term for the activity performed by the DCMA DIBCAC to evaluate the information system of an OSC when seeking a CMMC Status of Level 3 (DIBCAC).

(v) *POA&M closeout self-assessment* is the term for the activity performed by an OSA to evaluate only the NOT MET requirements that were identified with POA&M during the initial assessment, when seeking a CMMC Status of Final Level 2 (Self).

(vi) *POA&M closeout certification assessment* is the term for the activity performed by a C3PAO or DCMA DIBCAC to evaluate only the NOT MET requirements that were identified with POA&M during the initial assessment, when seeking a CMMC Status of Final Level 2 (C3PAO) or Final Level 3 (DIBCAC) respectively.

Assessment Findings Report means the final written assessment results by the third-party or government assessment team. The Assessment Findings Report is submitted to the OSC and to the DoD via CMMC eMASS. (CMMC-custom term)

Assessment objective means a set of determination statements that, taken together, expresses the desired outcome for the assessment of a security requirement. Successful implementation of the corresponding CMMC security requirement requires meeting all applicable assessment objectives defined in NIST SP 800–171A Jun2018 (incorporated by reference, see § 170.2) or NIST SP 800–172A Mar2022 (incorporated by reference, see § 170.2). (CMMC-custom term)

Assessment Team means participants in the Level 2 certification assessment (CMMC Certified Assessors and CMMC Certified Professionals) or the Level 3 certification assessment (DCMA DIBCAC assessors). This does not include the OSC participants preparing for or participating in the assessment. (CMMC-custom term)

Asset means an item of value to stakeholders. An asset may be tangible (*e.g.,* a physical item such as hardware, firmware, computing platform, network device, or other technology component) or intangible (*e.g.,* humans, data, information, software, capability, function, service, trademark, copyright, patent, intellectual property, image, or reputation). The value of an asset is determined by stakeholders in consideration of loss concerns across the entire system life cycle. Such concerns include but are not limited to business or mission concerns, as defined in NIST SP 800–160 V2R1 (incorporated by reference, see § 170.2).

Asset Categories means a grouping of assets that process, store or transmit information of similar designation, or provide security protection to those assets. (CMMC-custom term)

Authentication is defined in FIPS PUB 200 Mar2006 (incorporated by reference, see § 170.2).

Authorized means an interim status during which a CMMC Ecosystem member (person or organization), having met all criteria for the specific role they perform other than the required ISO/IEC accreditations, may act in that role for a specified time as set forth in § 170.8 for the Accreditation Body and § 170.9 for C3PAOs. (CMMC-custom term)

Capability means a combination of mutually reinforcing controls implemented by technical means, physical means, and procedural means. Such controls are typically selected to achieve a common information security or privacy purpose, as defined in NIST SP 800–37 R2 (incorporated by reference, see § 170.2).

Cloud Service Provider (CSP) means an external company that provides cloud services based on cloud computing. Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (*e.g.,* networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This definition is based on the definition for cloud

computing in NIST SP 800–145 Sept2011. (CMMC-custom term)

CMMC Assessment and Certification Ecosystem means the people and organizations described in subpart C of this part. This term is sometimes shortened to CMMC Ecosystem. (CMMC-custom term)

CMMC Assessment Scope means the set of all assets in the OSA's environment that will be assessed against CMMC security requirements. (CMMC-custom term)

CMMC Assessor and Instructor Certification Organization (CAICO) is defined in § 170.10 and means the organization responsible for training, testing, authorizing, certifying, and recertifying CMMC certified assessors, certified instructors, and certified professionals. (CMMC-custom term)

CMMC Instantiation of eMASS means a CMMC instance of the Enterprise Mission Assurance Support Service (eMASS), a government owned and operated system. (CMMC-custom term)

CMMC Security Requirements means the 15 Level 1 requirements listed in the 48 CFR 52.204–21(b)(1), the 110 Level 2 requirements from NIST SP 800–171 R2 (incorporated by reference, see § 170.2), and the 24 Level 3 requirements selected from NIST SP 800–172 Feb2021 (incorporated by reference, see § 170.2).

CMMC Status is the result of meeting or exceeding the minimum required score for the corresponding assessment. The CMMC Status of an OSA information system is officially stored in SPRS and additionally presented on a Certificate of CMMC Status, if the assessment was conducted by a C3PAO or DCMA DIBCAC. The potential CMMC Statuses are outlined in the paragraphs that follow. (CMMC-custom term)

(i) *Final Level 1 (Self)* is defined in § 170.15(a)(1) and (c)(1). (CMMC-custom term)

(ii) *Conditional Level 2 (Self)* is defined in § 170.16(a)(1)(ii). (CMMC-custom term)

(iii) *Final Level 2 (Self)* is defined in § 170.16(a)(1)(iii). (CMMC-custom term)

(iv) *Conditional Level 2 (C3PAO)* is defined in § 170.17(a)(1)(ii). (CMMC-custom term)

(v) *Final Level 2 (C3PAO)* is defined in § 170.17(a)(1)(iii). (CMMC-custom term)

(vi) *Conditional Level 3 (DIBCAC)* is defined in § 170.18(a)(1)(ii). (CMMC-custom term)

(vii) *Final Level 3 (DIBCAC)* is defined in § 170.18(a)(1)(iii). (CMMC-custom term)

CMMC Status Date means the date that the CMMC Status results are submitted to SPRS or the CMMC instantiation of eMASS, as appropriate. The date of the Conditional CMMC Status will remain as the CMMC Status Date after a successful POA&M closeout. A new date is not set for a Final that follows a Conditional. (CMMC-custom term)

CMMC Third-Party Assessment Organization (C3PAO) means an organization that has been authorized or accredited by the Accreditation Body to conduct Level 2 certification assessments and has the roles and responsibilities identified in § 170.9. (CMMC-custom term)

Contractor is defined in 48 CFR 3.502–1.

Contractor Risk Managed Assets are defined in table 3 to § 170.19(c)(1). (CMMC-custom term)

Controlled Unclassified Information (CUI) is defined in 32 CFR 2002.4(h).

Controlled Unclassified Information (CUI) Assets means assets that can process, store, or transmit CUI. (CMMC-custom term)

DCMA DIBCAC High Assessment means an assessment that is conducted by Government personnel in accordance with NIST SP 800–171A Jun2018 and leveraging specific guidance in the DoD Assessment Methodology that:

(i) Consists of:

(A) A review of a contractor's Basic Assessment;

(B) A thorough document review;

(C) Verification, examination, and demonstration of a contractor's system security plan to validate that NIST SP 800–171 R2 security requirements have been implemented as described in the contractor's system security plan; and

(D) Discussions with the contractor to obtain additional information or clarification, as needed; and

(ii) Results in a confidence level of ''High'' in the resulting score. (Source: 48 CFR 252.204–7020).

Defense Industrial Base (DIB) is defined in 32 CFR 236.2.

DoD Assessment Methodology (DoDAM) documents a standard methodology that enables a strategic assessment of a contractor's implementation of NIST SP 800–171 R2, a requirement for compliance with 48 CFR 252.204–7012. (Source: DoDAM Version 1.2.1)

Enduring Exception means a special circumstance or system where remediation and full compliance with CMMC *s*ecurity *r*equirements is not feasible. Examples include systems required to replicate the configuration of 'fielded' systems, medical devices, test equipment, OT, and IoT. No operational plan of action is required but the circumstance must be documented within a system security plan. Specialized Assets and GFE may be enduring exceptions. (CMMC-custom term)

Enterprise means an organization with a defined mission/goal and a defined boundary, using information systems to execute that mission, and with responsibility for managing its own risks and performance. An enterprise may consist of all or some of the following business aspects: acquisition, program management, financial management (*e.g.,* budgets), human resources, security, and information systems, information and mission management, as defined in NIST SP 800–53 R5 (incorporated by reference, see § 170.2).

External Service Provider (ESP) means external people, technology, or facilities that an organization utilizes for provision and management of IT and/or cybersecurity services on behalf of the organization. In the CMMC Program, CUI or Security Protection Data (*e.g.,* log data, configuration data), must be processed, stored, or transmitted on the ESP assets to be considered an ESP. (CMMC-custom term)

Federal Contract Information (FCI) is defined in 48 CFR 4.1901.

Government Furnished Equipment (GFE) has the same meaning as ''government-furnished property'' as defined in 48 CFR 45.101.

Industrial Control Systems (ICS) means a general term that encompasses several types of control systems, including supervisory control and data acquisition (SCADA) systems, distributed control systems (DCS), and other control system configurations that are often found in the industrial sectors and critical infrastructures, such as Programmable Logic Controllers (PLC). An ICS consists of combinations of control components (*e.g.,* electrical, mechanical, hydraulic, pneumatic) that act together to achieve an industrial objective (*e.g.,* manufacturing, transportation of matter or energy), as defined in NIST SP 800–82r3 (incorporated by reference, see § 170.2).

Information System (IS) is defined in NIST SP 800–171 R2 (incorporated by reference, see § 170.2).

Internet of Things (IoT) means the network of devices that contain the hardware, software, firmware, and actuators which allow the devices to connect, interact, and freely exchange data and information, as defined in NIST SP 800–172A Mar2022 (incorporated by reference, see § 170.2).

Operational plan of action as used in security requirement CA.L2–3.12.2, means the formal artifact which identifies temporary vulnerabilities and temporary deficiencies (*e.g.,* necessary information system updates, patches, or

reconfiguration as threats evolve) in implementation of requirements and documents how they will be mitigated, corrected, or eliminated. The OSA defines the format (*e.g.,* document, spreadsheet, database) and specific content of its operational plan of action. An operational plan of action does not identify a timeline for remediation and is not the same as a POA&M, which is associated with an assessment for remediation of deficiencies that must be completed within 180 days. (CMMC-custom term)

Operational Technology (OT) means programmable systems or devices that interact with the physical environment (or manage devices that interact with the physical environment). These systems or devices detect or cause a direct change through the monitoring or control of devices, processes, and events. Examples include industrial control systems, building management systems, fire control systems, and physical access control mechanisms, as defined in NIST SP 800–160 V2R1 (incorporated by reference, see § 170.2).

Organization-defined means as determined by the OSA except as defined in the case of Organization-Defined Parameter (ODP). (CMMC-custom term)

Organization-Defined Parameters (ODPs) means selected enhanced security requirements contain selection and assignment operations to give organizations flexibility in defining variable parts of those requirements, as defined in NIST SP 800–172A Mar2022 (incorporated by reference, see § 170.2).

Note 1 to ODPs: The organization defining the parameters is the DoD.

Organization Seeking Assessment (OSA) means the entity seeking to undergo a self-assessment or certification assessment for a given information system for the purposes of achieving and maintaining any CMMC Status. The term OSA includes all Organizations Seeking Certification (OSCs). (CMMC-custom term)

Organization Seeking Certification (OSC) means the entity seeking to undergo a certification assessment for a given information system for the purposes of achieving and maintaining the CMMC Status of Level 2 (C3PAO) or Level 3 (DIBCAC). An OSC is also an OSA. (CMMC-custom term)

Out-of-Scope Assets means assets that cannot process, store, or transmit CUI because they are physically or logically separated from information systems that do process, store, or transmit CUI, or are inherently unable to do so; except for assets that provide security protection for a CUI asset (see the definition for *Security Protection Assets*). (CMMC-custom term)

Periodically means occurring at a regular interval as determined by the OSA that may not exceed one year. (CMMC-custom term)

Personally Identifiable Information means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual, as defined in NIST SP 800–53 R5 (incorporated by reference, see § 170.2).

Plan of Action and Milestones (POA&M) means a document that identifies tasks needing to be accomplished. It details resources required to accomplish the elements of the plan, any milestones in meeting the tasks, and scheduled completion dates for the milestones, as defined in NIST SP 800–115 Sept2008 (incorporated by reference, see § 170.2).

Prime Contractor is defined in 48 CFR 3.502–1.

Process, store, or transmit means data can be used by an asset (*e.g.,* accessed, entered, edited, generated, manipulated, or printed); data is inactive or at rest on an asset (*e.g.,* located on electronic media, in system component memory, or in physical format such as paper documents); or data is being transferred from one asset to another asset (*e.g.,* data in transit using physical or digital transport methods). (CMMC-custom term)

Restricted Information Systems means systems (and associated IT components comprising the system) that are configured based on government requirements (*e.g.,* connected to something that was required to support a functional requirement) and are used to support a contract (*e.g.,* fielded systems, obsolete systems, and product deliverable replicas). (CMMC-custom term)

Risk means a measure of the extent to which an entity is threatened by a potential circumstance or event, and is typically a function of:

(i) The adverse impacts that would arise if the circumstance or event occurs; and

(ii) The likelihood of occurrence, as defined in NIST SP 800–53 R5 (incorporated by reference, see § 170.2).

Risk Assessment means the process of identifying risks to organizational operations (including mission, functions, image, reputation), organizational assets, individuals, other organizations, and the Nation, resulting from the operation of a system. Risk Assessment is part of risk management, incorporates threat and vulnerability analyses, and considers mitigations provided by security controls planned or in place. Synonymous with risk analysis, as defined in NIST SP 800–39 Mar2011 (incorporated by reference, see § 170.2).

Security Protection Assets (SPA) means assets providing security functions or capabilities for the OSA's CMMC Assessment Scope. (CMMC-custom term)

Security Protection Data (SPD) means data stored or processed by Security Protection Assets (SPA) that are used to protect an OSC's assessed environment. SPD is security relevant information and includes but is not limited to: configuration data required to operate an SPA, log files generated by or ingested by an SPA, data related to the configuration or vulnerability status of in-scope assets, and passwords that grant access to the in-scope environment. (CMMC-custom term)

Specialized Assets means types of assets considered specialized assets for CMMC: Government Furnished Equipment, Internet of Things (IoT) or Industrial Internet of Things (IIoT), Operational Technology (OT), Restricted Information Systems, and Test Equipment. (CMMC-custom term)

Subcontractor is defined in 48 CFR 3.502–1.

Supervisory Control and Data Acquisition (SCADA) means a generic name for a computerized system that is capable of gathering and processing data and applying operational controls over long distances. Typical uses include power transmission and distribution and pipeline systems. SCADA was designed for the unique communication challenges (*e.g.,* delays, data integrity) posed by the various media that must be used, such as phone lines, microwave, and satellite. Usually shared rather than dedicated, as defined in NIST SP 800–82r3 (incorporated by reference, see § 170.2).

System Security Plan (SSP) means the formal document that provides an overview of the security requirements for an information system or an information security program and describes the security controls in place or planned for meeting those requirements. The system security plan describes the system components that are included within the system, the environment in which the system operates, how the security requirements are implemented, and the relationships with or connections to other systems, as defined in NIST SP 800–53 R5 (incorporated by reference, see § 170.2).

Temporary deficiency means a condition where remediation of a discovered deficiency is feasible, and a known fix is available or is in process.

The deficiency must be documented in an operational plan of action. A temporary deficiency is not based on an 'in progress' initial implementation of a CMMC security requirement but arises after implementation. A temporary deficiency may apply during the initial implementation of a security requirement if, during roll-out, specific issues with a very limited subset of equipment is discovered that must be separately addressed. There is no standard duration for which a temporary deficiency may be active. For example, FIPS-validated cryptography that requires a patch and the patched version is no longer the validated version may be a temporary deficiency. (CMMC-custom term)

Test Equipment means hardware and/or associated IT components used in the testing of products, system components, and contract deliverables. (CMMC-custom term)

User means an individual, or (system) process acting on behalf of an individual, authorized to access a system, as defined in NIST SP 800–53 R5 (incorporated by reference, see § 170.2).

§ 170.5 Policy.

(a) Protection of FCI and CUI on contractor information systems is of paramount importance to the DoD and can directly impact its ability to successfully conduct essential missions and functions. It is DoD policy that defense contractors and subcontractors shall be required to safeguard FCI and CUI that is processed, stored, or transmitted on contractor information systems by applying specified security requirements. In addition, defense contractors and subcontractors may be required to implement additional safeguards defined in NIST SP 800–172 Feb2021 (incorporated by reference, see § 170.2), implementing DoD specified parameters to meet CMMC Level 3 security requirements (see table 1 to § 170.14(c)(4)). These additional requirements are necessary to protect CUI being processed, stored, or transmitted in contractor information systems, when designated by a requirement for CMMC Status of Level 3 (DIBCAC) as defined by a DoD program manager or requiring activity. In general, the Department will identify a requirement for a CMMC Status of Level 3 (DIBCAC) for solicitations and resulting contracts supporting its most critical programs and technologies.

(b) Program managers and requiring activities are responsible for identifying the CMMC Status that will apply to a procurement. Selection of the applicable CMMC Status will be based on factors including but not limited to:

(1) Criticality of the associated mission capability;

(2) Type of acquisition program or technology;

(3) Threat of loss of the FCI or CUI to be shared or generated in relation to the effort;

(4) Impacts from exploitation of information security deficiencies; and

(5) Other relevant policies and factors, including Milestone Decision Authority guidance.

(c) In accordance with the implementation plan described in § 170.3, CMMC Program requirements will apply to new DoD solicitations and contracts, and shall flow down to subcontractors who will process, store, or transmit FCI or CUI in performance of the subcontract, as described in § 170.23.

(d) In very limited circumstances, and in accordance with all applicable policies, procedures, and requirements, a Service Acquisition Executive or Component Acquisition Executive in the DoD, or as delegated, may elect to waive inclusion of CMMC Program requirements in a solicitation or contract. In such cases, contractors and subcontractors will remain obligated to comply with all applicable cybersecurity and information security requirements.

(e) The CMMC Program does not alter any separately applicable requirements to protect FCI or CUI, including those requirements in accordance with 48 CFR 52.204–21, *Basic Safeguarding of Covered Contractor Information Systems,* or covered defense information in accordance with 48 CFR 252.204–7012, *Safeguarding Covered Defense Information and Cyber Incident Reporting,* or any other applicable information protection requirements. The CMMC Program provides a means of verifying implementation of the security requirements set forth in 48 CFR 52.204–21, NIST SP 800–171 R2, and NIST SP 800–172 Feb2021, as applicable.

Subpart B—Government Roles and Responsibilities.

§ 170.6 CMMC PMO.

(a) The Office of the Department of Defense Chief Information Officer (DoD CIO) Office of the Deputy CIO for Cybersecurity (DoD CIO(CS)) provides oversight of the CMMC Program and is responsible for establishing CMMC assessment, accreditation, and training requirements as well as developing and updating CMMC Program policies and implementing guidance.

(b) The CMMC PMO is responsible for monitoring the CMMC AB's performance of roles assigned in this rule and acting as necessary to address problems pertaining to effective performance.

(c) The CMMC PMO retains, on behalf of the DoD CIO(CS), the prerogative to review decisions of the CMMC Accreditation Body as part of its oversight of the CMMC program and evaluate any alleged conflicts of interest purported to influence the CMMC Accreditation Body's objectivity.

(d) The CMMC PMO is responsible for sponsoring necessary DCSA activities including FOCI risk assessment and Tier 3 security background investigations for the CMMC Ecosystem members as specified in §§ 170.8(b)(4) and (5), 170.9(b)(3) through (5), 170.11(b)(3) and (4), and 170.13(b)(3) and (4).

(e) The CMMC PMO is responsible for investigating and acting upon indications that an active CMMC Status has been called into question. Indications that may trigger investigative evaluations include, but are not limited to, reports from the CMMC Accreditation Body, a C3PAO, or anyone knowledgeable of the security processes and activities of the OSA. Investigative evaluations include, but are not limited to, reviewing pertinent assessment information, and exercising the right to conduct a DCMA DIBCAC assessment of the OSA, as provided for under the 48 CFR 252.204–7020.

(f) If a subsequent DCMA DIBCAC assessment shows that adherence to the provisions of this rule and the required CMMC Status have not been achieved or maintained, the DIBCAC results will take precedence over any pre-existing CMMC Status recorded in SPRS, or its successor capability. The DoD will update SPRS to reflect that the OSA is out of compliance and does not meet DoD CMMC requirements. If the OSA is working on an active contract requiring CMMC compliance, then standard contractual remedies will apply.

§ 170.7 DCMA DIBCAC.

(a) DCMA DIBCAC assessors in support of the CMMC Program will:

(1) Complete CMMC Level 2 and Level 3 training.

(2) Conduct Level 3 certification assessments and upload assessment results into the CMMC instantiation of eMASS, or its successor capability.

(3) Issue Certificates of CMMC Status resulting from Level 3 certification assessments.

(4) Conduct Level 2 certification assessments of the Accreditation Body and prospective C3PAOs' information

systems that process, store, and/or transmit CUI.

(5) Create and maintain a process for assessors to collect the list of assessment artifacts to include artifact names, their return value of the hashing algorithm, the hashing algorithm used, and upload that data into the CMMC instantiation of eMASS.

(6) As authorized and in accordance with all legal requirements, enter and track, OSC appeals and updated results arising from Level 3 certification assessment activities into the CMMC instantiation of eMASS.

(7) Retain all records in accordance with DCMA–MAN 4501–04.

(8) Conduct an assessment of the OSA, when requested by the CMMC PMO per §§ 170.6(e) and (f), as provided for under the 48 CFR 252.204–7019 and 48 CFR 252.204–7020.

(9) Identify assessments that meet the criteria in § 170.20 and verify that SPRS accurately reflects the CMMC Status.

(b) An OSC, the CMMC AB, or a C3PAO may appeal the outcome of its DCMA DIBCAC conducted assessment within 21 days by submitting a written basis for appeal with the requirements in question for DCMA DIBCAC consideration. Appeals may be submitted for review by visiting *www.dcma.mil/DIBCAC* for contact information, and a DCMA DIBCAC Quality Assurance Review Team will provide a written response or request additional supporting documentation.

Subpart C—CMMC Assessment and Certification Ecosystem.

§ 170.8 Accreditation Body.

(a) *Roles and responsibilities.* The Accreditation Body is responsible for authorizing and ensuring the accreditation of CMMC Third-Party Assessment Organizations (C3PAOs) in accordance with ISO/IEC 17020:2012(E) (incorporated by reference, see § 170.2) and all applicable authorization and accreditation requirements set forth. The Accreditation Body is responsible for establishing the C3PAO authorization requirements and the C3PAO Accreditation Scheme and submitting both for approval by the CMMC PMO. At any given point in time, there will be only one Accreditation Body for the DoD CMMC Program.

(b) *Requirements.* The CMMC Accreditation Body shall:

(1) Be US-based and be and remain a member in good standing of the Inter-American Accreditation Cooperation (IAAC) and become an International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) signatory, with a signatory status scope of ISO/IEC 17020:2012(E) (incorporated by reference, see § 170.2).

(2) Be and remain a member in good standing of the International Accreditation Forum (IAF) with mutual recognition arrangement signatory status scope of ISO/IEC 17024:2012(E) (incorporated by reference, see § 170.2).

(3) Achieve and maintain full compliance with ISO/IEC 17011:2017(E) (incorporated by reference, see § 170.2) and complete a peer assessment by other ILAC signatories for competence in accrediting conformity assessment bodies to ISO/IEC 17020:2012(E) (incorporated by reference, see § 170.2), both within 24 months of DoD approval.

(i) Prior to achieving full compliance as set forth in this paragraph (b)(3), the Accreditation Body shall:

(A) Authorize C3PAOs who meet all requirements set forth in § 170.9 as well as administrative requirements as determined by the Accreditation Body to conduct Level 2 certification assessments and issue Certificates of CMMC Status to OSCs based on the assessment results.

(B) Require all C3PAOs to achieve and maintain the ISO/IEC 17020:2012(E) (incorporated by reference, see § 170.2) requirements within 27 months of authorization.

(ii) The Accreditation Body shall accredit C3PAOs, in accordance with ISO/IEC 17020:2012(E) (incorporated by reference, see § 170.2), who meet all requirements set forth in § 170.9 to conduct Level 2 certification assessments and issue Certificates of CMMC Status to OSCs based on the results.

(4) Ensure that the Accreditation Body's Board of Directors, professional staff, Information Technology (IT) staff, accreditation staff, and independent CMMC Certified Assessor staff complete a Tier 3 background investigation resulting in a determination of national security eligibility. This Tier 3 background investigation will not result in a security clearance and is not being executed for the purpose of government employment. The Tier 3 background investigation is initiated using the Standard Form (SF) 86 (*www.gsa.gov/reference/forms/questionnaire-for-national-security-positions*) and submitted by DoD CIO Security to Washington Headquarters Services (WHS) for coordination for processing by the Defense Counterintelligence and Security Agency (DCSA). These positions are designated as non-critical sensitive with a risk designation of ''Moderate Risk'' in accordance with 5 CFR 1400.201(b) and (d) and the investigative requirements of 5 CFR 731.106(c)(2).

(5) Comply with Foreign Ownership, Control or Influence (FOCI) by:

(i) Completing the Standard Form (SF) 328 (*www.gsa.gov/reference/forms/certificate-pertaining-to-foreign-interests*), *Certificate Pertaining to Foreign Interests,* and submit it directly to Defense Counterintelligence and Security Agency (DCSA) and undergo a National Security Review with regards to the protection of controlled unclassified information based on the factors identified in 32 CFR 117.11(b) using the procedures outlined in 32 CFR 117.11(c). The Accreditation Body must receive a non-disqualifying eligibility determination by the CMMC PMO to be recognized by the Department of Defense.

(ii) Reporting any change to the information provided on its SF 328 by resubmitting the SF 328 to DCSA within 15 business days of the change being effective. A disqualifying eligibility determination, based on the results of the change, will result in the Accreditation Body losing its authorization or accreditation under the CMMC Program.

(iii) Identifying all prospective C3PAOs to the CMMC PMO. The CMMC PMO will sponsor the prospective C3PAO for a FOCI risk assessment conducted by the DCSA using the SF 328 as part of the authorization and accreditation processes.

(iv) Notifying prospective C3PAOs of the CMMC PMO's eligibility determination resulting from the FOCI risk assessment.

(6) Obtain a Level 2 certification assessment in accordance with the procedures specified in § 170.17(a)(1) and (c). This assessment, conducted by DCMA DIBCAC, shall meet all requirements for a Final Level 2 (C3PAO) but will not result in a CMMC Status of Level 2 (C3PAO). The Level 2 certification assessment process must be performed every three years.

(7) Provide all documentation and records in English.

(8) Establish, maintain, and manage an up-to-date list of authorized and accredited C3PAOs on a single publicly accessible website and provide the list of these entities and their status to the DoD through submission in the CMMC instantiation of eMASS.

(9) Provide the CMMC PMO with current data on C3PAOs, including authorization and accreditation records and status in the CMMC instantiation of eMASS. This data shall include the dates associated with the authorization and accreditation of each C3PAO.

(10) Provide the DoD with information about aggregate statistics pertaining to operations of the CMMC Ecosystem to include the authorization and accreditation status of C3PAOs or other information as requested.

(11) Provide inputs for assessor supplemental guidance to the CMMC PMO. Participate and support coordination of these and other inputs through DoD-led Working Groups.

(12) Ensure that all information about individuals is encrypted and protected in all Accreditation Body information systems and databases.

(13) Provide all plans that are related to potential sources of revenue, to include but not limited to: fees, licensing, processes, membership, and/or partnerships to the Department's CMMC PMO.

(14) Ensure that the CMMC Assessors and Instructors Certification Organization (CAICO) is compliant with ISO/IEC 17024:2012(E)

(15) Ensure all training products, instruction, and testing materials are of high quality and subject to CAICO quality control policies and procedures, to include technical accuracy and alignment with all applicable legal, regulatory, and policy requirements.

(16) Develop and maintain an internal appeals process, as required by ISO/IEC 17020:2017(E), and render a final decision on all elevated appeals.

(17) Develop and maintain a comprehensive plan and schedule to comply with all ISO/IEC 17011:2017(E), and DoD requirements for Conflict of Interest, Code of Professional Conduct, and Ethics policies as set forth in the DoD contract. All policies shall apply to the Accreditation Body, and other individuals, entities, and groups within the CMMC Ecosystem who provide Level 2 certification assessments, CMMC instruction, CMMC training materials, or Certificates of CMMC Status on behalf of the Accreditation Body. All policies in this section must be approved by the CMMC PMO prior to effectivity in accordance with the following requirements.

(i) *Conflict of Interest (CoI) policy.* The CoI policy shall:

(A) Include a detailed risk mitigation plan for all potential conflicts of interest that may pose a risk to compliance with ISO/IEC 17011:2017(E).

(B) Require employees, Board directors, and members of any accreditation committees or appeals adjudication committees to disclose to the CMMC PMO, in writing, as soon as it is known or reasonably should be known, any actual, potential, or perceived conflict of interest with sufficient detail to allow for assessment.

(C) Require employees, Board directors, and members of any accreditation committees or appeals adjudication committees who leave the board or organization to enter a ''cooling off period'' of one (1) year whereby they are prohibited from working with the Accreditation Body or participating in any and all CMMC activities described in Subpart C.

(D) Require CMMC Ecosystem members to actively avoid participating in any activity, practice, or transaction that could result in an actual or perceived conflict of interest.

(E) Require CMMC Ecosystem members to disclose to Accreditation Body leadership, in writing, any actual or potential conflict of interest as soon as it is known, or reasonably should be known.

(ii) *Code of Professional Conduct (CoPC) policy.* The CoPC policy shall:

(A) Describe the performance standards by which the members of the CMMC Ecosystem will be held accountable and the procedures for addressing violations of those performance standards.

(B) Require the Accreditation Body to investigate and resolve any potential violations that are reported or are identified by the DoD.

(C) Require the Accreditation Body to inform the DoD in writing of new investigations within 72 hours.

(D) Require the Accreditation Body to report to the DoD in writing the outcome of completed investigations within 15 business days.

(E) Require CMMC Ecosystem members to represent themselves and their companies accurately; to include not misrepresenting any professional credentials or status, including CMMC authorization or CMMC Status, nor exaggerating the services that they or their company are capable or authorized to deliver.

(F) Require CMMC Ecosystem members to be honest and factual in all CMMC-related activities with colleagues, clients, trainees, and others with whom they interact.

(G) Prohibit CMMC Ecosystem members from participating in the Level 2 certification assessment process for an assessment in which they previously served as a consultant to prepare the organization for any CMMC assessment within 3 years.

(H) Require CMMC Ecosystem members to maintain the confidentiality of customer and government data to preclude unauthorized disclosure.

(I) Require CMMC Ecosystem members to report results and data from Level 2 certification assessments and training objectively, completely, clearly, and accurately.

(J) Prohibit CMMC Ecosystem members from cheating, assisting another in cheating, or allowing cheating on CMMC examinations.

(K) Require CMMC Ecosystem members to utilize official training content developed by a CMMC training organization approved by the CAICO in all CMMC certification courses.

(iii) *Ethics policy.* The Ethics policy shall:

(A) Require CMMC Ecosystem members to report to the Accreditation Body within 30 days of convictions, guilty pleas, or no contest pleas to crimes of fraud, larceny, embezzlement, misappropriation of funds, misrepresentation, perjury, false swearing, conspiracy to conceal, or a similar offense in any legal proceeding, civil or criminal, whether or not in connection with activities that relate to carrying out their role in the CMMC Ecosystem.

(B) Prohibit harassment or discrimination by CMMC Ecosystem members in all interactions with individuals whom they encounter in connection with their roles in the CMMC Ecosystem.

(C) Require CMMC Ecosystem members to have and maintain a satisfactory record of integrity and business ethics.

§ 170.9 CMMC Third-Party Assessment Organizations (C3PAOs).

(a) *Roles and responsibilities.* C3PAOs are organizations that are responsible for conducting Level 2 certification assessments and issuing Certificates of CMMC Status to OSCs based on the results. C3PAOs must be accredited or authorized by the Accreditation Body in accordance with the requirements set forth.

(b) *Requirements.* C3PAOs shall:

(1) Obtain authorization or accreditation from the Accreditation Body in accordance with § 170.8(b)(3)(i) and (ii).

(2) Comply with the Accreditation Body policies for Conflict of Interest, Code of Professional Conduct, and Ethics set forth in § 170.8(b)(17); and achieve and maintain compliance with ISO/IEC 17020:2012(E) (incorporated by reference, see § 170.2) within 27 months of authorization.

(3) Require all C3PAO company personnel participating in the Level 2 certification assessment process to complete a Tier 3 background investigation resulting in a determination of national security eligibility. This includes the CMMC Assessment Team and the quality

assurance individual. This Tier 3 background investigation will not result in a security clearance and is not being executed for the purpose of government employment. The Tier 3 background investigation is initiated using the Standard Form (SF) 86 (*www.gsa.gov/reference/forms/questionnaire-for-national-security-positions*). These positions are designated as non-critical sensitive with a risk designation of ''Moderate Risk'' in accordance with 5 CFR 1400.201(b) and (d) and the investigative requirements of 5 CFR 731.106(c)(2).

(4) Require all C3PAO company personnel participating in the Level 2 certification assessment process who are not eligible to obtain a Tier 3 background investigation to meet the equivalent of a favorably adjudicated Tier 3 background investigation. DoD will determine the Tier 3 background investigation equivalence for use with the CMMC Program only.

(5) Comply with Foreign Ownership, Control or Influence (FOCI) by:

(i) Completing and submitting Standard Form (SF) 328 (*www.gsa.gov/reference/forms/certificate-pertaining-to-foreign-interests*), *Certificate Pertaining to Foreign Interests,* upon request from DCSA and undergo a National Security Review with regards to the protection of controlled unclassified information based on the factors identified in 32 CFR 117.11(b) using the procedures outlined in 32 CFR 117.11(c).

(ii) Receiving a non-disqualifying eligibility determination from the CMMC PMO resulting from the FOCI risk assessment in order to proceed to a DCMA DIBCAC CMMC Level 2 assessment, as part of the authorization and accreditation process set forth in paragraph (b)(6) of this section.

(iii) Reporting any change to the information provided on its SF 328 by resubmitting the SF 328 to DCSA within 15 business days of the change being effective. A disqualifying eligibility determination, based on the results of the change, will result in the C3PAO losing its authorization or accreditation.

(6) Undergo a Level 2 certification assessment meeting all requirements for a Final Level 2 (C3PAO) in accordance with the procedures specified in § 170.17(a)(1) and (c), with the following exceptions:

(i) The assessment will be conducted by DCMA DIBCAC.

(ii) The assessment will not result in a CMMC Status of Level 2 (C3PAO) nor receive a Certificate of CMMC Status.

(7) Provide all documentation and records in English.

(8) Submit pre-assessment and planning material, final assessment reports, and CMMC certificates of assessment into the CMMC instantiation of eMASS.

(9) Unless disposition is otherwise authorized by the CMMC PMO, maintain all assessment related records for a period of six (6) years. Such records include any materials generated by the C3PAO in the course of an assessment, any working papers generated from Level 2 certification assessments; and materials relating to monitoring, education, training, technical knowledge, skills, experience, and authorization of all personnel involved in assessment activities; contractual agreements with OSCs; and organizations for whom consulting services were provided.

(10) Provide any requested audit information, including any out-of-cycle from ISO/IEC 17020:2012(E) requirements, to the Accreditation Body.

(11) Ensure that all personally identifiable information (PII) is encrypted and protected in all C3PAO information systems and databases.

(12) Meet the requirements for Assessment Team composition. An Assessment Team must include at least two people: a Lead CCA, as defined in § 170.11(b)(10), and at least one other CCA. Additional CCAs and CCPs may also participate on an Assessment Team.

(13) Implement a quality assurance function that ensures the accuracy and completeness of assessment data prior to upload into the CMMC instantiation of eMASS. Any individual fulfilling the quality assurance function must be a CCA and cannot be a member of an Assessment Team for which they are performing a quality assurance role. A quality assurance individual shall manage the C3PAO's quality assurance reviews as defined in paragraph (b)(14) of this section and the appeals process as required by paragraphs (b)(19) and (20) of this section and in accordance with ISO/IEC 17020:2012(E) (incorporated by reference, see § 170.2) and ISO/IEC 17011:2017(E) (incorporated by reference, see § 170.2).

(14) Conduct quality assurance reviews for each assessment, including observations of the Assessment Team's conduct and management of CMMC assessment processes.

(15) Ensure that all Level 2 certification assessment activities are performed on the information system within the CMMC Assessment Scope.

(16) Maintain all facilities, personnel, and equipment involved in CMMC activities that are in scope of their Level 2 certification assessment and comply with all security requirements and procedures as prescribed by the Accreditation Body.

(17) Ensure that all assessment data and information uploaded into the CMMC instantiation of eMASS assessment data is compliant with the CMMC assessment data standard as set forth in eMASS CMMC Assessment Import Templates on the CMMC eMASS website: *https://cmmc.emass.apps.mil*. This system is accessible only to authorized users.

(18) Issue Certificates of CMMC Status to OSCs in accordance with the Level 2 certification assessment requirements set forth in § 170.17, that include, at a minimum, all industry CAGE codes associated with the information systems addressed by the CMMC Assessment Scope, the C3PAO name, assessment unique identifier, the OSC name, and the CMMC Status date and level.

(19) Address all OSC appeals arising from Level 2 certification assessment activities. If the OSC or C3PAO is not satisfied with the result of the appeal either the OSC or the C3PAO can elevate the matter to the Accreditation Body for final determination.

(20) Submit assessment appeals, review records, and decision results of assessment appeals to DoD using the CMMC instantiation of eMASS.

§ 170.10 CMMC Assessor and Instructor Certification Organization (CAICO).

(a) *Roles and responsibilities.* The CAICO is responsible for training, testing, authorizing, certifying, and recertifying CMMC assessors, instructors, and related professionals. Only the CAICO may make decisions relating to examination certifications, including the granting, maintaining, recertifying, expanding, and reducing the scope of certification, and suspending or withdrawing certification in accordance with current ISO/IEC 17024:2012(E) (incorporated by reference, see § 170.2). At any given point in time, there will be only one CAICO for the DoD CMMC Program.

(b) *Requirements.* The CAICO shall:

(1) Comply with the Accreditation Body policies for Conflict of Interest, Code of Professional Conduct, and Ethics set forth in § 170.8(b)(17); and achieve and maintain ISO/IEC 17024(E) accreditation within 12 months of December 16, 2024.

(2) Provide all documentation and records in English.

(3) Train, test, and designate PIs in accordance with the requirements of this section. Train, test, certify, and recertify CCPs, CCAs, and CCIs in accordance with the requirements of this section.

(4) Ensure the instructor and assessor certification examinations are certified under ISO/IEC 17024:2012(E) (incorporated by reference, see § 170.2), by a recognized US-based accreditor who is not a member of the CMMC Accreditation Body. The US-based accreditor must be a signatory to International Laboratory Accreditation Cooperation (ILAC) or relevant International Accreditation Forum (IAF) Mutual Recognition Arrangement (MRA) and must operate in accordance with ISO/IEC 17011:2017(E) (incorporated by reference, see § 170.2).

(5) Establish quality control policies and procedures for the generation of training products, instruction, and testing materials.

(6) Oversee development, administration, and management pertaining to the quality of training and examination materials for CMMC assessor and instructor certification and recertification.

(7) Establish and publish an authorization and certification appeals process to receive, evaluate, and make decisions on complaints and appeals in accordance with ISO/IEC 17024:2012(E) (incorporated by reference, see § 170.2).

(8) Address all appeals arising from the CCA, CCI, and CCP authorizations and certifications process through use of internal processes in accordance with ISO/IEC 17024:2012(E) (incorporated by reference, see § 170.2).

(9) Maintain records for a period of six (6) years of all procedures, processes, and actions related to fulfillment of the requirements set forth in this section and provide the Accreditation Body access to those records.

(10) Provide the Accreditation Body information about the authorization and accreditation status of assessors, instructors, training community, and publishing partners.

(11) Ensure separation of duties between individuals involved in testing activities, training activities, and certification activities.

(12) Safeguard and require any CAICO training support service providers, as applicable, to safeguard the confidentiality of applicant, candidate, and certificate-holder information and ensure the overall security of the certification process.

(13) Ensure that all PII is encrypted and protected in all CAICO information systems and databases and those of any CAICO training support service providers.

(14) Ensure the security of assessor and instructor examinations and the fair and credible administration of examinations.

(15) Neither disclose nor allow any CAICO training support service providers, as applicable, to disclose CMMC data or metrics related to authorization or certification activities to any entity other than the Accreditation Body and DoD, except as required by law.

(16) Require retraining and redesignation of PIs upon significant change to DoD's CMMC Program requirements. Require retraining and recertification of CCPs, CCAs, and CCIs upon significant change to DoD's CMMC Program requirements, as determined by the DoD or the CAICO.

(17) Require CMMC Ecosystem members to report to the CAICO within 30 days of convictions, guilty pleas, or no contest pleas to crimes of fraud, larceny, embezzlement, misappropriation of funds, misrepresentation, perjury, false swearing, conspiracy to conceal, or a similar offense in any legal proceeding, civil or criminal, whether or not in connection with activities that relate to carrying out their role in the CMMC Ecosystem.

§ 170.11 CMMC Certified Assessor (CCA).

(a) *Roles and responsibilities.* CCAs, in support of a C3PAO, conduct Level 2 certification assessments of OSCs in accordance with NIST SP 800–171A Jun2018 (incorporated by reference, see § 170.2), the assessment processes defined in § 170.17, and the scoping requirements defined in § 170.19(c). CCAs must meet all of the requirements set forth in paragraph (b) of this section. A CCA may conduct Level 2 certification assessments and participate on a C3PAO Assessment Team.

(b) *Requirements.* CCAs shall:

(1) Obtain and maintain certification from the CAICO in accordance with the requirements set forth in § 170.10. Certification is valid for 3 years from the date of issuance.

(2) Comply with the Accreditation Body policies for Conflict of Interest, Code of Professional Conduct, and Ethics set forth in § 170.8(b)(17).

(3) Complete a Tier 3 background investigation resulting in a determination of national security eligibility. This Tier 3 background investigation will not result in a security clearance and is not being executed for the purpose of government employment. The Tier 3 background investigation is initiated using the Standard Form (SF) 86 (*www.gsa.gov/reference/forms/questionnaire-for-national-security-positions*). These positions are designated as non-critical sensitive with a risk designation of ''Moderate Risk'' in accordance with 5 CFR 1400.201(b) and (d) and the investigative requirements of 5 CFR 731.106(c)(2).

(4) Meet the equivalent of a favorably adjudicated Tier 3 background investigation when not eligible for a Tier 3 background investigation. DoD will determine the Tier 3 background investigation equivalence for use with the CMMC Program only.

(5) Provide all documentation and records in English.

(6) Be a CCP who has at least 3 years of cybersecurity experience, at least 1 year of assessment or audit experience, and at least one foundational qualification, aligned to at least the Intermediate Proficiency Level of the DoD Cyberspace Workforce Framework's Security Control Assessor (612) Work Role, from DoD Manual 8140.03, *Cyberspace Workforce Qualification and Management Program* (*https://dodcio.defense.gov/Portals/0/Documents/Library/DoDM-8140-03.pdf*). Information on the Work Role 612 can be found at *https://public.cyber.mil/dcwf-work-role/security-control-assessor/*.

(7) Only use IT, cloud, cybersecurity services, and end-point devices provided by the authorized/accredited C3PAO that has been engaged to perform that OSA's Level 2 certification assessment and which has undergone a Level 2 certification assessment by DCMA DIBCAC (or higher) for all assessment activities. Individual assessors are prohibited from using any other IT, including IT that is personally owned, to include internal and external cloud services and end-point devices, to process, store, or transmit CMMC assessment reports or any other CMMC assessment-related information. The evaluation of assessment evidence within the OSC environment, using OSC tools, is permitted.

(8) Immediately notify the responsible C3PAO of any breach or potential breach of security to any CMMC-related assessment materials under the assessors' purview.

(9) Not share any information about an OSC obtained during CMMC pre-assessment and assessment activities with any person not involved with that specific assessment, except as otherwise required by law.

(10) Qualify as a Lead CCA by having at least 5 years of cybersecurity experience, 5 years of management experience, 3 years of assessment or audit experience, and at least one foundational qualification aligned to Advanced Proficiency Level of the DoD Cyberspace Workforce Framework's Security Control Assessor (612) Work Role, from DoD Manual 8140.03, *Cyberspace Workforce Qualification and*

Management Program (*https://dodcio.defense.gov/Portals/0/Documents/Library/DoDM-8140-03.pdf*). Information on the Work Role 612 can be found at *https://public.cyber.mil/dcwf-work-role/security-control-assessor/.*

§ 170.12 CMMC Instructor.

(a) *CMMC Provisional Instructor (PI) roles and responsibilities.* A CMMC Provisional Instructor (PI) teaches CCA and CCP candidates during the transitional period that ends 18 months after December 16, 2024. A PI is trained, tested, and designated to perform CMMC instructional duties by the CAICO to teach CCP and CCA candidates. PIs are designated by the CAICO after successful completion of the PI training and testing requirements set forth by the CAICO. A PI with a valid CCP certification may instruct CCP candidates, while a PI with a valid CCA certification may instruct CCP and CCA candidates. PIs are required to meet requirements in (c) of this section.

(b) *CMMC Certified Instructor (CCI) roles and responsibilities.* A CMMC Certified Instructor (CCI) teaches CCP, CCA, and CCI candidates and performs CMMC instructional duties. Candidate CCIs are certified by the CAICO after successful completion of the CCI training and testing requirements. A CCI is required to obtain and maintain assessor and instructor certifications from the CAICO in accordance with the requirements set forth in § 170.10 and in paragraph (c) of this section. A CCI with a valid CCP certification may instruct CCP candidates, while a CCI with a valid CCA certification may instruct CCP, CCA, and CCI candidates. Certifications are valid for 3 years from the date of issuance. CCIs are required to meet requirements in paragraph (c) of this section.

(c) *Requirements.* CMMC Instructors shall:

(1) Obtain and maintain instructor designation or certification, as appropriate, from the CAICO in accordance with the requirements set forth in § 170.10.

(2) Obtain and maintain CCP or CCA certification to deliver CCP training.

(3) Obtain and maintain a CCA certification to deliver CCA training.

(4) Comply with the Accreditation Body policies for Conflict of Interest, Code of Professional Conduct, and Ethics set forth in § 170.8(b)(17).

(5) Provide all documentation and records in English.

(6) Provide the Accreditation Body and the CAICO annually with accurate information detailing their qualifications, training experience, professional affiliations, and certifications, and, upon reasonable request, submit documentation verifying this information.

(7) Not provide CMMC consulting services while serving as a CMMC instructor; however, subject to the Code of Professional Conduct and Conflict of Interest policies, can serve on an assessment team.

(8) Not participate in the development of exam objectives and/or exam content or act as an exam proctor while at the same time serving as a CCI.

(9) Keep confidential all information obtained or created during the performance of CMMC training activities, including trainee records, except as required by law.

(10) Not disclose any CMMC-related data or metrics that is PII, FCI, or CUI to anyone without prior coordination with and approval from DoD.

(11) Notify the Accreditation Body or the CAICO if required by law or authorized by contractual commitments to release confidential information.

(12) Not share with anyone any CMMC training-related information not previously publicly disclosed.

§ 170.13 CMMC Certified Professional (CCP).

(a) *Roles and responsibilities.* A CMMC Certified Professional (CCP) completes rigorous training on CMMC and the assessment process to provide advice, consulting, and recommendations to their OSA clients. Candidate CCPs are certified by the CAICO after successful completion of the CCP training and testing requirements set forth in paragraph (b) of this section. CCPs are eligible to become CMMC Certified Assessors and can participate as a CCP on Level 2 certification assessments with CCA oversight where the CCA makes all final determinations.

(b) *Requirements.* CCPs shall:

(1) Obtain and maintain certification from the CAICO in accordance with the requirements set forth in § 170.10. Certification is valid for 3 years from the date of issuance.

(2) Comply with the Accreditation Body policies for Conflict of Interest, Code of Professional Conduct, and Ethics as set forth in § 170.8(b)(17).

(3) Complete a Tier 3 background investigation resulting in a determination of national security eligibility. This Tier 3 background investigation will not result in a security clearance and is not being executed for the purpose of government employment. The Tier 3 background investigation is initiated using the Standard Form (SF) 86 (*www.gsa.gov/reference/forms/questionnaire-for-national-security-positions*). These positions are designated as non-critical sensitive with a risk designation of ''Moderate Risk'' in accordance with 5 CFR 1400.201(b) and (d) and the investigative requirements of 5 CFR 731.106(c)(2).

(4) Meet the equivalent of a favorably adjudicated Tier 3 background investigation when not eligible to obtain a Tier 3 background investigation. DoD will determine the Tier 3 background investigation equivalence for use with the CMMC Program only.

(5) Provide all documentation and records in English.

(6) Not share any information about an OSC obtained during CMMC pre-assessment and assessment activities with any person not involved with that specific assessment, except as otherwise required by law.

Subpart D—Key Elements of the CMMC Program

§ 170.14 CMMC Model.

(a) *Overview.* The CMMC Model incorporates the security requirements from:

(1) 48 CFR 52.204–21, *Basic Safeguarding of Covered Contractor Information Systems;*

(2) NIST SP 800–171 R2, *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations* (incorporated by reference, see § 170.2); and

(3) Selected security requirements from NIST SP 800–172 Feb2021, *Enhanced Security Requirements for Protecting Controlled Unclassified Information: A Supplement to NIST Special Publication 800–171* (incorporated by reference, see § 170.2).

(b) *CMMC domains.* The CMMC Model consists of domains that map to the Security Requirement Families defined in NIST SP 800–171 R2 (incorporated by reference, see § 170.2).

(c) *CMMC level requirements.* CMMC Levels 1–3 utilize the safeguarding requirements and security requirements specified in 48 CFR 52.204–21 (for Level 1), NIST SP 800–171 R2 (incorporated by reference, see § 170.2) (for Level 2), and selected security requirements from NIST SP 800–172 Feb2021 (incorporated by reference, see § 170.2) (for Level 3). This paragraph discusses the numbering scheme and the security requirements for each level.

(1) *Numbering.* Each security requirement has an identification number in the format—DD.L#-REQ—where:

(i) DD is the two-letter domain abbreviation;

(ii) L# is the CMMC level number; and

(iii) REQ is the 48 CFR 52.204–21 paragraph number, NIST SP 800–171 R2 requirement number, or NIST SP 800–172 Feb2021 requirement number.

(2) *CMMC Level 1 security requirements.* The security requirements in CMMC Level 1 are those set forth in 48 CFR 52.204–21(b)(1)(i) through (xv).

(3) *CMMC Level 2 security requirements.* The security requirements in CMMC Level 2 are identical to the requirements in NIST SP 800–171 R2.

(4) *CMMC Level 3 security requirements.* The security requirements in CMMC Level 3 are selected from NIST SP 800–172 Feb2021, and where applicable, Organization-Defined Parameters (ODPs) are assigned. Table 1 to this paragraph identifies the selected requirements and applicable ODPs that represent the CMMC Level 3 security requirements. ODPs for the NIST SP 800–172 Feb2021 requirements are italicized, where applicable:

TABLE 1 TO § 170.14(c)(4)

Security requirement No.*	CMMC Level 3 security requirements (selected NIST SP 800–172 Feb2021 security requirement with DoD ODPs italicized)
(i) AC.L3–3.1.2e	Restrict access to systems and system components to only those information resources that are owned, provisioned, or issued by the organization.
(ii) AC.L3–3.1.3e	Employ *secure information transfer solutions* to control information flows between security domains on connected systems.
(iii) AT.L3–3.2.1e	Provide awareness training *upon initial hire, following a significant cyber event, and at least annually,* focused on recognizing and responding to threats from social engineering, advanced persistent threat actors, breaches, and suspicious behaviors; update the training *at least annually* or when there are significant changes to the threat.
(iv) AT.L3–3.2.2e	Include practical exercises in awareness training for *all users, tailored by roles, to include general users, users with specialized roles, and privileged users,* that are aligned with current threat scenarios and provide feedback to individuals involved in the training and their supervisors.
(v) CM.L3–3.4.1e	Establish and maintain an authoritative source and repository to provide a trusted source and accountability for approved and implemented system components.
(vi) CM.L3–3.4.2e	Employ automated mechanisms to detect misconfigured or unauthorized system components; after detection, *remove the components or place the components in a quarantine or remediation network* to facilitate patching, re-configuration, or other mitigations.
(vii) CM.L3–3.4.3e	Employ automated discovery and management tools to maintain an up-to-date, complete, accurate, and readily available inventory of system components.
(viii) IA.L3–3.5.1e	Identify and authenticate *systems and system components, where possible,* before establishing a network connection using bidirectional authentication that is cryptographically based and replay resistant.
(ix) IA.L3–3.5.3e	Employ automated or manual/procedural mechanisms to prohibit system components from connecting to organizational systems unless the components are known, authenticated, in a properly configured state, or in a trust profile.
(x) IR.L3–3.6.1e	Establish and maintain a security operations center capability that operates *24/7, with allowance for remote/on-call staff.*
(xi) IR.L3–3.6.2e	Establish and maintain a cyber-incident response team that can be deployed by the organization within *24 hours.*
(xii) PS.L3–3.9.2e	Ensure that organizational systems are protected if adverse information develops or is obtained about individuals with access to CUI.
(xiii) RA.L3–3.11.1e	Employ *threat intelligence, at a minimum from open or commercial sources, and any DoD-provided sources,* as part of a risk assessment to guide and inform the development of organizational systems, security architectures, selection of security solutions, monitoring, threat hunting, and response and recovery activities.
(xiv) RA.L3–3.11.2e	Conduct cyber threat hunting activities *on an on-going aperiodic basis or when indications warrant,* to search for indicators of compromise in *organizational systems* and detect, track, and disrupt threats that evade existing controls.
(xv) RA.L3–3.11.3e	Employ advanced automation and analytics capabilities in support of analysts to predict and identify risks to organizations, systems, and system components.
(xvi) RA.L3–3.11.4e	Document or reference in the system security plan the security solution selected, the rationale for the security solution, and the risk determination.
(xvii) RA.L3–3.11.5e	Assess the effectiveness of security solutions *at least annually or upon receipt of relevant cyber threat information, or in response to a relevant cyber incident,* to address anticipated risk to organizational systems and the organization based on current and accumulated threat intelligence.
(xviii) RA.L3–3.11.6e	Assess, respond to, and monitor supply chain risks associated with organizational systems and system components.
(xix) RA.L3–3.11.7e	Develop a plan for managing supply chain risks associated with organizational systems and system components; update the plan *at least annually, and upon receipt of relevant cyber threat information, or in response to a relevant cyber incident.*
(xx) CA.L3–3.12.1e	Conduct penetration testing *at least annually or when significant security changes are made to the system,* leveraging automated scanning tools and ad hoc tests using subject matter experts.
(xxi) SC.L3–3.13.4e	Employ *physical isolation techniques or logical isolation techniques or both* in organizational systems and system components.
(xxii) SI.L3–3.14.1e	Verify the integrity of *security critical and essential software* using root of trust mechanisms or cryptographic signatures.
(xxiii) SI.L3–3.14.3e	Ensure that *specialized assets including IoT, IIoT, OT, GFE, Restricted Information Systems, and test equipment* are included in the scope of the specified enhanced security requirements or are segregated in purpose-specific networks.
(xxiv) SI.L3–3.14.6e	Use threat indicator information and effective mitigations obtained from, *at a minimum, open or commercial sources, and any DoD-provided sources,* to guide and inform intrusion detection and threat hunting.

* Roman numerals in parentheses before the Security Requirement are for numbering purposes only. The numerals are not part of the naming convention for the requirement.

(d) *Implementation.* Assessment of security requirements is prescribed by NIST SP 800–171A Jun2018 (incorporated by reference, see § 170.2) and NIST SP 800–172A Mar2022 (incorporated by reference, see § 170.2). Descriptive text in these documents support OSA implementation of the security requirements and use the terms organization-defined and periodically. Except where referring to Organization-Defined Parameters (ODPs), organization-defined means as determined by the OSA. Periodically means occurring at regular intervals. As used in many requirements within CMMC, the interval length is organization-defined to provided contractor flexibility, with an interval length of no more than one year.

§ 170.15 CMMC Level 1 self-assessment and affirmation requirements.

(a) *Level 1 self-assessment.* To comply with CMMC Level 1 self-assessment requirements, the OSA must meet the requirements detailed in paragraphs (a)(1) and (2) of this section. An OSA conducts a Level 1 self-assessment as detailed in paragraph (c) of this section to achieve a CMMC Status of Final Level 1 (Self).

(1) *Level 1 self-assessment requirements.* The OSA must complete and achieve a MET result for all security requirements specified in § 170.14(c)(2) to achieve the CMMC Status of Final Level 1 (Self). No POA&Ms are permitted for CMMC Level 1. The OSA must conduct a self-assessment in accordance with the procedures set forth in § 170.15(c)(1) and submit assessment results in SPRS. To maintain compliance with the requirements for the CMMC Status of Final Level 1 (Self), the OSA must conduct a Level 1 self-assessment on an annual basis and submit the results in SPRS, or its successor capability.

(i) *Inputs to SPRS.* The Level 1 self-assessment results in the Supplier Performance Risk System (SPRS) shall include, at minimum, the following items:

(A) CMMC Level.

(B) CMMC Status Date.

(C) CMMC Assessment Scope.

(D) All industry CAGE code(s) associated with the information system(s) addressed by the CMMC Assessment Scope.

(E) Compliance result.

(ii) [Reserved]

(2) *Affirmation.* Affirmation of the Level 1 (Self) CMMC Status is required for all Level 1 self-assessments. Affirmation procedures are set forth in § 170.22.

(b) *Contract eligibility.* Prior to award of any contract or subcontract with a requirement for the CMMC Status of Level 1 (Self), OSAs must both achieve a CMMC Status of Level 1 (Self) and have submitted an affirmation of compliance into SPRS for all information systems within the CMMC Assessment Scope.

(c) *Procedures*—(1) *Level 1 self-assessment.* The OSA must conduct a Level 1 self-assessment scored in accordance with the CMMC Scoring Methodology described in § 170.24. The Level 1 self-assessment must be performed in accordance with the CMMC Level 1 scope requirements set forth in § 170.19(a) and (b) and the following:

(i) The Level 1 self-assessment must be performed using the objectives defined in NIST SP 800–171A Jun2018 (incorporated by reference, see § 170.2) for the security requirement that maps to the CMMC Level 1 security requirement as specified in table 1 to paragraph (c)(1)(ii) of this section. In any case where an objective addresses CUI, FCI should be substituted for CUI in the objective.

(ii) Mapping table for CMMC Level 1 security requirements to the NIST SP 800–171A Jun2018 objectives.

TABLE 2 TO § 170.15(c)(1)(ii)—CMMC LEVEL 1 SECURITY REQUIREMENTS MAPPED TO NIST SP 800–171A JUN2018

CMMC Level 1 security requirements as set forth in § 170.14(c)(2)	NIST SP 800–171A Jun2018
AC.L1–b.1.i	3.1.1
AC.L1–b.1.ii	3.1.2
AC.L1–b.1.iii	3.1.20
AC.L1–b.1.iv	3.1.22
IA.L1–b.1.v	3.5.1
IA.L1–b.1.vi	3.5.2
MP.L1–b.1.vii	3.8.3
PE.L1–b.1.viii	3.10.1
First phrase of PE.L1–b.1.ix (FAR b.1.ix*)	3.10.3
Second phrase of PE.L1–b.1.ix (FAR b.1.ix*)	3.10.4
Third phrase of PE.L1–b.1.ix (FAR b.1.ix*)	3.10.5
SC.L1–b.1.x	3.13.1
SC.L1–b.1.xi	3.13.5
SI.L1–b.1.xii	3.14.1
SI.L1–b.1.xiii	3.14.2
SI.L1–b.1.xiv	3.14.4
SI.L1–b.1.xv	3.14.5

*Three of the 48 CFR 52.204–21 requirements were broken apart by "phrase" when NIST SP 800–171 R2 was developed.

(iii) Additional guidance can be found in the guidance document listed in paragraph (b) of appendix A to this part.

(2) *Artifact retention.* The artifacts used as evidence for the assessment must be retained by the OSA for six (6) years from the CMMC Status Date.

§ 170.16 CMMC Level 2 self-assessment and affirmation requirements.

(a) *Level 2 self-assessment.* To comply with Level 2 self-assessment requirements, the OSA must meet the requirements detailed in paragraphs (a)(1) and (2) of this section. An OSA conducts a Level 2 self-assessment as detailed in paragraph (c) of this section to achieve a CMMC Status of either Conditional or Final Level 2 (Self). Achieving a CMMC Status of Level 2 (Self) also satisfies the requirements for a CMMC Status of Level 1 (Self) detailed in § 170.15 for the same CMMC Assessment Scope.

(1) *Level 2 self-assessment requirements.* The OSA must complete and achieve a MET result for all security requirements specified in § 170.14(c)(3) to achieve the CMMC Status of Level 2 (Self). The OSA must conduct a self-assessment in accordance with the procedures set forth in paragraph (c)(1) of this section and submit assessment

results in Supplier Performance Risk System (SPRS). To maintain compliance with the requirements for a CMMC Status of Level 2 (Self), the OSA must conduct a Level 2 self-assessment every three years and submit the results in SPRS, within three years of the CMMC Status Date associated with the Conditional Level 2 (Self).

(i) *Inputs to SPRS.* The Level 2 self-assessment results in the SPRS shall include, at minimum, the following information:

(A) CMMC Level.

(B) CMMC Status Date.

(C) CMMC Assessment Scope.

(D) All industry CAGE code(s) associated with the information system(s) addressed by the CMMC Assessment Scope.

(E) Overall Level 2 self-assessment score (*e.g.,* 105 out of 110).

(F) POA&M usage and compliance status, if applicable.

(ii) *Conditional Level 2 (Self).* The OSA has achieved the CMMC Status of Conditional Level 2 (Self) if the Level 2 self-assessment results in a POA&M and the POA&M meets all the CMMC Level 2 POA&M requirements listed in § 170.21(a)(2).

(A) *Plan of Action and Milestones.* A Level 2 POA&M is allowed only in accordance with the CMMC POA&M requirements listed in § 170.21.

(B) *POA&M closeout.* The OSA must remediate any NOT MET requirements, must perform a POA&M closeout self-assessment, and must post compliance results to SPRS within 180 days of the CMMC Status Date associated with the Conditional Level 2 (Self). If the POA&M is not successfully closed out within the 180-day timeframe, the Conditional Level 2 (Self) CMMC Status for the information system will expire. If Conditional Level 2 (Self) CMMC Status expires within the period of performance of a contract, standard contractual remedies will apply, and the OSA will be ineligible for additional awards with a requirement for the CMMC Status of Level 2 (Self), or higher requirement, for the information system within the CMMC Assessment Scope until such time as a new CMMC Status is achieved.

(iii) *Final Level 2 (Self).* The OSA has achieved the CMMC Status of Final Level 2 (Self) if the Level 2 self-assessment results in a passing score as defined in § 170.24. This score may be achieved upon initial self-assessment or as the result of a POA&M closeout self-assessment, as applicable.

(iv) *CMMC Status investigation.* The DoD reserves the right to conduct a DCMA DIBCAC assessment of the OSA, as provided for under the 48 CFR 252.204–7020. If the investigative results of a subsequent DCMA DIBCAC assessment show that adherence to the provisions of this part have not been achieved or maintained, these DCMA DIBCAC results will take precedence over any pre-existing CMMC Status. At that time, standard contractual remedies will be available and the OSA will be ineligible for additional awards with CMMC Status requirement of Level 2 (Self), or higher requirement, for the information system within the CMMC Assessment Scope until such time as a new CMMC Status is achieved.

(2) *Affirmation.* Affirmation of the Level 2 (Self) CMMC Status is required for all Level 2 self-assessments at the time of each assessment, and annually thereafter. Affirmation procedures are set forth in § 170.22.

(b) *Contract eligibility.* Prior to award of any contract or subcontract with requirement for CMMC Status of Level 2 (Self), the following two requirements must be met:

(1) The OSA must achieve, as specified in paragraph (a)(1) of this section, a CMMC Status of either Conditional Level 2 (Self) or Final Level 2 (Self).

(2) The OSA must submit an affirmation of compliance into SPRS, as specified in paragraph (a)(2) of this section.

(c) *Procedures*—(1) *Level 2 self-assessment of the OSA.* The OSA must conduct a Level 2 self-assessment in accordance with NIST SP 800–171A Jun2018 (incorporated by reference, see § 170.2) and the CMMC Level 2 scoping requirements set forth in §§ 170.19(a) and (c) for the information systems within the CMMC Assessment Scope. The Level 2 self-assessment must be scored in accordance with the CMMC Scoring Methodology described in § 170.24 and the OSA must upload the results into SPRS. If a POA&M exists, a POA&M closeout self-assessment must be performed by the OSA when all NOT MET requirements have been remediated. The POA&M closeout self-assessment must be performed within 180-days of the Conditional CMMC Status Date. Additional guidance can be found in the guidance document listed in paragraph (c) of appendix A to this part.

(2) *Level 2 self-assessment with the use of Cloud Service Provider (CSP).* An OSA may use a cloud environment to process, store, or transmit CUI in performance of a contract or subcontract with a requirement for the CMMC Status of Level 2 (Self) under the following circumstances:

(i) The CSP product or service offering is FedRAMP Authorized at the FedRAMP Moderate (or higher) baseline in accordance with the FedRAMP Marketplace; or

(ii) The CSP product or service offering is not FedRAMP Authorized at the FedRAMP Moderate (or higher) baseline but meets security requirements equivalent to those established by the FedRAMP Moderate (or higher) baseline. FedRAMP Moderate or FedRAMP Moderate equivalent is in accordance with DoD Policy.

(iii) In accordance with § 170.19(c)(2), the OSA's on-premises infrastructure connecting to the CSP's product or service offering is part of the CMMC Assessment Scope, which will also be assessed. As such, the security requirements from the Customer Responsibility Matrix (CRM) must be documented or referred to in the OSA's System Security Plan (SSP).

(3) *Level 2 self-assessment with the use of an External Service Provider (ESP), not a CSP.* An OSA may use an ESP that is not a CSP to process, store, or transmit CUI in performance of a contract or subcontract with a requirement for the CMMC Status of Level 2 (Self) under the following circumstances:

(i) The use of the ESP, its relationship to the OSA, and the services provided are documented in the OSA's SSP and described in the ESP's service description and CRM.

(ii) The ESP services used to meet OSA requirements are assessed within the scope of the OSA's assessment against all Level 2 security requirements.

(iii) In accordance with § 170.19(c)(2), the OSA's on-premises infrastructure connecting to the ESP's product or service offering is part of the CMMC Assessment Scope, which will also be assessed. As such, the security requirements from the CRM must be documented or referred to in the OSA's SSP.

(4) *Artifact retention.* The artifacts used as evidence for the assessment must be retained by the OSA for six (6) years from the CMMC Status Date.

§ 170.17 CMMC Level 2 certification assessment and affirmation requirements.

(a) *Level 2 certification assessment.* To comply with Level 2 certification assessment requirements, the OSC must meet the requirements set forth in paragraphs (a)(1) and (2) of this section. An OSC undergoes a Level 2 certification assessment as detailed in paragraph (c) of this section to achieve a CMMC Status of either Conditional or Final Level 2 (C3PAO). Achieving a CMMC Status of Level 2 (C3PAO) also

satisfies the requirements for a CMMC Statuses of Level 1 (Self) and Level 2 (Self) set forth in §§ 170.15 and 170.16 respectively for the same CMMC Assessment Scope.

(1) *Level 2 certification assessment requirements.* The OSC must complete and achieve a MET result for all security requirements specified in § 170.14(c)(3) to achieve the CMMC Status of Level 2 (C3PAO). The OSC must obtain a Level 2 certification assessment from an authorized or accredited C3PAO following the procedures outlined in paragraph (c) of this section. The C3PAO must submit the Level 2 certification assessment results into the CMMC instantiation of eMASS, which then provides automated transmission to SPRS. To maintain compliance with the requirements for a CMMC Status of Level 2 (C3PAO), the Level 2 certification assessment must be completed within three years of the CMMC Status Date associated with the Conditional Level 2 (C3PAO).

(i) *Inputs into the CMMC instantiation of eMASS.* The Level 2 certification assessment results input into the CMMC instantiation of eMASS shall include, at minimum, the following information:

(A) Date and level of the assessment.

(B) C3PAO name.

(C) Assessment unique identifier.

(D) For each Assessor conducting the assessment, name and business contact information.

(E) All industry CAGE codes associated with the information systems addressed by the CMMC Assessment Scope.

(F) The name, date, and version of the SSP.

(G) CMMC Status Date.

(H) Assessment result for each requirement objective.

(I) POA&M usage and compliance, as applicable.

(J) List of the artifact names, the return value of the hashing algorithm, and the hashing algorithm used.

(ii) *Conditional Level 2 (C3PAO).* The OSC has achieved the CMMC Status of Conditional Level 2 (C3PAO) if the Level 2 certification assessment results in a POA&M and the POA&M meets all CMMC Level 2 POA&M requirements listed in § 170.21(a)(2).

(A) *Plan of Action and Milestones.* A Level 2 POA&M is allowed only in accordance with the CMMC POA&M requirements listed in § 170.21.

(B) *POA&M closeout.* The OSC must remediate any NOT MET requirements, must undergo a POA&M closeout certification assessment from a C3PAO, and the C3PAO must post compliance results into the CMMC instantiation of eMASS within 180 days of the CMMC Status Date associated with the Conditional Level 2 (C3PAO). If the POA&M is not successfully closed out within the 180-day timeframe, the Conditional Level 2 (C3PAO) CMMC Status for the information system will expire. If Conditional Level 2 (C3PAO) CMMC Status expires within the period of performance of a contract, standard contractual remedies will apply, and the OSC will be ineligible for additional awards with a requirement for the CMMC Status of Level 2 (C3PAO), or higher requirement, for the information system within the CMMC Assessment Scope until such time as a new CMMC Status is achieved.

(iii) *Final Level 2 (C3PAO).* The OSC has achieved the CMMC Status of Final Level 2 (C3PAO) if the Level 2 certification assessment results in a passing score as defined in § 170.24. This score may be achieved upon initial certification assessment or as the result of a POA&M closeout certification assessment, as applicable.

(iv) *CMMC Status investigation.* The DoD reserves the right to conduct a DCMA DIBCAC assessment of the OSC, as provided for under the 48 CFR 252.204–7020. If the investigative results of a subsequent DCMA DIBCAC assessment show that adherence to the provisions of this part have not been achieved or maintained, these DCMA DIBCAC results will take precedence over any pre-existing CMMC Status. At that time, standard contractual remedies will be available and the OSC will be ineligible for additional awards with CMMC Status requirement of Level 2 (C3PAO), or higher requirement, for the information system within the CMMC Assessment Scope until such time as a new CMMC Status is achieved.

(2) *Affirmation.* Affirmation of the Level 2 (C3PAO) CMMC Status is required for all Level 2 certification assessments at the time of each assessment, and annually thereafter. Affirmation procedures are provided in § 170.22.

(b) *Contract eligibility.* Prior to award of any contract or subcontract with a requirement for the CMMC Status of Level 2 (C3PAO), the following two requirements must be met:

(1) The OSC must achieve, as specified in paragraph (a)(1) of this section, a CMMC Status of either Conditional Level 2 (C3PAO) or Final Level 2 (C3PAO).

(2) The OSC must submit an affirmation of compliance into SPRS, as specified in paragraph (a)(2) of this section.

(c) *Procedures*—(1) *Level 2 certification assessment of the OSC.* An authorized or accredited C3PAO must perform a Level 2 certification assessment in accordance with NIST SP 800–171A Jun2018 (incorporated by reference, see § 170.2) and the CMMC Level 2 scoping requirements set forth in § 170.19(a) and (c) for the information systems within the CMMC Assessment Scope. The Level 2 certification assessment must be scored in accordance with the CMMC Scoring Methodology described in § 170.24 and the C3PAO must upload the results into the CMMC instantiation of eMASS. Final results are communicated to the OSC through a CMMC Assessment Findings Report.

(2) *Security requirement re-evaluation.* A security requirement that is NOT MET (as defined in § 170.24) may be re-evaluated during the course of the Level 2 certification assessment and for 10 business days following the active assessment period if all of the following conditions exist:

(i) Additional evidence is available to demonstrate the security requirement has been MET;

(ii) Cannot change or limit the effectiveness of other requirements that have been scored MET; and

(iii) The CMMC Assessment Findings Report has not been delivered.

(3) *POA&M.* If a POA&M exists, a POA&M closeout certification assessment must be performed by a C3PAO within 180-days of the Conditional CMMC Status Date. Additional guidance can be found in § 170.21 and in the guidance document listed in paragraph (c) of appendix A to this part.

(4) *Artifact retention and integrity.* The hashed artifacts used as evidence for the assessment must be retained by the OSC for six (6) years from the CMMC Status Date. To ensure that the artifacts have not been altered, the OSC must hash the artifact files using a NIST-approved hashing algorithm. The OSC must provide the C3PAO with a list of the artifact names, the return value of the hashing algorithm, and the hashing algorithm for upload into the CMMC instantiation of eMASS. Additional guidance for hashing artifacts can be found in the guidance document listed in paragraph (h) of appendix A to this part.

(5) *Level 2 certification assessment with the use of Cloud Service Provider (CSP).* An OSC may use a cloud environment to process, store, or transmit CUI in performance of a contract or subcontract with a requirement for the CMMC Status of Level 2 (C3PAO) under the following circumstances:

(i) The CSP product or service offering is FedRAMP Authorized at the

FedRAMP Moderate (or higher) baseline in accordance with the FedRAMP Marketplace; or

(ii) The CSP product or service offering is not FedRAMP Authorized at the FedRAMP Moderate (or higher) baseline but meets security requirements equivalent to those established by the FedRAMP Moderate (or higher) baseline. FedRAMP Moderate or FedRAMP Moderate equivalent is in accordance with DoD Policy.

(iii) In accordance with § 170.19(c)(2), the OSC's on-premises infrastructure connecting to the CSP's product or service offering is part of the CMMC Assessment Scope. As such, the security requirements from the CRM must be documented or referred to in the OSC's SSP.

(6) *Level 2 certification assessment with the use of an External Service Provider (ESP), not a CSP.* An OSA may use an ESP that is not a CSP to process, store, or transmit CUI in performance of a contract or subcontract with a requirement for the CMMC Status of Level 2 (C3PAO) under the following circumstances:

(i) The use of the ESP, its relationship to the OSA, and the services provided are documented in the OSA's SSP and described in the ESP's service description and customer responsibility matrix.

(ii) The ESP services used to meet OSA requirements are assessed within the scope of the OSA's assessment against all Level 2 security requirements.

(iii) In accordance with § 170.19(c)(2), the OSA's on-premises infrastructure connecting to the ESP's product or service offering is part of the CMMC Assessment Scope, which will also be assessed. As such, the security requirements from the CRM must be documented or referred to in the OSA's SSP.

§ 170.18 CMMC Level 3 certification assessment and affirmation requirements.

(a) *Level 3 certification assessment.* To comply with Level 3 certification assessment requirements, the OSC must meet the requirements set forth in paragraphs (a)(1) and (2) of this section. An OSC undergoes a Level 3 certification assessment as detailed in paragraph (c) of this section to achieve a CMMC Status of either Conditional or Final Level 3 (DIBCAC). A CMMC Status of Final Level 2 (C3PAO) for information systems within the Level 3 CMMC Assessment Scope is a prerequisite to undergo a Level 3 certification assessment. CMMC Level 3 recertification also has a prerequisite for a new CMMC Level 2 assessment. Achieving a CMMC Status of Level 3 (DIBCAC) also satisfies the requirements for CMMC Statuses of Level 1 (Self), Level 2 (Self), and Level 2 (C3PAO) set forth in §§ 170.15 through 170.17 respectively for the same CMMC Assessment Scope.

(1) *Level 3 certification assessment requirements.* The OSC must achieve a CMMC Status of Final Level 2 (C3PAO) on the Level 3 CMMC Assessment Scope, as defined in § 170.19(d), prior to initiating a Level 3 certification assessment, which will be performed by DCMA DIBCAC (*www.dcma.mil/DIBCAC*) on behalf of the DoD. The OSC must complete and achieve a MET result for all security requirements specified in table 1 to § 170.14(c)(4) to achieve the CMMC Status of Level 3 (DIBCAC). DCMA DIBCAC will submit the Level 3 certification assessment results into the CMMC instantiation of eMASS, which then provides automated transmission to SPRS. To maintain compliance with the requirements for a CMMC Status of Level 3 (DIBCAC), the Level 3 certification assessment must be performed every three years for all information systems within the Level 3 CMMC Assessment Scope. In addition, given that compliance with Level 2 requirements is a prerequisite for applying for CMMC Level 3, a Level 2 (C3PAO) certification assessment must also be conducted every three years to maintain CMMC Level 3 (DIBCAC) status. Level 3 certification assessment must be completed within three years of the CMMC Status Date associated with the Final Level 3 (DIBCAC) or, if there was a POA&M, then within three years of the CMMC Status Date associated with the Conditional Level 3 (DIBCAC).

(i) *Inputs into the CMMC instantiation of eMASS.* The Level 3 certification assessment results input into the CMMC instantiation of eMASS shall include, at minimum, the following items:

(A) Date and level of the assessment.

(B) For each Assessor(s) conducting the assessment, name and government organization information.

(C) All industry CAGE code(s) associated with the information system(s) addressed by the CMMC Assessment Scope.

(D) The name, date, and version of the system security plan(s) (SSP).

(E) CMMC Status Date.

(F) Result for each security requirement objective.

(G) POA&M usage and compliance, as applicable.

(H) List of the artifact names, the return value of the hashing algorithm, and the hashing algorithm used.

(ii) *Conditional Level 3 (DIBCAC).* The OSC has achieved the CMMC Status of Conditional Level 3 (DIBCAC) if the Level 3 certification assessment results in a POA&M and the POA&M meets all CMMC Level 3 POA&M requirements listed in § 170.21(a)(3).

(A) *Plan of Action and Milestones.* A Level 3 POA&M is allowed only in accordance with the CMMC POA&M requirements listed in § 170.21.

(B) *POA&M closeout.* The OSC must remediate any NOT MET requirements, must undergo a POA&M closeout certification assessment from DCMA DIBCAC, and DCMA DIBCAC must post compliance results into the CMMC instantiation of eMASS within 180 days of the CMMC Status Date associated with the Conditional Level 3 (DIBCAC). If the POA&M is not successfully closed out within the 180-day timeframe, the Conditional Level 3 (DIBAC) CMMC Status for the information system will expire. If Conditional Level 3 (DIBCAC) CMMC Status expires within the period of performance of a contract, standard contractual remedies will apply, and the OSC will be ineligible for additional awards with a requirement for the CMMC Status of Level 3 (DIBCAC) for the information system within the CMMC Assessment Scope until such time as a new CMMC Status is achieved.

(iii) *Final Level 3 (DIBCAC).* The OSC has achieved the CMMC Status of Final Level 3 (DIBCAC) if the Level 3 certification assessment results in a passing score as defined in § 170.24. This score may be achieved upon initial certification assessment or as the result of a POA&M closeout certification assessment, as applicable.

(iv) *CMMC Status investigation.* The DoD reserves the right to conduct a DCMA DIBCAC assessment of the OSC, as provided for under the 48 CFR 252.204–7020. If the investigative results of a subsequent DCMA DIBCAC assessment show that adherence to the provisions of this part have not been achieved or maintained, these DCMA DIBCAC results will take precedence over any pre-existing CMMC Status. At that time, standard contractual remedies will be available and the OSC will be ineligible for additional awards with CMMC Status requirement of Level 3 (DIBCAC) for the information system within the CMMC Assessment Scope until such time as a new CMMC Status is achieved.

(2) *Affirmation.* Affirmation of the Level 3 (DIBCAC) CMMC Status is required for all Level 3 certification assessments at the time of each assessment, and annually thereafter. Affirmation procedures are provided in § 170.22.

(b) *Contract eligibility.* Prior to award of any contract or subcontract with requirement for CMMC Status of Level 3 (DIBCAC), the following two requirements must be met:

(1) The OSC must achieve, as specified in paragraph (a)(1) of this section, a CMMC Status of either Conditional Level 3 (DIBCAC) or Final Level 3 (DIBCAC).

(2) The OSC must submit an affirmation of compliance into SPRS, as specified in paragraph (a)(2) of this section.

(c) *Procedures*—(1) *Level 3 certification assessment of the OSC.* The CMMC Level 3 certification assessment process includes:

(i) *Final Level 2 (C3PAO).* The OSC must achieve a CMMC Status of Final Level 2 (C3PAO) for information systems within the Level 3 CMMC Assessment Scope prior to the CMMC Level 3 certification assessment. The CMMC Assessment Scope for the Level 3 certification assessment must be equal to, or a subset of, the CMMC Assessment Scope associated with the OSC's Final Level 2 (C3PAO). Asset requirements differ for each CMMC Level. Scoping differences are set forth in § 170.19.

(ii) *Initiating the Final Level 3 (DIBCAC).* The OSC (including ESPs that voluntarily elect to undergo a Level 3 certification assessment) initiates a Level 3 certification assessment by emailing a request to DCMA DIBCAC point of contact found at *www.dcma.mil/DIBCAC.* The request must include the Level 2 certification assessment unique identifier. DCMA DIBCAC will validate the OSC has achieved a CMMC Status of Level 2 (C3PAO) and will contact the OSC to schedule their Level 3 certification assessment.

(iii) *Conducting the Final Level 3 (DIBCAC).* DCMA DIBCAC will perform a Level 3 certification assessment in accordance with NIST SP 800–171A Jun2018 (incorporated by reference, see § 170.2) and NIST SP 800–172A Mar2022 (incorporated by reference, see § 170.2) and the CMMC Level 3 scoping requirements set forth in § 170.19(d) for the information systems within the CMMC Assessment Scope. The Level 3 certification assessment will be scored in accordance with the CMMC Scoring Methodology set forth in § 170.24 and DCMA DIBCAC will upload the results into the CMMC instantiation of eMASS. Final results are communicated to the OSC through a CMMC Assessment Findings Report. For assets that changed asset category (*i.e.,* CRMA to CUI Asset) or assessment requirements (*i.e.,* Specialized Assets) between the Level 2 and Level 3 certification assessments, DCMA DIBCAC will perform limited checks of Level 2 security requirements. If the OSC had these upgraded asset categories included in their Level 2 certification assessment, then DCMA DIBCAC may still perform limited checks for compliance. If DCMA DIBCAC identifies that a Level 2 security requirement is NOT MET, the Level 3 assessment process may be paused to allow for remediation, placed on hold, or immediately terminated.

(2) *Security requirement re-evaluation.* A security requirement that is NOT MET (as defined in § 170.24) may be re-evaluated during the course of the Level 3 certification assessment and for 10 business days following the active assessment period if all of the following conditions exist:

(i) Additional evidence is available to demonstrate the security requirement has been MET;

(ii) The additional evidence does not materially impact previously assessed security requirements; and

(iii) The CMMC Assessment Findings Report has not been delivered.

(3) *POA&M.* If a POA&M exists, a POA&M closeout certification assessment will be performed by DCMA DIBCAC within 180-days of the Conditional CMMC Status Date. Additional guidance is located in § 170.21 and in the guidance document listed in paragraph (d) of appendix A to this part.

(4) *Artifact retention and integrity.* The hashed artifacts used as evidence for the assessment must be retained by the OSC for six (6) years from the CMMC Status Date. The hashed artifacts used as evidence for the assessment must be retained by the OSC for six (6) years from the CMMC Status Date. To ensure that the artifacts have not been altered, the OSC must hash the artifact files using a NIST-approved hashing algorithm. Assessors will collect the list of the artifact names, the return value of the hashing algorithm, and the hashing algorithm used and upload that data into the CMMC instantiation of eMASS. Additional guidance for hashing artifacts can be found in the guidance document listed in paragraph (h) of appendix A to this part.

(5) *Level 3 certification assessment with the use of Cloud Service Provider (CSP).* An OSC may use a cloud environment to process, store, or transmit CUI in performance of a contract or subcontract with a requirement for the CMMC Status of Level 3 (DIBCAC) under the following circumstances:

(i) The OSC may utilize a CSP product or service offering that meets the FedRAMP Moderate (or higher) baseline. If the CSP's product or service offering is not FedRAMP Authorized at the FedRAMP Moderate (or higher) baseline, the product or service offering must meet security requirements equivalent to those established by the FedRAMP Moderate (or higher) baseline in accordance with DoD Policy.

(ii) Use of a CSP does not relieve an OSC of its obligation to implement the 24 Level 3 security requirements. These 24 requirements apply to every environment where the CUI data is processed, stored, or transmitted, when Level 3 (DIBCAC) is the designated CMMC Status. If any of these 24 requirements are inherited from a CSP, the OSC must demonstrate that protection during a Level 3 certification assessment via a Customer Implementation Summary/Customer Responsibility Matrix (CIS/CRM) and associated Body of Evidence (BOE). The BOE must clearly indicate whether the OSC or the CSP is responsible for meeting each requirement and which requirements are implemented by the OSC versus inherited from the CSP.

(iii) In accordance with § 170.19(d)(2), the OSC's on-premises infrastructure connecting to the CSP's product or service offering is part of the CMMC Assessment Scope. As such, the security requirements from the CRM must be documented or referred to in the OSC's SSP.

(6) *Level 3 certification assessment with the use of an ESP, not a CSP.* An OSC may use an ESP that is not a CSP to process, store, or transmit CUI in performance of a contract or subcontract with a requirement for the CMMC Status of Level 3 (DIBCAC) under the following circumstances:

(i) The use of the ESP, its relationship to the OSC, and the services provided are documented in the OSC's SSP and described in the ESP's service description and customer responsibility matrix.

(ii) The ESP services used to meet OSC requirements are assessed within the scope of the OSC's assessment against all Level 2 and Level 3 security requirements.

(iii) In accordance with § 170.19(d)(2), the OSC's on-premises infrastructure connecting to the ESP's product or service offering is part of the CMMC Assessment Scope, which will also be assessed. As such, the security requirements from the CRM must be documented or referred to in the OSC's SSP.

§ 170.19 CMMC scoping.

(a) *Scoping requirement.* (1) The CMMC Assessment Scope must be specified prior to assessment in

accordance with the requirements of this section. The CMMC Assessment Scope is the set of all assets in the OSA's environment that will be assessed against CMMC security requirements.

(2) The requirements for defining the CMMC Assessment Scope for CMMC Levels 1, 2, and 3 are set forth in this section. Additional guidance regarding scoping can be found in the guidance documents listed in paragraphs (e) through (g) of appendix A to this part.

(b) *CMMC Level 1 scoping.* Prior to performing a Level 1 self-assessment, the OSA must specify the CMMC Assessment Scope.

(1) *Assets in scope for Level 1 self-assessment.* OSA information systems which process, store, or transmit FCI are in scope for CMMC Level 1 and must be self-assessed against applicable CMMC security requirements.

(2) *Assets not in scope for Level 1 self-assessment*—(i) *Out-of-Scope Assets.* OSA information systems which do not process, store, or transmit FCI are outside the scope for CMMC Level 1. An endpoint hosting a VDI client configured to not allow any processing, storage, or transmission of FCI beyond the Keyboard/Video/Mouse sent to the VDI client is considered out-of-scope. There are no documentation requirements for out-of-scope assets.

(ii) *Specialized Assets.* Specialized Assets are those assets that can process, store, or transmit FCI but are unable to be fully secured, including: Internet of Things (IoT) devices, Industrial Internet of Things (IIoT) devices, Operational Technology (OT), Government Furnished Equipment (GFE), Restricted Information Systems, and Test Equipment. Specialized Assets are not part of the Level 1 CMMC Assessment Scope and are not assessed against CMMC security requirements.

(3) *Level 1 self-assessment scoping considerations.* To scope a Level 1 self-assessment, OSAs should consider the people, technology, facilities, and External Service Providers (ESP) within its environment that process, store, or transmit FCI.

(c) *CMMC Level 2 Scoping.* Prior to performing a Level 2 self-assessment or Level 2 certification assessment, the OSA must specify the CMMC Assessment Scope.

(1) The CMMC Assessment Scope for CMMC Level 2 is based on the specification of asset categories and their respective requirements as defined in table 3 to this paragraph (c)(1). Additional information is available in the guidance document listed in paragraph (f) of appendix A to this part.

TABLE 3 TO § 170.19(c)(1)—CMMC LEVEL 2 ASSET CATEGORIES AND ASSOCIATED REQUIREMENTS

Asset category	Asset description	OSA requirements	CMMC assessment requirements
Assets that are in the Level 2 CMMC Assessment Scope			
Controlled Unclassified Information (CUI) Assets.	• Assets that process, store, or transmit CUI.	• Document in the asset inventory ..... • Document asset treatment in the System Security Plan (SSP). • Document in the network diagram of the CMMC Assessment Scope. • Prepare to be assessed against CMMC Level 2 security requirements.	• Assess against all Level 2 security requirements.
Security Protection Assets	• Assets that provide security functions or capabilities to the OSA's CMMC Assessment Scope.	• Document in the asset inventory ..... • Document asset treatment in SSP. • Document in the network diagram of the CMMC Assessment Scope. • Prepare to be assessed against CMMC Level 2 security requirements.	• Assess against Level 2 security requirements that are relevant to the capabilities provided.

Contractor Risk Managed Assets.	• Assets that can, but are not intended to, process, store, or transmit CUI because of security policy, procedures, and practices in place.
	• Assets are not required to be physically or logically separated from CUI assets.
		• Document in the asset inventory .....
		• Document asset treatment in the SSP.
		• Document in the network diagram of the CMMC Assessment Scope.
		• Prepare to be assessed against CMMC Level 2 security requirements.
			• Review the SSP:
			  • If sufficiently documented, do not assess against other CMMC security requirements, except as noted.
			  • If OSA's risk-based security policies, procedures, and practices documentation or other findings raise questions about these assets, the assessor can conduct a limited check to identify deficiencies.
			  • The limited check(s) shall not materially increase the assessment duration nor the assessment cost.
			  • The limited check(s) will be assessed against CMMC security requirements.

Specialized Assets	• Assets that can process, store, or transmit CUI but are unable to be fully secured, including: Internet of Things (IoT) devices, Industrial Internet of Things (IIoT) devices, Operational Technology (OT), Government Furnished Equipment (GFE), Restricted Information Systems, and Test Equipment.	• Document in the asset inventory ..... • Document asset treatment in the SSP. • Show these assets are managed using the contractor's risk-based security policies, procedures, and practices. • Document in the network diagram of the CMMC Assessment Scope.	• Review the SSP. • Do not assess against other CMMC security requirements.
Assets that are not in the Level 2 CMMC Assessment Scope			
Out-of-Scope Assets	• Assets that cannot process, store, or transmit CUI; and do not provide security protections for CUI Assets. • Assets that are physically or logically separated from CUI assets. • Assets that fall into any in-scope asset category cannot be considered an Out-of-Scope Asset.	• Prepare to justify the inability of an Out-of-Scope Asset to process, store, or transmit CUI.	• None.

TABLE 3 TO § 170.19(c)(1)—CMMC LEVEL 2 ASSET CATEGORIES AND ASSOCIATED REQUIREMENTS—Continued

Asset category	Asset description	OSA requirements	CMMC assessment requirements
	• An endpoint hosting a VDI client configured to not allow any processing, storage, or transmission of CUI beyond the Keyboard/Video/Mouse sent to the VDI client is considered an Out-of-Scope Asset.		

(2)(i) Table 4 to this paragraph (c)(2)(i) defines the requirements to be met when utilizing an External Service Provider (ESP). The OSA must consider whether the ESP is a Cloud Service Provider (CSP) and whether the ESP processes, stores, or transmits CUI and/or Security Protection Data (SPD).

TABLE 4 TO § 170.19(c)(2)(i)—ESP SCOPING REQUIREMENTS

When the ESP processes, stores, or transmits:	When utilizing an ESP that is:	
	A CSP	Not a CSP
CUI (with or without SPD) ..	The CSP shall meet the FedRAMP requirements in 48 CFR 252.204–7012.	The services provided by the ESP are in the OSA's assessment scope and shall be assessed as part of the OSA's assessment.
SPD (without CUI)	The services provided by the CSP are in the OSA's assessment scope and shall be assessed as Security Protection Assets.	The services provided by the ESP are in the OSA's assessment scope and shall be assessed as Security Protection Assets.
Neither CUI nor SPD	A service provider that does not process CUI or SPD does not meet the CMMC definition of an ESP.	A service provider that does not process CUI or SPD does not meet the CMMC definition of an ESP.

(ii) The use of an ESP, its relationship to the OSA, and the services provided need to be documented in the OSA's SSP and described in the ESP's service description and customer responsibility matrix (CRM), which describes the responsibilities of the OSA and ESP with respect to the services provided. Note that the ESP may voluntarily undergo a CMMC certification assessment to reduce the ESP's effort required during the OSA's assessment. The minimum assessment type for the ESP is dictated by the OSA's DoD contract requirement.

(d) *CMMC Level 3 scoping*. Prior to performing a Level 3 certification assessment, the CMMC Assessment Scope must be specified.

(1) The CMMC Assessment Scope for Level 3 is based on the specification of asset categories and their respective requirements as set forth in table 5 to this paragraph (d)(1). Additional information is available in the guidance document listed in paragraph (g) of appendix A to this part.

TABLE 5 TO § 170.19(d)(1)—CMMC LEVEL 3 ASSET CATEGORIES AND ASSOCIATED REQUIREMENTS

Asset category	Asset description	OSC requirements	CMMC assessment requirements
Assets that are in the Level 3 CMMC Assessment Scope			
Controlled Unclassified Information (CUI) Assets.	• Assets that process, store, or transmit CUI. • Assets that can, but are not intended to, process, store, or transmit CUI (defined as Contractor Risk Managed Assets in table 1 to paragraph (c)(1) of this section CMMC Scoping).	• Document in the asset inventory ..... • Document asset treatment in the System Security Plan (SSP). • Document in the network diagram of the CMMC Assessment Scope. • Prepare to be assessed against CMMC Level 2 and Level 3 security requirements.	• Limited check against Level 2 and assess against all Level 3 CMMC security requirements.
Security Protection Assets	• Assets that provide security functions or capabilities to the OSC's CMMC Assessment Scope, irrespective of whether or not these assets process, store, or transmit CUI.	• Document in the asset inventory ..... • Document asset treatment in the SSP. • Document in the network diagram of the CMMC Assessment Scope. • Prepare to be assessed against CMMC Level 2 and Level 3 security requirements.	• Limited check against Level 2 and assess against all Level 3 CMMC security requirements that are relevant to the capabilities provided.
Specialized Assets	• Assets that can process, store, or transmit CUI but are unable to be fully secured, including: Internet of Things (IoT) devices, Industrial Internet of Things (IIoT) devices, Operational Technology (OT), Government Furnished Equipment (GFE), Restricted Information Systems, and Test Equipment.	• Document in the asset inventory ..... • Document asset treatment in the SSP. • Document in the network diagram of the CMMC Assessment Scope. • Prepare to be assessed against CMMC Level 2 and Level 3 security requirements.	• Limited check against Level 2 and assess against all Level 3 CMMC security requirements. • Intermediary devices are permitted to provide the capability for the specialized asset to meet one or more CMMC security requirements.

TABLE 5 TO § 170.19(d)(1)—CMMC LEVEL 3 ASSET CATEGORIES AND ASSOCIATED REQUIREMENTS—Continued

Asset category	Asset description	OSC requirements	CMMC assessment requirements
Assets that are not in the Level 3 CMMC Assessment Scope			
Out-of-Scope Assets	• Assets that cannot process, store, or transmit CUI; and do not provide security protections for CUI Assets. • Assets that are physically or logically separated from CUI assets. • Assets that fall into any in-scope asset category cannot be considered an Out-of-Scope Asset. • An endpoint hosting a VDI client configured to not allow any processing, storage, or transmission of CUI beyond the Keyboard/Video/Mouse sent to the VDI client is considered an Out-of-Scope Asset.	• Prepare to justify the inability of an Out-of-Scope Asset to process, store, or transmit CUI.	• None.

(2)(i) Table 6 to this paragraph (d)(2)(i) defines the requirements to be met when utilizing an External Service Provider (ESP). The OSA must consider whether the ESP is a Cloud Service Provider (CSP) and whether the ESP processes, stores, or transmits CUI and/or Security Protection Data (SPD).

TABLE 6 TO § 170.19(d)(2)(i)—ESP SCOPING REQUIREMENTS

When the ESP processes, stores, or transmits:	When utilizing an ESP that is:	
	A CSP	Not a CSP
CUI (with or without SPD)	The CSP shall meet the FedRAMP requirements in 48 CFR 252.204–7012.	The services provided by the ESP are in the OSA's assessment scope and shall be assessed as part of the OSA's assessment.
SPD (without CUI)	The services provided by the CSP are in the OSA's assessment scope and shall be assessed as Security Protection Assets.	The services provided by the ESP are in the OSA's assessment scope and shall be assessed as Security Protection Assets.
Neither CUI nor SPD	A service provider that does not process CUI or SPD does not meet the CMMC definition of an ESP.	A service provider that does not process CUI or SPD does not meet the CMMC definition of an ESP.

(ii) The use of an ESP, its relationship to the OSC, and the services provided need to be documented in the OSC's SSP and described in the ESP's service description and customer responsibility matrix (CRM), which describes the responsibilities of the OSC and ESP with respect to the services provided. Note that the ESP may voluntarily undergo a CMMC certification assessment to reduce the ESP's effort required during the OSA's assessment. The minimum. The minimum assessment type for the ESP is dictated by the OSC's DoD contract requirement.

(e) *Relationship between Level 2 and Level 3 CMMC Assessment Scope.* The Level 3 CMMC Assessment Scope must be equal to or a subset of the Level 2 CMMC Assessment Scope in accordance with § 170.18(a) (*e.g.,* a Level 3 data enclave with greater restrictions and protections within a Level 2 data enclave). Any Level 2 POA&M items must be closed prior to the initiation of the Level 3 certification assessment. DCMA DIBCAC may check any Level 2 security requirement of any in-scope asset. If DCMA DIBCAC identifies that a Level 2 security requirement is NOT MET, the Level 3 assessment process may be paused to allow for remediation, placed on hold, or immediately terminated. For further information regarding scoping of CMMC Level 3 assessments please contact DCMA DIBCAC at *www.dcma.mil/DIBCAC/.*

§ 170.20 Standards acceptance.

(a) *NIST SP 800–171 R2 DoD assessments.* In order to avoid duplication of efforts, thereby reducing the aggregate cost to industry and the Department, OSCs that have completed a DCMA DIBCAC High Assessment aligned with CMMC Level 2 Scoping will be given the CMMC Status of Final Level 2 (C3PAO) under the following conditions:

(1) *DCMA DIBCAC High Assessment.* An OSC that achieved a perfect score with no open POA&M from a DCMA DIBCAC High Assessment conducted prior to the effective date of this rule, will be given a CMMC Status of Level 2 Final (C3PAO) with a validity period of three (3) years from the date of the original DCMA DIBCAC High Assessment. DCMA DIBCAC will identify assessments that meet these criteria and verify that SPRS accurately reflects the CMMC Status. Eligible DCMA DIBCAC High Assessments include ones conducted with Joint Surveillance in accordance with the DCMA Manual 2302–01 Surveillance. The scope of the Level 2 certification assessment is identical to the scope of the DCMA DIBCAC High Assessment. In accordance with § 170.17(a)(2), the OSC must also submit an affirmation in SPRS and annually thereafter to achieve contractual eligibility.

(2) [Reserved].

(b) [Reserved].

§ 170.21 Plan of Action and Milestones requirements.

(a) *POA&M.* For purposes of achieving a Conditional CMMC Status, an OSA is only permitted to have a POA&M for select requirements scored as NOT MET during the CMMC assessment and only under the following conditions:

(1) *Level 1 self-assessment.* A POA&M is not permitted at any time for Level 1 self-assessments.

(2) *Level 2 self-assessment and Level 2 certification assessment.* An OSA is only permitted to achieve the CMMC Status of Conditional Level 2 (Self) or Conditional Level 2 (C3PAO), as appropriate, if all the following conditions are met:

(i) The assessment score divided by the total number of CMMC Level 2 security requirements is greater than or equal to 0.8;

(ii) None of the security requirements included in the POA&M have a point value of greater than 1 as specified in the CMMC Scoring Methodology set forth in § 170.24, except SC.L2–3.13.11 CUI Encryption may be included on a POA&M if encryption is employed but it is not FIPS-validated, which would result in a point value of 3; and

(iii) None of the following security requirements are included in the POA&M:

(A) AC.L2–3.1.20 External Connections (CUI Data).

(B) AC.L2–3.1.22 Control Public Information (CUI Data).

(C) CA.L2–3.12.4 System Security Plan.

(D) PE.L2–3.10.3 Escort Visitors (CUI Data).

(E) PE.L2–3.10.4 Physical Access Logs (CUI Data).

(F) PE.L2–3.10.5 Manage Physical Access (CUI Data).

(3) *Level 3 certification assessment.* An OSC is only permitted to achieve the CMMC Status of Conditional Level 3 (DIBCAC) if all the following conditions are met:

(i) The assessment score divided by the total number of CMMC Level 3 security requirements is greater than or equal to 0.8; and

(ii) The POA&M does not include any of following security requirements:

(A) IR.L3–3.6.1e Security Operations Center.

(B) IR.L3–3.6.2e Cyber Incident Response Team.

(C) RA.L3–3.11.1e Threat-Informed Risk Assessment.

(D) RA.L3–3.11.6e Supply Chain Risk Response.

(E) RA.L3–3.11.7e Supply Chain Risk Plan.

(F) RA.L3–3.11.4e Security Solution Rationale.

(G) SI.L3–3.14.3e Specialized Asset Security.

(b) *POA&M closeout assessment.* A POA&M closeout assessment is a CMMC assessment that assesses only the NOT MET requirements that were identified with POA&M in the initial assessment. The closing of a POA&M must be confirmed by a POA&M closeout assessment within 180-days of the Conditional CMMC Status Date. If the POA&M is not successfully closed out within the 180-day timeframe, the Conditional CMMC Status for the information system will expire.

(1) *Level 2 self-assessment.* For a Level 2 self-assessment, the POA&M closeout self-assessment shall be performed by the OSA in the same manner as the initial self-assessment.

(2) *Level 2 certification assessment.* For Level 2 certification assessment, the POA&M closeout certification assessment must be performed by an authorized or accredited C3PAO.

(3) *Level 3 certification assessment.* For Level 3 certification assessment, DCMA DIBCAC will perform the POA&M closeout certification assessment.

§ 170.22 Affirmation.

(a) *General.* The OSA must affirm continuing compliance with the appropriate level self-assessment or certification assessment. An Affirming Official from each OSA, whether a prime or subcontractor, must affirm the continuing compliance of their respective organizations with the specified security requirement after every assessment, including POA&M closeout, and annually thereafter. Affirmations are entered electronically in SPRS. The affirmation shall be submitted in accordance with the following requirements:

(1) *Affirming Official.* The Affirming Official is the senior level representative from within each Organization Seeking Assessment (OSA) who is responsible for ensuring the OSA's compliance with the CMMC Program requirements and has the authority to affirm the OSA's continuing compliance with the specified security requirements for their respective organizations.

(2) *Affirmation content.* Each CMMC affirmation shall include the following information:

(i) Name, title, and contact information for the Affirming Official; and

(ii) Affirmation statement attesting that the OSA has implemented and will maintain implementation of all applicable CMMC security requirements to their CMMC Status for all information systems within the relevant CMMC Assessment Scope.

(3) *Affirmation submission.* The Affirming Official shall submit a CMMC affirmation in the following instances:

(i) Upon achievement of a Conditional CMMC Status, as applicable;

(ii) Upon achievement of a Final CMMC Status;

(iii) Annually following a Final CMMC Status Date; and

(iv) Following a POA&M closeout assessment, as applicable.

(b) *Submission procedures.* All affirmations shall be completed in SPRS. The Department will verify submission of the affirmation in SPRS to ensure compliance with CMMC solicitation or contract requirements.

(1) *Level 1 self-assessment.* At the completion of a Level 1 self-assessment and annually thereafter, the Affirming Official shall submit a CMMC affirmation attesting to continuing compliance with all requirements of the CMMC Status Level 1 (Self).

(2) *Level 2 self-assessment.* At the completion of a Level 2 self-assessment and annually following a Final CMMC Status Date, the Affirming Official shall submit a CMMC affirmation attesting to continuing compliance with all requirements of the CMMC Status Level 2 (Self). An affirmation shall also be submitted at the completion of a POA&M closeout self-assessment.

(3) *Level 2 certification assessment.* At the completion of a Level 2 certification assessment and annually following a Final CMMC Status Date, the Affirming Official shall submit a CMMC affirmation attesting to continuing compliance with all requirements of the CMMC Status Level 2 (C3PAO). An affirmation shall also be submitted at the completion of a POA&M closeout certification assessment.

(4) *Level 3 certification assessment.* At the completion of a Level 3 certification assessment and annually following a Final CMMC Status Date, the Affirming Official shall submit a CMMC affirmation attesting to continuing compliance with all requirements of the CMMC Status Level 3 (DIBCAC). Because C3PAOs and DCMA DIBCAC check for compliance with different requirements in their respective assessments, OSCs must annually affirm their CMMC Status of Level 2 (C3PAO) in addition to their CMMC Status of Level 3 (DIBCAC) to maintain eligibility for contracts requiring compliance with Level 3. An affirmation shall also be submitted at the completion of a POA&M closeout certification assessment.

§ 170.23 Application to subcontractors.

(a) CMMC requirements apply to prime contractors and subcontractors throughout the supply chain at all tiers that will process, store, or transmit any FCI or CUI on contractor information systems in the performance of the DoD contract or subcontract. Prime contractors shall comply and shall require subcontractors to comply with and to flow down CMMC requirements, such that compliance will be required throughout the supply chain at all tiers with the applicable CMMC level and assessment type for each subcontract as follows:

(1) If a subcontractor will only process, store, or transmit FCI (and not CUI) in performance of the subcontract,

then a CMMC Status of Level 1 (Self) is required for the subcontractor.

(2) If a subcontractor will process, store, or transmit CUI in performance of the subcontract, then a CMMC Status of Level 2 (Self) is the minimum requirement for the subcontractor.

(3) If a subcontractor will process, store, or transmit CUI in performance of the subcontract and the associated prime contract has a requirement for a CMMC Status of Level 2 (C3PAO), then the CMMC Status of Level 2 (C3PAO) is the minimum requirement for the subcontractor.

(4) If a subcontractor will process, store, or transmit CUI in performance of the subcontract and the associated prime contract has a requirement for the CMMC Status of Level 3 (DIBCAC), then the CMMC Status of Level 2 (C3PAO) is the minimum requirement for the subcontractor.

(b) As with any solicitation or contract, the DoD may provide specific guidance pertaining to flow-down.

§ 170.24 CMMC Scoring Methodology.

(a) *General.* This scoring methodology is designed to provide a measurement of an OSA's implementation status of the NIST SP 800–171 R2 security requirements (incorporated by reference elsewhere in this part, see § 170.2) and the selected NIST SP 800–172 Feb2021 security requirements (incorporated by reference elsewhere in this part, see § 170.2). The CMMC Scoring Methodology is designed to credit partial implementation only in limited cases (*e.g.,* multi-factor authentication IA.L2–3.5.3).

(b) *Assessment findings.* Each security requirement assessed under the CMMC Scoring Methodology must result in one of three possible assessment findings, as follows:

(1) *Met.* All applicable objectives for the security requirement are satisfied based on evidence. All evidence must be in final form and not draft. Unacceptable forms of evidence include but are not limited to working papers, drafts, and unofficial or unapproved policies.

(i) Enduring exceptions when described, along with any mitigations, in the system security plan shall be assessed as MET.

(ii) Temporary deficiencies that are appropriately addressed in operational plans of action (*i.e.,* include deficiency reviews and show progress towards the implementation of corrections to reduce or eliminate identified vulnerabilities) shall be assessed as MET.

(2) *Not Met.* One or more applicable objectives for the security requirement is not satisfied. During an assessment, for each security requirement objective marked NOT MET, the assessor will document why the evidence does not conform.

(3) *Not Applicable (N/A).* A security requirement and/or objective does not apply at the time of the CMMC assessment. For example, Public-Access System Separation (SC.L2–3.13.5) might be N/A if there are no publicly accessible systems within the CMMC Assessment Scope. During an assessment, an assessment objective assessed as N/A is equivalent to the same assessment objective being assessed as MET.

(c) *Scoring.* At each CMMC Level, security requirements are scored as follows:

(1) *CMMC Level 1.* All CMMC Level 1 security requirements must be fully implemented to be considered MET. No POA&M is permitted for CMMC Level 1, and self-assessment results are scored as MET or NOT MET in their entirety.

(2) *CMMC Level 2 Scoring Methodology.* The maximum score achievable for a Level 2 self-assessment or Level 2 certification assessment is equal to the total number of CMMC Level 2 security requirements. If all CMMC Level 2 security requirements are MET, OSAs are awarded the maximum score. For each requirement NOT MET, the associated value of the security requirement is subtracted from the maximum score, which may result in a negative score.

(i) *Procedures.* (A) Scoring methodology for Level 2 self-assessment and Level 2 certification assessment is based on all CMMC Level 2 security requirement objectives, including those NOT MET.

(B) In the CMMC Level 2 Scoring Methodology, each security requirement has a value (*e.g.,* 1, 3 or 5), which is related to the designation by NIST as basic or derived security requirements. Per NIST SP 800–171 R2, the basic security requirements are obtained from FIPS PUB 200 Mar2006, which provides the high-level and fundamental security requirements for Federal information and systems. The derived security requirements, which supplement the basic security requirements, are taken from the security controls in NIST SP 800–53 R5.

(*1*) For NIST SP 800–171 R2 basic and derived security requirements that, if not implemented, could lead to significant exploitation of the network, or exfiltration of CUI, five (5) points are subtracted from the maximum score. The basic and derived security requirements with a value of five (5) points include:

(*i*) *Basic security requirements.* AC.L2–3.1.1, AC.L2–3.1.2, AT.L2–3.2.1, AT.L2–3.2.2, AU.L2–3.3.1, CM.L2–3.4.1, CM.L2–3.4.2, IA–L2–3.5.1, IA–L2–3.5.2, IR.L2–3.6.1, IR.L2–3.6.2, MA.L2–3.7.2, MP.L2–3.8.3, PS.L2–3.9.2, PE.L2–3.10.1, PE.L2–3.10.2, CA.L2–3.12.1, CA.L2–3.12.3, SC.L2–3.13.1, SC.L2–3.13.2, SI.L2–3.14.1, SI.L2–3.14.2, and SI.L2–3.14.3.

(*ii*) *Derived security requirements.* AC.L2–3.1.12, AC.L2–3.1.13, AC.L2–3.1.16, AC.L2–3.1.17, AC.L2–3.1.18, AU.L2–3.3.5, CM.L2–3.4.5, CM.L2–3.4.6, CM.L2–3.4.7, CM.L2–3.4.8, IA.L2–3.5.10, MA.L2–3.7.5, MP.L2–3.8.7, RA.L2–3.11.2, SC.L2–3.13.5, SC.L2–3.13.6, SC.L2–3.13.15, SI.L2–3.14.4, and SI.L2–3.14.6.

(*2*) For basic and derived security requirements that, if not implemented, have a specific and confined effect on the security of the network and its data, three (3) points are subtracted from the maximum score. The basic and derived security requirements with a value of three (3) points include:

(*i*) *Basic security requirements.* AU.L2–3.3.2, MA.L2–3.7.1, MP.L2–3.8.1, MP.L2–3.8.2, PS.L2–3.9.1, RA.L2–3.11.1, and CA.L2–3.12.2.

(*ii*) *Derived security requirements.* AC.L2–3.1.5, AC.L2- 3.1.19, MA.L2–3.7.4, MP.L2–3.8.8, SC.L2–3.13.8, SI.L2–3.14.5, and SI.L2–3.14.7.

(*3*) All remaining derived security requirements, other than the exceptions noted, if not implemented, have a limited or indirect effect on the security of the network and its data. For these, 1 point is subtracted from the maximum score.

(*4*) Two derived security requirements, IA.L2–3.5.3 and SC.L2–3.13.11, can be partially effective even if not completely or properly implemented, and the points deducted may be adjusted depending on how the security requirement is implemented.

(*i*) Multi-factor authentication (MFA) (CMMC Level 2 security requirement IA.L2–3.5.3) is typically implemented first for remote and privileged users (since these users are both limited in number and more critical) and then for the general user, so three (3) points are subtracted from the maximum score if MFA is implemented only for remote and privileged users. Five (5) points are subtracted from the maximum score if MFA is not implemented for any users.

(*ii*) FIPS-validated encryption (CMMC Level 2 security requirement SC.L2–3.13.11) is required to protect the confidentiality of CUI. If encryption is employed, but is not FIPS-validated, three (3) points are subtracted from the maximum score; if encryption is not

employed; five (5) points are subtracted from the maximum score.

(*5*) OSAs must have a System Security Plan (SSP) (CMMC security requirement CA.L2–3.12.4) in place at the time of assessment to describe each information system within the CMMC Assessment Scope. The absence of an up to date SSP at the time of the assessment would result in a finding that '*an assessment could not be completed due to incomplete information and noncompliance with 48 CFR 252.204–7012.*'

(*6*) For each NOT MET security requirement the OSA must have a POA&M in place. A POA&M addressing NOT MET security requirements is not a substitute for a completed requirement. Security requirements not implemented, whether described in a POA&M or not, is assessed as 'NOT MET.'

(*7*) Specialized Assets must be evaluated for their asset category per the CMMC scoping guidance for the level in question and handled accordingly as set forth in § 170.19.

(*8*) If an OSC previously received a favorable adjudication from the DoD CIO indicating that a security requirement is not applicable or that an alternative security measure is equally effective (in accordance with 48 CFR 252.204–7008 or 48 CFR 252.204–7012), the DoD CIO adjudication must be included in the system security plan to receive consideration during an assessment. A security requirement for which implemented security measures have been adjudicated by the DoD CIO as equally effective is assessed as MET if there have been no changes in the environment.

(ii) *CMMC Level 2 Scoring Table.* CMMC Level 2 scoring has been assigned based on the methodology set forth in table 1 to this paragraph (c)(2)(ii).

TABLE 7 TO § 170.24(c)(2)(ii)—CMMC LEVEL 2 SCORING TABLE

CMMC Level 2 requirement categories	Point value subtracted from maximum score
Basic Security Requirements:	
If not implemented, could lead to significant exploitation of the network, or exfiltration of CUI	5
If not implemented, has specific and confined effect on the security of the network and its data	3
Derived Security Requirements:	
If not implemented, could lead to significant exploitation of the network, or exfiltration of CUI	5
If not completely or properly implemented, could be partially effective and points adjusted depending on how the security requirement is implemented:	3 or 5
—Partially effective implementation—3 points.	
—Non-effective (not implemented at all)—5 points.	
If not implemented, has specific and confined effect on the security of the network and its data	3
If not implemented, has a limited or indirect effect on the security of the network and its data	1

(3) *CMMC Level 3 assessment scoring methodology.* CMMC Level 3 scoring does not utilize varying values like the scoring for CMMC Level 2. All CMMC Level 3 security requirements use a value of one (1) point for each security requirement. As a result, the maximum score achievable for a Level 3 certification assessment is equivalent to the total number of the selected subset of NIST SP 800–172 Feb2021 security requirements for CMMC Level 3, see § 170.14(c)(4). The maximum score is reduced by one (1) point for each security requirement NOT MET. The CMMC Level 3 scoring methodology reflects the fact that all CMMC Level 2 security requirements must already be MET (for the Level 3 CMMC Assessment Scope). A maximum score on the Level 2 certification assessment is required to be eligible to initiate a Level 3 certification assessment. The Level 3 certification assessment score is equal to the number of CMMC Level 3 security requirements that are assessed as MET.

Appendix A to Part 170—Guidance

Guidance documents include:

(a) ''CMMC Model Overview'' available at *https://DoDcio.defense.gov/CMMC/*.

(b) ''CMMC Assessment Guide—Level 1'' available at *https://DoDcio.defense.gov/CMMC/*.

(c) ''CMMC Assessment Guide—Level 2'' available at *https://DoDcio.defense.gov/CMMC/*.

(d) ''CMMC Assessment Guide—Level 3'' available at *https://DoDcio.defense.gov/CMMC/*.

(e) ''CMMC Scoping Guide—Level 1'' available at *https://DoDcio.defense.gov/CMMC/*.

(f) ''CMMC Scoping Guide—Level 2'' available at *https://DoDcio.defense.gov/CMMC/*.

(g) ''CMMC Scoping Guide—Level 3'' available at *https://DoDcio.defense.gov/CMMC/*.

(h) ''CMMC Hashing Guide'' available at *https://DoDcio.defense.gov/CMMC/*.

Dated: September 30, 2024.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 476, and 489

Medicare Program: Appeal Rights for Certain Changes in Patient Status; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 476, and 489

[CMS–4204–F]

RIN 0938–AV16

Medicare Program: Appeal Rights for Certain Changes in Patient Status

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

ACTION: Final rule.

SUMMARY: This final rule implements an order from the Federal district court for the District of Connecticut in *Alexander* v. *Azar* that requires HHS to establish appeals processes for certain Medicare beneficiaries who are initially admitted as hospital inpatients but are subsequently reclassified as outpatients receiving observation services during their hospital stay and meet other eligibility criteria.

DATES: These regulations are effective on October 11, 2024.

FOR FURTHER INFORMATION CONTACT:

David Danek, *david.danek@cms.hhs.gov,* for issues related to the retrospective process.

Janet Miller, *janet.miller@cms.hhs.gov,* for issues related to the prospective process.

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

The purpose of this final rule is to establish appeals processes to comply with a court order issued in the case *Alexander* v. *Azar,* 613 F. Supp. 3d 559 (D. Conn. 2020), *aff'd sub nom., Barrows* v. *Becerra,* 24 F.4th 116 (2d Cir. 2022). The processes will apply to certain Medicare beneficiaries who are initially admitted as hospital inpatients but are subsequently reclassified as outpatients receiving observation services during their hospital stay and meet other eligibility criteria.

The processes consist of the following:

- *Expedited appeals:* We are establishing an expedited appeals process for certain beneficiaries who disagree with the hospital's decision to reclassify their status from inpatient to outpatient receiving observation services (resulting in a denial of coverage for the hospital stay under Part A). Eligible beneficiaries will be entitled to request an expedited appeal regarding that decision prior to release from the hospital. Appeals will be conducted by a Beneficiary & Family Centered Care—Quality Improvement Organization (BFCC–QIO).
- *Standard appeals:* Beneficiaries who do not file an expedited appeal will have the opportunity to file a standard appeal (that is, an appeal requested by a beneficiary eligible for an expedited appeal, but filed outside of the expedited timeframes) regarding the hospital's decision to reclassify their status from inpatient to outpatient receiving observation services (resulting in a denial of coverage for the hospital stay under Part A). These standard appeals will follow similar procedures to the expedited appeals process but without the expedited timeframes to file and for the QIO to make decisions.
- *Retrospective appeals:* We are establishing a retrospective review process for certain beneficiaries to appeal denials of Part A coverage of hospital services (and certain SNF services, as applicable), for specified inpatient admissions involving status changes that occurred prior to the implementation of the prospective appeals process, dating back to January 1, 2009. Consistent with existing claims appeals processes, Medicare Administrative Contractors (MACs) will perform the first level of appeal, followed by Qualified Independent Contractor (QIC) reconsiderations, Administrative Law Judge (ALJ) hearings, review by the Medicare Appeals Council, and judicial review. Eligible beneficiaries will have 365 calendar days from the implementation date of this rule to file a request for a retrospective appeal. We will announce the implementation date on *CMS.gov* and/or *Medicare.gov.*

In general, as explained in this final rule, we are finalizing the procedures for these appeals as proposed. However, we are making some editorial/technical corrections to the regulations text, as well as several revisions and clarifications to the retrospective appeal procedures based on the public comments we received. These revisions include:

- Extending the timeframe for providers to submit a claim following a favorable decision from 180 calendar days to 365 calendar days.
- Extending the timeframe for providers to submit records as requested by a contractor from 60 calendar days to 120 calendar days.
- Clarifying the effect of a favorable appeal decision to explain that if a hospital chooses to submit a Part A inpatient claim, the hospital must refund any payments received for the Part B outpatient claim before submitting the Part A inpatient claim to Medicare. If a Part A claim is submitted, the previous Part B outpatient claim will be reopened and canceled, and any Medicare payments will be recouped to prevent duplicate payment.
- Clarifying the effect of a favorable decision for a beneficiary who was not enrolled in Medicare Part B at the time of hospitalization to explain that the hospital must refund any payments collected for the outpatient services even if the hospital chooses not to submit a Part A claim for payment to the program.
- Clarifying the effect of favorable appeals involving beneficiaries who were enrolled in Medicare Part B at the time of hospitalization to explain that hospitals must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services.
- Clarifying that out-of-pocket payments made by a family member on behalf of a beneficiary for SNF services (for the purpose of determining whether those SNF services are eligible for inclusion in an appeal under these procedures), may include out-of-pocket payments made by individuals who are not biologically related to the beneficiary (for example, a close family friend, roommate, or a former spouse).

II. Background

This rule finalizes a proposal issued in December 2023 [1] and sets forth new appeals procedures to implement the court order in *Alexander* v. *Azar,* 613 F. Supp. 3d 559 (D. Conn. 2020), *aff'd sub nom., Barrows* v. *Becerra,* 24 F.4th 116 (2d Cir. 2022). In this order, the court directed the Department of Health and Human Services (HHS) to ''permit all members of the . . . class to appeal the denial of their Part A coverage'' and to establish appeal procedures for certain beneficiaries in Medicare Part A and B (''Original Medicare'') who are initially admitted to a hospital as an inpatient by a physician or otherwise qualified practitioner [2] but whose status during

[1] 88 FR 89506.

[2] As discussed in section III.A.1. of this final rule in response to a public comment, we acknowledge that under existing policies, for purposes of payment under Medicare Part A, an individual is considered an inpatient of a hospital if formally admitted as an inpatient pursuant to an order for hospital inpatient admission by a physician or certain qualified practitioners as defined in 42 CFR 412.3. We inadvertently omitted other qualified practitioners when describing the inpatient admission process and have revised our language in this final rule accordingly, when referencing persons ordering hospital inpatient admissions.

their stay is changed to outpatient by the hospital, thereby effectively denying Part A coverage for their hospital stay.[3] In some cases, the status change also affects the availability of Part A coverage for a beneficiary's post-hospital extended care services furnished in a skilled nursing facility (SNF). The court imposed additional conditions on the right to appeal as described in detail in this final rule.

The court's order requires new appeal procedures be afforded to the following class: Medicare beneficiaries who, on or after January 1, 2009—

- Have been or will have been formally admitted as a hospital inpatient;
- Have been or will have been subsequently reclassified by the hospital as an outpatient receiving ''observation services''; [4]
- Have received or will have received an initial determination or Medicare Outpatient Observation Notice (MOON) [5] indicating that the observation services are not covered under Medicare Part A; and
- Either—(1) were not enrolled in Part B coverage at the time of their hospitalization; or (2) stayed at the hospital for 3 or more consecutive days but were designated as inpatients for fewer than 3 days, unless more than 30 days has passed after the hospital stay without the beneficiary's having been admitted to a SNF. Medicare beneficiaries who meet the requirements of the foregoing sentence but who pursued an administrative appeal and received a final decision of the Secretary before September 4, 2011, are excluded from the class.

The court determined that beneficiaries who are members of the class described previously have been deprived of due process and ordered the following:

- Class members shall have an opportunity to appeal the denial of their Part A coverage.
- Class members who have stayed, or will have stayed, at a hospital for 3 or more consecutive days, but who were designated as inpatients for fewer than 3 days, shall have the right to an appeal through an expedited appeals process substantially similar to the existing expedited process for challenging hospital discharges.
- Class members shall be permitted to argue that their inpatient admission satisfied the relevant criteria for Part A coverage—for example, that the medical record supported a reasonable expectation of a medically necessary two-midnight stay at the time of the physician's or otherwise qualified practitioner's initial inpatient order, in the case of a post–Two Midnight Rule hospital stay—and that the hospital utilization review committee's (URC) determination to the contrary was therefore erroneous. If a class member prevails, then for the purposes of determining Part A benefits, including both Part A hospital coverage and Part A SNF coverage, the beneficiary's reclassification as an outpatient that resulted from the URC's erroneous determination shall be disregarded.
- For class members whose due process rights were violated, or will have been violated, prior to the availability of the procedural protections as previously set forth, such beneficiaries shall be afforded a meaningful opportunity to appeal the denial of their Part A coverage, as well as effective notice of this right.

In addition, on December 9, 2022, the district court issued an ''Order Clarifying Judgment'' with respect to the claims for outpatient hospital services received by beneficiaries who were enrolled in Part B of the program at the time such services were furnished. In this clarifying order, the court stated that it intended to provide a meaningful opportunity for class members whose due process rights were violated to appeal the denial of Part A coverage, but it also stressed the need to provide a remedy for class members who endured undercompensated stays at skilled nursing facilities. It further stated that, since class members with Part B coverage had much of their past hospital stays paid for by such coverage, it did not intend to require the unwinding of previously approved Part B outpatient hospital claims so they could be reprocessed as Part A claims. The clarification states that if a class member enrolled in Part B coverage at the time of their hospitalization prevails in an appeal of a claim, then an adjustment of payment for the underlying hospital services (including any applicable deductible and coinsurance amounts) is not required, and Part A payment for covered SNF services may be made without any adjustment to the payment for the underlying hospital services.

In section III.A. of this final rule, we describe the procedures that will be available to members of the class described previously (hereinafter, eligible beneficiaries) to appeal denials of Part A coverage of hospital services (and certain SNF services, as applicable), for specified inpatient admissions involving status changes that occurred prior to the implementation of the prospective appeals process, dating back to January 1, 2009. We refer to this as the retrospective appeals process. In section III.B. of this final rule, we describe the expedited and standard appeals procedures that will be available prospectively (meaning to beneficiaries whose status is changed after the effective date of this rule and after the implementation and availability of the procedures established by the rule) to eligible beneficiaries who, among other things, are admitted as hospital inpatients and are reclassified by hospitals as outpatients receiving observation services (the ''prospective appeals process'').

Eligible beneficiaries who are hospitalized and entitled to an appeal under these procedures prior to the implementation date of the prospective appeals process will be able to utilize the retrospective appeals process, subject to the filing limitation proposed in § 405.932(a)(2)(i)(B).

The flowcharts below depict the overall appeals processes being finalized in this regulation. With the exception of some editorial revisions and updating the amount in controversy requirements for calendar year 2025 ($190 for an Administrative Law Judge hearing and $1,900 for judicial review), the flowcharts are the same as what was outlined in the proposed rule (88 FR 59509).

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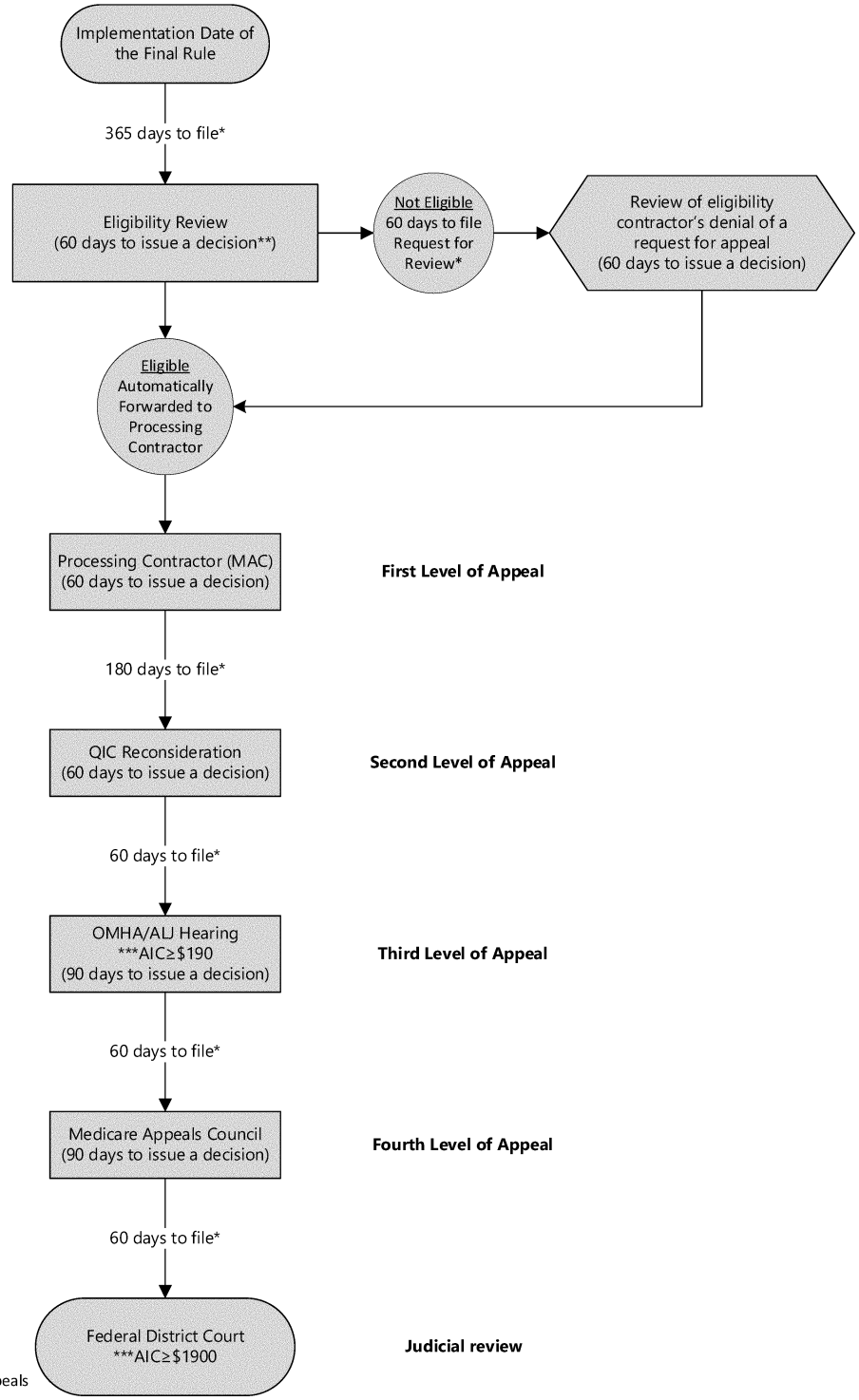
[3] The terms of the court order refer to denials of Part A coverage. Consistent with the court order, the appeals processes in this rule do not extend to enrollees in MA plans. MA plan enrollees have existing rights that afford enrollees the right to appeal a plan organization determination where the plan refuses to provide or pay for services, in whole or in part, including the type or level of services, that the enrollee believes should be furnished or arranged for by the MA organization (42 CFR 422.560 through 422.634). For example, if an MA plan has refused to authorize an inpatient admission, the enrollee may request a standard or expedited plan reconsideration of that organization determination (42 CFR 422.566(b), 422.580 through 422.596, and 422.633).

[4] For the purposes of these procedures, a beneficiary is considered an outpatient receiving observation services when the hospital changes a beneficiary's status from inpatient to outpatient while the beneficiary is in the hospital and the beneficiary subsequently receives observation services following a valid order for such services (see 42 CFR 405.931(h)).

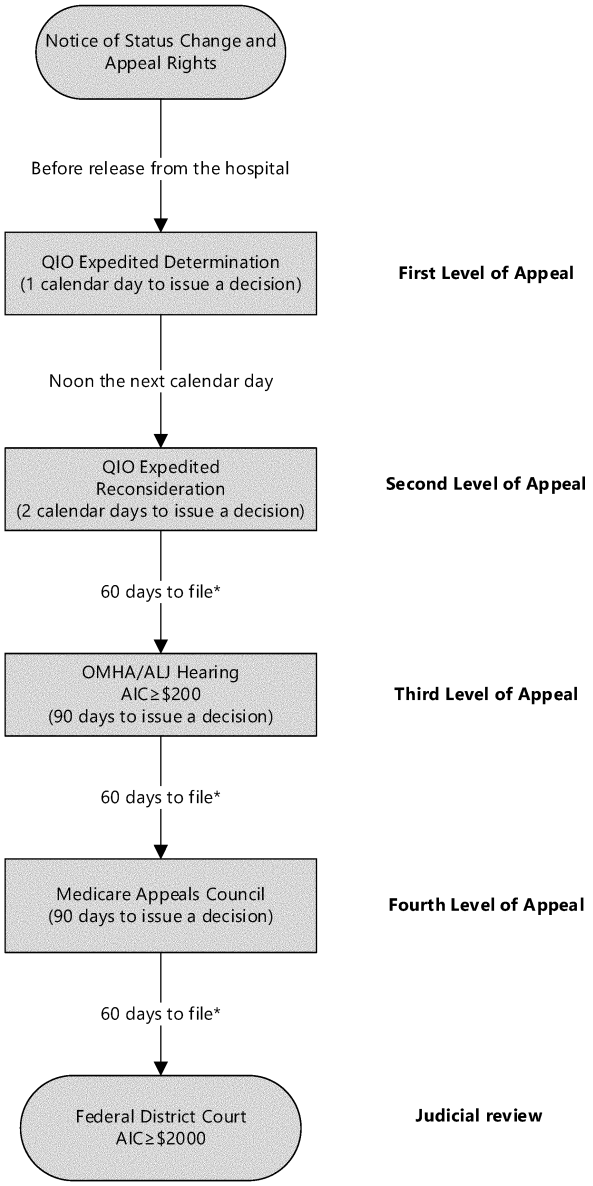
[5] As explained in 42 CFR 489.21(y), the Medicare Outpatient Observation Notice (MOON) is a written notice furnished by a hospital to Medicare beneficiaries who receive observation services as an outpatient for more than 24 hours. The notice explains why the beneficiary is not an inpatient and also explains the consequences of being an outpatient rather than an inpatient. A copy of the notice is available to download at *https://www.cms.gov//medicare/forms-notices/beneficiary-notices-initiative/ffs-ma-moon.*

Retrospective Review Process



AIC = Amount In Controversy
ALJ = Administrative Law Judge
MAC = Medicare Administrative Contractor
OMHA = Office of Medicare Hearings and Appeals
QIC = Qualified Independent Contractor
*Filing deadlines are calendar days from date of receipt of the notice/decision (presumed to be 5 days from the date of the notice, unless evidence to the contrary).
**Eligibility determination timeframes may be longer if additional documentation is required (such as medical records or claims information).
***The AIC requirement for an ALJ hearing and Federal District Court is adjusted annually in accordance with the medical care component of the consumer price index. The chart reflects the amounts for calendar year 2025, and is subject to change each calendar year.

Expedited (Prospective) Appeals Process



AIC = Amount In Controversy
ALJ = Administrative Law Judge
OMHA = Office of Medicare Hearings and Appeals
QIO = Quality Improvement Organization, a.k.a. Beneficiary Family Centered Care (BFCC-QIO)
*Filing deadlines are calendar days from date of receipt of the notice/decision (presumed to be 5 days from the date of the notice, unless evidence to the contrary).
NOTE: The Amount In Controversy for an ALJ Hearing and Judicial Review is not adjusted annually under Section 1155 of the Social Security Act.

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In the sections that follow, we provide an overview of the different appeal processes and describe the proposed provisions, the comments received on those provisions, and our response to those comments. We then indicate whether we are finalizing the provisions as proposed or with modifications.

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

A. Retrospective Appeals

1. Overview

The retrospective appeals required by the court order constitute a new process under the Medicare program, as the appeals would be based on alleged entitlement to coverage for services that were not actually billed to the program on a claim. That is, under existing claims appeals processes for the Original Medicare program, a beneficiary is asking for a determination on whether specific items and services billed on a claim for payment should have been covered and paid, not whether items and services should have been billed or whether there should have been coverage when there is no claim. Sections 205(a), 1871, and 1872 of the Social Security Act (the Act) provide the Secretary authority to establish regulations to carry out the administration of the insurance programs under Title XVIII of the Act.[6] The new retrospective appeals procedures required under the court order do not fit into the existing claims appeals process for Original Medicare claims established under section 1869 of the Act. However, in our view, these new procedures would have similarities to the longstanding claims appeals procedures with which Medicare beneficiaries are familiar. Accordingly, we proposed new procedures to govern the retrospective appeals process in proposed 42 CFR 405.931 through 405.938 that would be based, in large part and to the extent appropriate, on the existing claims appeals procedures in the existing provisions in 42 CFR part 405 Subpart I (as authorized under section 1869 of the Act).

In § 405.931(b), we proposed to define the term ''eligibility contractor'' to mean the contractor that would serve as a single point of contact for incoming retrospective appeal requests. As proposed in § 405.932(a) through (e), the eligibility contractor would determine if the request for appeal is valid, including whether the request is timely and contains the required elements for an appeal. In addition, we proposed that the eligibility contractor would determine whether the individual submitting the request (or the individual for whom a request is submitted, in the case of a request filed by a representative) meets the definition of a class member as defined by the court, and is, thus, an eligible party entitled to an appeal under the terms of the court order. The eligibility contractor would then either deny or approve each appeal request received and notify the individual (or their representative) of the determination. For those requests that are denied (that is, the beneficiary has not demonstrated they meet the definition of a class member and is not eligible for an appeal, or the appeal request is not otherwise valid), we proposed in § 405.932(e) that the individual filing the request (or their representative) would have an opportunity to correct any errors and/or demonstrate why the appeal request should be approved. An individual's request to review a denial must be received by the eligibility contractor within 60 calendar days of the individual's receipt of the denial notice under proposed § 405.932(e)(2). For appeal requests that are approved (that is, the beneficiary satisfies the requirements for class membership—and thus, is determined to be an eligible party—and the request is valid), the eligibility contractor would forward those requests to the processing contractor to conduct the first level appeal.

In § 405.931(b), we proposed that the processing contractor would perform the first level of appeal. The processing contractor would be the MAC that currently has jurisdiction over Part A claims for the hospital at which the beneficiary was initially admitted prior to being subject to a status change. As proposed in § 405.932(f) through (i), processing contractors would generally follow existing procedures that govern redeterminations (42 CFR 405.940 through 405.958), as appropriate, except as we otherwise proposed in § 405.932.

In § 405.934, we proposed that eligible parties (or their representatives) who are dissatisfied with the processing contractor's appeal decision would have the opportunity to request a reconsideration to be performed by a QIC. We proposed that the QICs would generally utilize existing procedures that govern reconsiderations (42 CFR 405.960 through 405.978), as appropriate, except as we otherwise proposed in § 405.934.

Following a reconsideration, in § 405.936 we proposed that eligible parties (or their representatives) who are dissatisfied with the reconsideration would be able to request a hearing before an Administrative Law Judge (ALJ) (or review by an attorney adjudicator) if the claims under appeal meet the amount in controversy requirement.[7] In § 405.936(c), we proposed a new method of calculating the amount in controversy that reflects the differences between these new appeals and typical claims appeals under existing procedures. In addition, under proposed § 405.938, eligible parties (or their representatives), would be able to request review by the Medicare Appeals Council (hereinafter, Council). As with the first two levels of appeal, we proposed that these new appeals before an ALJ (or attorney adjudicator) and the Council would generally follow existing procedures in 42 CFR 405.1000 through 1140, as appropriate, except as we have otherwise proposed in §§ 405.936 through 405.938. Eligible parties would also be able to request judicial review under the existing provisions in 42 CFR 405.1136.

In § 405.932(a)(2), we proposed to limit the time to file a request for a retrospective appeal to 365 calendar days following the implementation date of the final rule. We have provided notice of the pending appeals process for class members since July 2022 on both Medicare.gov and CMS.gov and we will continue to update those websites with information as this rulemaking proceeds and as we begin to implement the final rule. Thus, when this rulemaking is concluded and procedures are finalized, effective, and operational, we believe we would have afforded eligible beneficiaries ample time to gather necessary documentation in anticipation of filing appeal requests.

We received many comments in support of the overall process we proposed for retrospective appeals. In addition, we received several general comments on the scope and proposed procedures for the retrospective appeals process and several comments on the outreach efforts we proposed.

Comment: A commenter expressed concern that due to the length of the entire retrospective appeal process, eligible parties could experience delays in receiving coverage decisions for up to a year or more.

Response: We appreciate the concerns raised by the commenter. We

[6] Section 205(a) of the Act, incorporated into Title XVIII by section 1872 of the Act, provides that the Secretary ''shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions[.]'' Section 1871 of the Act states that the Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this title.

[7] The amount in controversy requirement for CY 2025 is $190 for a hearing before an Administrative Law Judge, and $1,900 for judicial review. Notice of the updated minimum amounts for each calendar year is published in the **Federal Register** and is available on *https://www.cms.gov/medicare/appeals-grievances/fee-for-service/third-level-appeal.*

understand that beneficiaries and their families, in some cases, have waited for many years to access an appeals process for the issues addressed in these procedures. As we explained in the proposed rule, the new appeals procedures ordered by the court do not fit neatly into existing processes, but to the extent possible, we are mirroring existing appeals processes for these new appeals. This relative consistency in the processes will benefit individuals filing appeals as well as our contractors who process appeals. In some cases, decisions can be made in less time than the deadlines prescribed in the regulations. We believe these timeframes, which have been in place for existing appeals for 15 years, are reasonable and balance the need to resolve complex issues with the interests of appellants in receiving timely decisions.

Comment: A commenter requested that CMS clarify whether these new appeals procedures apply to persons enrolled in Medicare Advantage (MA) plans and consider extending these rights to the MA program.

Response: The retrospective appeals process (addressed in section III.A. of this final rule) and the prospective appeals process (addressed in section III.B. of this final rule) do not apply to the MA program and will not be available for MA enrollees. As we explained in the proposed rule, the terms of the court order refer to denials of Part A coverage. Consistent with the court order, we are creating a new appeals process for beneficiaries enrolled in Original Medicare. We further explained that the appeals processes proposed in this rule do not extend to enrollees in MA plans because we have determined that the considerations underlying the protections ordered by the court for beneficiaries enrolled in Original Medicare do not apply to MA plan enrollees. MA enrollees have rights and protections as set forth in 42 CFR part 422 Subpart M. Under the MA regulations at 42 CFR 422.566(b)(3), an MA plan's refusal to provide or pay for services, in whole or in part, including the type or level of services, that the enrollee believes should be furnished or arranged for by the MA plan is an organization determination. If an MA plan enrollee disagrees with a plan's organization determination, the enrollee has the right to request a reconsideration of that decision under the rules at § 422.578. In the event an MA plan refuses to authorize an inpatient admission, this is an adverse organization determination and the enrollee may request a standard or expedited plan reconsideration (§§ 422.580 through 422.590, 422.633). If an MA plan upholds an adverse decision at the reconsideration level, the case is automatically sent to the Part C IRE for review (§§ 422.592 and 422.594). Additional levels of appeal that may be available to an MA enrollee include ALJ and Council review and judicial review (§§ 422.600 through 422.612). Because of these existing rights and protections afforded to MA enrollees, we did not propose any new procedures applicable to MA enrollees. To the extent we identify additional processes that may be necessary for the MA program, any such proposals would be subject to full public discussion through notice and comment rulemaking.

Comment: A commenter requested that we use ''provider-neutral language'' throughout the rule, for example, instead of using physician, we should consider using physician or otherwise qualified practitioner.

Response: We appreciate the suggestion from this commenter. We have reviewed the language in the proposed rule and found several instances where it would be more appropriate to use the phrase ''physician or other qualified practitioner'' consistent with the regulatory provisions regarding inpatient admissions in 42 CFR 412.3(a). We will use this terminology going forward.

Comment: A commenter requested that we amend the text of several sections of the proposed codified regulations text to include the word ''shall'' to strengthen and emphasize required actions.

Response: We appreciate the suggestion by the commenter. We drafted the regulation text for these new procedures to be consistent with existing regulation text in 42 CFR part 405 Subpart I. Those provisions also include required actions for contractors, but generally use ''must'' rather than ''shall'' to indicate a requirement. We reviewed the proposed regulation text and did not identify language that was vague or did not clearly indicate a requirement where we intended a requirement. Thus, we are not adopting the recommendations made by the commenter.

Comment: Many commenters expressed their support for the outreach and education that we plan to conduct following the issuance of the final rule as we implement these procedures. Commenters suggested additional means of educating beneficiaries and their representatives on the new appeal rights offered in this rule. For example, commenters recommended we include information in the Medicare & You handbook and with Medicare Summary Notices (MSNs) while the filing period is open and create new materials available to beneficiaries and advocates such as social workers and State Health Insurance Assistance Program (SHIP) counselors. Commenters also suggested that we provide translations of these materials into various languages.

Response: We appreciate the support of these commenters on our general approach to conducting education and outreach related to these new appeals procedures. We are committed to providing educational and training materials on our website for advocates to reference and provide to beneficiaries. We are also committed to creating new documents and publications, as well as updating current publications such as Medicare & You, that may be downloaded from *Medicare.gov* and/or *CMS.gov.* This includes the translation of materials into different languages as needed. We intend to train and provide information to customer service representatives at 1–800–MEDICARE to assist and inform beneficiaries with questions about these procedures. We also intend to provide information to SHIP counselors and other advocacy groups in providing updates on new and emerging programs in Medicare, such as these new appeal rights.

In addition, we will include a message regarding this new appeal right on beneficiary MSNs. This message will refer beneficiaries to the detailed information that will be included on *Medicare.gov* and/or *CMS.gov.*

Comment: A commenter suggested that we extend the date of receipt of notices or decisions sent by the eligibility contractor, processing contractor or other appeals adjudicators, to 30 calendar days following receipt of the notice.

Response: We appreciate the comment. Our longstanding policy presumes receipt of a notice in the appeals process is 5 calendar days after the date of the notice. We adopted this policy for these new retrospective appeals as we intended the process for these new appeals to mirror existing processes as much as possible. This presumption is rebuttable if the appellant can establish receipt outside of the 5-day window. The reason for this longstanding presumption is to account for the time between the printing and mailing of the notice receipt by the appellant and because filing timeframes at subsequent levels of appeal begin upon receipt of the decision at the previous level. Our longstanding experience is that this 5-day window for

receipt is generally consistent with postal delivery timeframes. We do not believe the time between mailing the notice and receipt would be as long as 30 calendar days. Thus, we are not adopting the recommendation made by the commenter.

2. Party Status, Authorized Representatives, and Appointed Representatives

The court order instructs HHS to establish new appeals procedures for certain beneficiaries, specifically, beneficiaries who are members of the defined class, as previously described in the overview and in proposed § 405.931(b). The court's decision noted that some class members suffered financial or other consequences as a result of the change in their status from inpatient to outpatient receiving observation services, including having to pay for the costs of post-hospital extended care services in a SNF out of pocket because they did not satisfy the statutory requirement for SNF coverage of having a 3 consecutive day qualifying inpatient stay (see section 1861(i) of the Act). In addition, other class members had to pay for their hospital services themselves because they lacked Medicare Part B coverage. The court directed HHS to afford class members a right to appeal certain denials of Part A coverage which are defined later is this section. The court ordered an appeal process be made available to those class members who did not have such a process available if their hospital stays, dating back to January 1, 2009, met the conditions of the order. Accordingly, in § 405.931(b) we proposed to define an eligible party as an individual who meets the definition of a class member in *Alexander* v. *Azar.* In that case, the court adopted the following class definition: a Medicare beneficiary who, on or after January 1, 2009—

- Was formally admitted as a hospital inpatient;
- While in the hospital was subsequently reclassified as an outpatient receiving observation services (as defined in § 405.931(h));
- Has received an initial determination (as defined in § 405.920) or a Medicare Outpatient Observation Notice (MOON) (as described in § 489.20(y)) indicating that the observation services are not covered under Medicare Part A; and
- Either—

++ Was not enrolled in the Supplementary Medical Insurance program (that is, Medicare Part B coverage) at the time of beneficiary's hospitalization; or

++ Stayed at the hospital for 3 or more consecutive days but was designated as an inpatient for fewer than 3 days, unless more than 30 calendar days has passed after the hospital stay without the beneficiary's having been admitted to a SNF.

An eligible party would be entitled to request an appeal under the proposed retrospective process.

In contrast, the court's decision did not include providers as class members entitled to additional appeals procedures and did not require HHS to afford new appeal rights to providers in these new appeals proceedings. Accordingly, in § 405.931(b) and (c), we proposed to limit party status in these new appeals to beneficiaries who meet the definition of a class member as specified in the court order.

As we believe some beneficiaries who are members of the class may require assistance with their appeal requests, we proposed to apply existing rules regarding appointed representatives and authorized representatives (see §§ 405.902 and 405.910) to these new appeals.[8] There may also be some situations in which a class member has died since their hospitalization and, as applicable, admission to a SNF. Our existing rules in § 405.906(a)(1) permit certain successors in interest to file appeals on behalf of a deceased beneficiary. Thus, in § 405.931(d)(3) we proposed to apply those rules to deceased class members who would have been eligible to request an appeal under the proposed procedures for retrospective appeals.

However, contrary to existing claims appeals procedures, in § 405.931(d)(1)(i) we proposed to exclude providers from representing beneficiaries in these new appeals, and we proposed to prohibit the assignment of appeal rights to providers as well. Since the decision to change a patient's status is made by the hospital, we had concerns that the interests of a class member could conflict with the interests of a hospital or SNF, and we were concerned that a class member's challenge to their denial of Part A coverage resulting from a change in status from inpatient to outpatient receiving observation services may not be appropriately represented by the hospital that initiated that change, determined that outpatient services were appropriate for the beneficiary, and in most cases, previously received payment for outpatient services. We had similar concerns regarding representation by SNFs that already received payment for the SNF services at issue. Unlike most existing claims appeals, where the primary issue under review is the denied coverage and payment for items and/or services billed on a claim, the issue on appeal under these procedures is whether services meet the relevant criteria for coverage and payment under the inpatient hospital benefit under Part A of the program rather than under the Part B outpatient benefit where payment was, in most cases,[9] previously made to the hospital, and the consequences of that decision on coverage of SNF services. Moreover, as we are implementing procedures required under the court's order under the Secretary's rulemaking authority in sections 205(a), 1871, and 1872 of the Act, we believed the provisions of section 1869 of the Act guide, but do not explicitly govern, the appeals procedures for the new retrospective appeals ordered by the court.

We proposed to include a definition of ''unrepresented beneficiary'' applicable to appeals under proposed §§ 405.931 through 405.938. In the existing claims appeals process in 42 CFR part 405 subpart I, certain procedural requirements do not apply to an unrepresented beneficiary. However, that term is not defined in existing regulations. Therefore, in § 405.931(d)(5), we proposed to define an unrepresented beneficiary as a beneficiary who is an eligible party and: (1) has not appointed a representative under § 405.910; or (2) has an authorized representative as defined in § 405.902; [10] or (3) has appointed as its representative, a member of the beneficiary's family, a legal guardian, or

[8] Appointed representative means an individual appointed by a party to represent the party in a Medicare claim or claim appeal. Authorized representative means an individual authorized under State or other applicable law to act on behalf of a beneficiary involved in the appeal (for example, a beneficiary's legal guardian, surrogate decision-maker for an incapacitated beneficiary, or an SSA-appointed representative payee). The authorized representative will have all of the rights and responsibilities of a beneficiary or party, as applicable, throughout the appeals process and does not need a further appointment.

[9] We acknowledge that payment by Medicare would not have been made in appeals brought by a beneficiary who was not enrolled in Part B at the time of hospitalization. In those situations, the beneficiary would have been responsible for payment for outpatient services furnished by the hospital.

[10] Typically, an authorized representative will be a legal guardian, representative payee or someone acting under state law on behalf of a beneficiary (for example, a family member with a durable power of attorney). Often these authorized representatives are family members or other individuals who are unfamiliar with the technical requirements of the existing claim appeals process. We believed it was reasonable to treat appeals filed by authorized representatives, like other existing claim appeals filed by family members (that is, as if the appeal was filed by an unrepresented beneficiary).

an individual who routinely acts on behalf of the beneficiary, such as a family member or friend who has a power of attorney; or (4) in the case of a deceased beneficiary, the appeal request is filed by an eligible party who meets the conditions set forth in § 405.906(a)(1).

We also proposed to incorporate certain existing policies that would apply in the new appeals procedures for the convenience of appellants and adjudicators. For example, in § 405.931(f), we proposed that the date of receipt of a notice or decision sent by the eligibility contractor, processing contractor or other appeals adjudicator is presumed to be 5 calendar days following the date on the notice unless there is evidence to the contrary. In addition, in § 405.931(g) we proposed that for the purposes of determining whether a beneficiary has a qualifying inpatient stay for SNF eligibility and for eligibility as a class member, days are counted consistent with existing policy in § 409.30 (that is, 3 consecutive calendar days starting with the admission day but not counting the discharge day).

In proposed § 405.931(h), we explained that for the purposes of determining eligibility for an appeal under these procedures, a beneficiary would be considered an outpatient receiving observation services when the hospital changes a beneficiary's status from inpatient to outpatient while the beneficiary is in the hospital and the beneficiary subsequently receives observation services following a valid order for such services.

We received several comments regarding eligibility requirements for an appeal under these procedures and several comments regarding the limitation on provider representation of eligible parties.

Comment: A few commenters questioned the MOON being a determining factor for eligibility for an appeal under the new procedures. A commenter noted that the MOON was established in August 2015, but retroactive appeals are available to eligible beneficiaries with hospital admissions starting on January 1, 2009. Another commenter suggested that the proposed regulation in § 405.931(b) defining an eligible party requires the delivery of the MOON as a condition of eligibility for a retrospective appeal.

Response: We appreciate the commenter's observations regarding the implementation date of the MOON and the eligibility criteria under these appeal procedures. The federal district court order and our definition of an eligible party states that receipt of either an initial determination or a MOON would serve to meet one condition of eligibility for an appeal under these new procedures. For hospitalizations that predate the effective date of the MOON, a beneficiary's receipt of an initial determination for their hospital and/or SNF claim (that is, a Medicare Summary Notice resulting from processing a claim submitted by a provider) would serve to meet the requirement.

Comment: A commenter sought clarification on whether a beneficiary must receive observation services after the change in status from inpatient to outpatient in order to be eligible for an appeal under these new procedures.

Response: We appreciate the opportunity to provide this clarification. A beneficiary must receive observation services after the change in status from inpatient to outpatient in order to be eligible for an appeal under these new procedures. As explained in the proposed rule, consistent with the court order, the class members who are to be afforded an opportunity to appeal the denial of their Part A coverage include Medicare beneficiaries who, on or after January 1, 2009, have been or will have been subsequently reclassified by the hospital as an outpatient receiving observation services, and meet the other conditions specified in the order (88 FR 89506 (December 27, 2023)). We further stated in the proposed rule that, for the purposes of these proposed procedures, a beneficiary is considered an outpatient receiving observation services when the hospital changes a beneficiary's status from inpatient to outpatient while the beneficiary is in the hospital and the beneficiary subsequently receives observation services following a valid order for such services (88 FR 89506).

Comment: Several commenters stated that the proposed rule does not address how beneficiaries who are eligible for a retrospective appeal will be identified and receive notice of the new appeal procedures that are available. A commenter suggested that CMS utilize claims data, hospital records, or beneficiary reports to identify eligible parties.

Response: We appreciate the commenter's suggestions. We considered this issue as we assessed how to implement the court order and determined that it would not be feasible to proactively identify eligible parties. Unfortunately, the claims data available to us do not align precisely with the eligibility criteria for these new appeals procedures. For example, the outpatient claim submitted by a hospital would not provide any indication of when observation services were furnished to a beneficiary. Thus, we could not discern between a beneficiary who received observation services prior to the inpatient admission (who would not meet eligibility criteria) and a beneficiary who received observation services after the change in status from inpatient to outpatient simply based on claims information. This aspect of eligibility for an appeal would only be available after a review of medical records, and we believe it would be inefficient and ineffective to request and review medical records for all potentially eligible beneficiaries (estimated to be over 32,000) in order to identify those beneficiaries who are, in fact, eligible for an appeal. Such attempts would cause undue burden on the program and would delay appeals due to the volume of records requests and resources needed to review every medical record. Instead, we will rely on education and outreach to alert beneficiaries to the availability of these new appeal procedures and the eligibility requirements to access these appeals established in this final rule.

Comment: A commenter questioned whether beneficiaries who were not enrolled in Medicare Part B at the time of their hospitalization but had other insurance coverage to cover outpatient services (such as a group health plan) would be eligible for an appeal.

Response: A beneficiary not enrolled in Medicare Part B who meets all stated eligibility criteria would be eligible for an appeal under these new procedures, even if the beneficiary had other insurance coverage that covered Part B outpatient hospital services. We would expect such appeals would be rare and would likely focus on noncovered SNF services that resulted in out-of-pocket expenditures by the beneficiary.

Comment: A few commenters disagreed with our limitation on provider representation for these new appeals as proposed in § 405.931. Generally, these commenters were concerned about the lack of support for beneficiaries to work through these appeals. A commenter stated that beneficiaries sometimes rely on provider staff to understand benefits and available coverage and requested clarification regarding whether provider staff may provide information and assistance to beneficiaries filing appeals. A commenter stated that SNFs should be able to file appeals on behalf of beneficiaries since SNFs have the motivation to ensure that they receive proper payment for the services they provide. A commenter expressed support for the definition of an unrepresented beneficiary and the rights it will extend to beneficiaries under 42 CFR part 405 subpart I.

Response: We appreciate the concerns raised by these commenters. While we generally agree that providers may provide valuable assistance to beneficiaries seeking appeals of denied services under existing procedures, we believe that in these new appeals, the circumstances warrant a different approach to appointed representatives. We note that beneficiaries entitled to an appeal under these new rules still have many options for obtaining assistance in their appeal. For example, friends and family members are eligible to be appointed as a representative. In each state, state health insurance assistance programs (SHIPs) are available to explain coverage and benefits and to represent and assist beneficiaries in appeals. Private advocacy groups are also available to assist and represent beneficiaries in Medicare appeals. Staff employed by providers may also assist beneficiaries by providing them with information and support in their appeals. These are just a few illustrative examples of persons and groups that may be available to assist beneficiaries, and we do not believe that precluding providers from representing beneficiaries for services, in some cases, furnished many years ago, will have a negative impact on beneficiary access or representation in these new appeals.

As explained in the proposed rule, we are concerned about a provider acting as the appointed representative of a beneficiary in these new appeals. Appointed representatives play a significant role in a beneficiary's appeal. The representative is responsible for submitting forms, receiving and submitting information on behalf of the beneficiary, and making arguments on behalf of the beneficiary. While an appointed representative is acting on behalf of a beneficiary, the representative exercises control over most aspects of the appeal. In many of the appeals we expect under these new procedures, beneficiaries or family members reimbursed SNFs for the care that was furnished to the beneficiary. In some of these cases, we believe a SNF's interests could be at odds with the interest of the beneficiary. For example, a SNF could be motivated by maintaining the status quo with respect to payment already received for services in light of the burden associated with refunding payments and billing the Medicare program for payment for services furnished as many as 15 years earlier. We believe restricting formal provider representation in the appeals process, given the broad availability of other resources, affords beneficiaries the best opportunity for independent and unbiased assistance, if needed. While a provider may not act as an appointed representative for a beneficiary under these procedures, we believe it would be entirely appropriate for providers to lend assistance to beneficiaries in providing records, information, and advice about the appeal and the appeal process. Thus, we are not adopting the recommendation to allow providers to be appointed as a representative for an eligible party.

We would also like to clarify the scope of our proposal in adding a definition to the term unrepresented beneficiary in § 405.931(d)(5) for these new appeal procedures. As proposed in § 405.931(d)(5), a beneficiary who is an eligible party is considered unrepresented if the beneficiary meets one of several criteria specified in that section. As we explained in the introductory paragraph of § 405.931(d), the policies established in that section are for the limited purposes of these new appeal procedures, that is, appeals conducted under §§ 405.931 through 405.938. We did not intend to apply the definition of unrepresented beneficiary in § 405.931(d)(5) to claim appeals conducted under existing 42 CFR part 405 subpart I. The purpose in adding this definition is to help eligible parties who are considered unrepresented understand how certain existing procedural requirements, adopted for these new procedures, will apply. For example, in § 405.1018, there are specific requirements regarding the submission of evidence at an ALJ hearing that do not apply to an unrepresented beneficiary. For the purposes of appeals conducted under §§ 405.931 through 405.938, those requirements will not apply to an unrepresented beneficiary as defined in § 405.931(d)(5).

We appreciate the feedback that we received from commenters on eligibility requirements and policies regarding appointed representatives. Based on analysis of the public comments, we will be finalizing the proposals related to such procedures as proposed.

3. Appeal Requests and Determinations of Eligibility by the Eligibility Contractor

In § 405.932, we proposed to channel all retrospective appeal requests from eligible parties through a single point of contact, the eligibility contractor. We proposed, in § 405.932(a)(2) for a retrospective appeal, that the appeal request filed by an eligible party (or their representative) must be received by the eligibility contractor within 365 calendar days from the implementation date of these provisions which would be specified when this rule is finalized. We proposed that details regarding the filing of appeal requests would be posted to *Medicare.gov* and/or *CMS.gov* once the retrospective appeals process is operational. A single point of contact will relieve beneficiaries of the burden of determining which contractor is currently responsible for claims processed many years ago in order to file their appeal request. In addition, due to the complexity of the requirements for determining eligibility as a class member for an appeal, we believed having a single point of contact would promote consistency in such determinations and would provide a better overall experience for eligible beneficiaries pursuing their appeal rights.

We anticipated eligible parties (or their representatives) would provide relevant information to demonstrate their eligibility as a member of the class afforded appeal rights in the court order as proposed in § 405.932(a) through (c), including medical records that may serve to document certain conditions of eligibility under the court order. Medical records would also assist in determining whether the beneficiary received observation services following the reclassification from inpatient to outpatient receiving observation services. However, we understood the challenges beneficiaries and their representatives may face in obtaining and producing such information in situations where significant time may have passed since a beneficiary was hospitalized. Therefore, we proposed in § 405.932(c)(2) that the eligibility contractor would work with MACs, eligible parties, and providers, whenever necessary, to attempt to obtain the information needed to make such determinations. In our existing claims appeals process, contractors routinely seek records from providers to assist beneficiaries filing appeals when the beneficiary is unable to provide records needed to adjudicate the appeal.

In § 405.932(b), we proposed that eligible parties (or their representatives) provide, in writing, certain minimum basic information in their appeal request, so the eligibility and processing contractors may identify the prior claims filed for the hospital stay and SNF services, as applicable, that serve as the basis for the retrospective appeal. These required elements for an appeal request (which are similar to existing requirements for requesting a redetermination under § 405.944) include the beneficiary's name, Medicare number (the number on the beneficiary's Medicare card), name of the hospital and the dates of

hospitalization, and the name of the SNF and the dates of stay (as applicable). If the appeal includes SNF services not covered by Medicare, the written request must also include an attestation to the out-of-pocket payment(s) made by the beneficiary for such SNF services and must include documentation of payments made to the SNF for such services. CMS would prepare a model form that appellants may use to file requests for a retrospective appeal under these provisions. Once the appeal process is operational, this notice would be available online at *Medicare.gov* to download and complete and would be available to request in printed or accessible form by calling 1–800–MEDICARE.

We also proposed in § 405.932(b)(2) that eligible parties attest to their out-of-pocket costs (other than customary cost sharing paid to a third-party payer or insurer) paid for SNF services not covered by Medicare because the statutory requisite, 3-consecutive calendar day inpatient hospital stay, was not met. (We note that for the purposes of determining coverage of SNF services under section 1861 of the Act, inpatient hospital days are counted in accordance with longstanding, existing policy in § 409.30, that is, a patient must have a qualifying inpatient stay of at least 3 consecutive calendar days starting with the admission day but not counting the discharge day (see § 405.931(g)).

In cases where a third-party payer or insurer covered all of the cost of SNF services of an eligible party, we proposed that such services be excluded from consideration in the retrospective appeals process. (Payments for SNF services made by a family member would not be considered payment by a third-party payer but would be considered out-of-pocket payment for the eligible party.) In light of the clarification to the court order indicating that the new appeal processes are intended to provide a remedy for class members who already endured uncompensated or undercompensated stays at skilled nursing facilities, we did not believe the court order requires the readjudication of such paid services under a Medicare appeal process if payment for that care is provided by another insurer.[11] Moreover, readjudicating these claims potentially puts Medicare trust fund dollars at risk for making duplicate payments to providers for previously compensated care, as Medicare does not have authority to compel refunds with respect to payments made by third-party payers to providers. In addition, focusing our efforts on situations involving payments for denied services made by beneficiaries (or their families) focuses resources for appeals for beneficiaries (or their families) that paid out of pocket for the cost of care.

We proposed in § 405.932(d) that the eligibility contractor would be responsible for determining the validity of requests for appeal under these provisions, that is, whether the request is filed by an eligible party, is timely filed, and contains the required elements for a valid request specified in § 405.932(b)(1) and (2). The eligibility contractor would issue a decision to approve or deny such requests. In proposed § 405.932(d)(1)(ii), we would require the eligibility contractor to issue a written decision within 60 calendar days of receipt of a valid appeal request from the eligible party (or their representative). We proposed in § 405.932(d)(2) that approved requests (meaning those meeting both eligibility and filing requirements), would be forwarded to the processing contractor (the MAC with jurisdiction over the hospital claim), and the processing contractor would perform the appeal. Under proposed § 405.932(d)(3), requests that are not eligible for an appeal or do not meet the requirements under proposed in §§ 405.931 and 405.932 would be denied. However, we proposed that individuals receiving a notice of denial of an appeal request would have an opportunity to request a review of the denial by the eligibility contractor in order to provide additional clarification, or correct any deficiencies in the filing, under the provisions proposed in § 405.932(e). Our proposed approach to handling requests that are ineligible for an appeal differed slightly from how similar appeal requests are handled under existing claims appeals procedures in § 405.952. Under existing rules, such requests are dismissed, and dismissals may be reviewed and vacated by the adjudicator who issued the dismissal or appealed to the next level adjudicator to determine if the dismissal was appropriate. However, given the complexity of the eligibility requirements, the age of the service in question and in many cases, the lack of a claim to review, in our view the most effective and efficient approach to resolving eligibility concerns was to keep these disputes with the eligibility contractor, requiring review by an individual not involved with the initial denial determination.

We received several comments regarding the proposed filing timeframes and procedures for retrospective appeals, the procedures for eligibility determinations, and the submission of medical records in support of an eligible party's appeal.

Comment: Several commenters recommended CMS extend the filing timeframes for retrospective appeals beyond the period of 1 year following the implementation of the final rule proposed by CMS, citing that beneficiaries may have trouble locating such dated medical records and that the process to determine eligibility could prove to be complex. Commenters varied in their recommendations, some suggested 2 years while another suggested 4 years. Commenters also recommended that CMS apply existing good cause rules that allow for exceptions to appeal filing deadlines.

Response: We believe the 1-year (that is, 365 calendar day) filing timeframe from the implementation date of the final rule affords eligible parties adequate time to submit appeal requests under these new procedures. The 1-year timeframe is twice as long as any other existing timeframe to file an appeal. Moreover, we note that general information regarding the forthcoming right to appeal has been posted on *Medicare.gov* and *CMS.gov* since 2021.[12] We also anticipate providing more detailed information regarding the appeals process online and in Medicare publications, including MSNs, in the time between publication of the final rule and the actual implementation of the provisions. Thus, we believe the time between publication of the final rule and the implementation date, and the 1-year timeframe to file from the implementation date will give eligible parties a reasonable amount of time to compile information necessary for their case, and to file an appeal (and as we explain in this final rule, Medicare contractors will assist in obtaining medical records if the records cannot be submitted with the appeal request). Accordingly, we are not adopting the recommendations made by the commenters to lengthen the filing timeframe for retrospective appeals. (We note that the procedures in § 405.932(a)(2)(ii) include an exception that allows the eligibility contractor to accept an untimely filed appeal request

[11] However, if an eligible party paid out of pocket for some or all of the SNF services, including situations where a denial by a third-party insurer resulted in the beneficiary making out of pocket payments for some or all of the SNF services, then those SNF services that resulted in out of pocket payments would be eligible for an appeal.

[12] See *https://www.medicare.gov/providers-services/claims-appeals-complaints/appeals/original-medicare* and *https://www.cms.gov/medicare/appeals-grievances/fee-for-service.*

if the eligible party establishes good cause under the existing appeal provisions in § 405.942(b)(2) and (3).)

Finally, we are making an editorial revision in § 405.932(a)(2)(ii) to insert the word calendar after the number 365 for clarity and to be consistent with existing language regarding timeframes being measured in calendar days, both in these procedures and in our existing appeals procedures.

Comment: A commenter recommended that CMS create an online portal for the submission of appeal requests and supporting documentation.

Response: We appreciate the recommendation submitted by commenter to create an online portal for the submission of appeal requests and supporting documentation. We considered this option as we began to plan for implementation of this new appeals process, but ultimately found this approach to be impracticable due to a variety of time, cost, and security considerations. The length of development time, testing, and sheer level of effort required to implement a secured beneficiary-facing portal is at odds with the complex security environment and the need to implement these new procedures as quickly as possible. Moreover, we are committed to mirroring existing appeal procedures as much as possible for these new appeals. Therefore, we are not adopting the recommendation made by the commenters. We believe it is appropriate for beneficiary appeal requests to continue to be submitted via mail. CMS will provide clear instructions to beneficiaries on where to mail their requests.

Comment: A commenter suggested that we consider having beneficiaries file appeals with the health plan and have the plan conduct the initial eligibility determination in addition to the appeal. Other commenters supported our proposal to use a single point of contact for receiving appeals and making eligibility determinations.

Response: We appreciate the comments and support for our use of an eligibility contractor. We considered having MACs conduct the appeal intake and make eligibility determinations. However, as we explained in the proposed rule, we are establishing a single point of contact, the eligibility contractor, to receive these new appeals and to make eligibility determinations. We believe a single point of contact will relieve beneficiaries of the burden of determining which MAC would be responsible for performing an appeal under these new procedures. In addition, we believe a single contractor making eligibility determinations will promote consistency in such determinations. Following the determination of eligibility, the processing contractor (the MAC) will conduct the appeal. We also note that, as explained in the proposed rule, these new appeals are limited to beneficiaries in Medicare Part A and B (''Original Medicare''). Claims processing and first level appeals in Original Medicare are conducted by MACs and not health plans. Thus, we are not adopting the recommendation to use a health plan or the MACs to make eligibility determinations.

Comment: Many commenters supported the availability of a model form that could be used to file an appeal request. Commenters suggested that we make the form available in multiple languages, including an ASL interpretation of the form.

Response: We appreciate the support of the commenters regarding our proposal for a model form that beneficiaries may use to submit an appeal request. We plan to translate the form into different languages as needed.

Comment: Several commenters requested that we provide more information about the submission of medical records as part of the retrospective appeal request and what types of records and information would be needed as part of the appeal. Commenters also suggested that we provide eligible parties with instruction about how to seek assistance from the eligibility contractor in obtaining records and suggested other information that we should consider including in our instructions for filing appeal requests (for example, the types of records that would be helpful, the dates spent in the hospital, orders regarding admission and care, etc.).

Response: We appreciate the recommendations submitted by commenters for the content of instructions related to filing appeal requests. We intend to carefully consider these recommendations for the online educational materials we intend to publish prior to implementation of the new procedures. We agree that as part of our educational efforts, it will be helpful to provide beneficiaries with information about the types of records needed for these new appeals and suggestions for how to get access to them.

We would like to emphasize, as we did in the proposed rule, that we strongly encourage beneficiaries or their representatives to submit with their appeal request all available medical records related to the hospitalization and, as applicable, SNF services, and documentation of amounts paid out of pocket for care that was not covered under Part A. However, in these new appeals, we understand the difficulty some beneficiaries may have in obtaining records for services furnished many years ago. For that reason, we will require the eligibility contractor to work with the appropriate MAC to request all relevant records that are needed to establish eligibility for an appeal from the appropriate providers if some, or all, of those records are not submitted with the appeal request. In addition, as necessary, the eligibility contractor and MAC will request missing records related to the hospital, and as applicable, SNF services furnished to the beneficiary to determine whether coverage under Part A is warranted. Such records should be comprehensive with respect to the treatment and services received and would include, but are not limited to, hospital records that document admission as an inpatient, orders for observation services, diagnosis and treatment notes, orders and results of testing, discharge planning notes, as well as records from services furnished by the SNF (as applicable). In addition, beneficiaries should submit information related to the out of pocket payments that were made for the services at issue in the appeal, particularly SNF services for which a provider refund is sought. Such information could include provider bills and/or invoices, proof of payment in the form of a copy of a cashed check, credit card statement, etc.

Comment: A commenter requested clarification on how contractors will request additional information from providers related to an appeal request, and who within the provider's organization would be authorized to share patient information with the contractor.

Response: Providers have a longstanding obligation to provide requested information related to services furnished to a beneficiary under section 1815(a) of the Act. MACs will utilize existing methods for requesting additional documentation and records, that is, the Additional Documentation Request (ADR) process, where a letter outlining the requested records and dates of service is mailed to the provider. Providers that have registered to receive ADRs and submit records in response electronically may use the existing system (for example, the Electronic Submission of Medical Documentation (esMD) system). Providers should follow existing privacy protocols for the submission of records requested by the MAC for these appeals in the same manner as they would for

other records requests by a MAC or other contractor.

Comment: Several commenters recommended that we give individuals and providers additional time to submit records requested for an appeal. The commenters stated that the 60-day timeframe in the proposed rule is inadequate and suggested we allow 120 calendar days for the submission of missing information. A commenter expressed concern about the impact of records requests on providers. Some commenters also recommended that we also allow extensions of the timeframe for good cause. Commenters also expressed concern about whether providers would be penalized for being unable to locate records that are older than existing record retention requirements and urged CMS to ensure contractors are aware of record retention requirements.

Response: We understand and appreciate the concerns of the commenters regarding the potential issue some individuals or providers may have in locating and producing records for services furnished many years ago, and the burden of these requests on providers. While we are concerned that extended timeframes to respond to records requests may cause delays in establishing eligibility of the beneficiary in order to adjudicate valid appeals, we agree with the commenters that affording up to 120 calendar days to submit records to the eligibility contractor is reasonable. Accordingly, we are revising § 405.932(c)(2) to provide that the eligibility contractor will allow up to 120 calendar days for submission of missing information.

However, in light of the 365-calendar day filing timeframe to request an appeal under these procedures and the additional 60 calendar days we are granting to submit records, we believe it is also reasonable not to include extensions to the 120-calendar day timeframe in which records must be submitted to the eligibility contractor. It is important to balance the interests in affording individuals adequate time to obtain records with the interests in avoiding extended delays in processing appeals. We believe the 365-calendar day filing timeframe to request an appeal provides individuals with adequate time to obtain the necessary documentation to support their appeal. Should the eligibility contractor still need additional information, we believe allowing up to another 120 calendar days is reasonable. If an individual or provider cannot meet the deadline, the eligibility contractor will make a decision based on the information in the record. If the information in the record does not establish the individual's eligibility, then the eligibility contractor will issue a denial notice. The individual (or their representative) may request a review of the eligibility contractor's denial in accordance with the procedures outlined in § 405.932(e) and may submit any records subsequently obtained that serve to establish eligibility and/or coverage of services.

We acknowledge the concerns raised by commenters about the extended lookback period for retrospective appeals and the ability of providers to locate medical records for services that were furnished on dates that are not covered by existing record retention requirements. Medicare requires records be retained by providers for 7 years from the date of service (42 CFR 424.516(f)). While providers are not required to maintain records beyond the 7-year timeframe specified in regulations, we encourage providers to make reasonable efforts to search for and furnish any records in their possession, including those outside the record retention requirements. However, contractors are aware of existing record retention requirements, and we will not penalize providers who cannot locate records for dates of service that are beyond the record retention timeframe.

Comment: Several commenters stated that we should advise beneficiaries in our instructions for these new appeals that they may still submit retrospective appeal requests even if their medical records are unavailable. The commenters also requested that we specify that in the absence of medical records, acceptable evidence for the determination of Part A coverage would include written statements from beneficiaries, family members and providers who are familiar with the facts giving rise to the appeal.

Response: We agree with these commenters that beneficiaries may submit a retrospective appeal request without medical records. Consistent with the proposed rule, under this final rule we will require the eligibility contractor and the appropriate MAC to coordinate with providers to obtain necessary medical records to determine eligibility and to process the appeal regarding the denial of Part A coverage. Written statements from a beneficiary or family member regarding hospital services and, as applicable, SNF services furnished to a beneficiary may be submitted as evidence in the appeal. However, we believe an adjudicator will need some form of documentary evidence, such as medical records, to determine whether specific aspects of eligibility are met (for example, whether the hospital in fact admitted a patient as an inpatient and subsequently changed their status, or whether observation services were furnished after such change in status to outpatient). The adjudicator will also need to determine whether services meet Part A coverage requirements (for example, with hospital admissions subject to the original two-midnight rule from 2013, whether the patient is reasonably expected to require a stay of at least two midnights, and where the medical record includes information to support the physician's or otherwise qualified practitioner's expectation that the patient would require a stay of at least two midnights). Thus, testimonial evidence, such as statements from a beneficiary or provider regarding the care or treatment received will be accepted and considered in an appeal. However, without corresponding medical documentation, such statements by themselves may be insufficient to establish eligibility and/or determine if Part A coverage requirements were met. Thus, we decline to adopt the recommendation made by the commenters.

Comment: Several commenters recommended that our instructions for filing appeals and other guidance regarding the new appeals procedures explain the relevant standard for coverage that beneficiaries will have to meet in order to demonstrate that their hospital stay met the relevant Part A coverage criteria for inpatient hospital services.

Response: We appreciate this recommendation, and we agree that guidance regarding the coverage standards for inpatient admissions will be important information for beneficiaries eligible for an appeal. We intend to provide information regarding the relevant standards for inpatient hospital coverage and the applicable timeframes in materials we will publish on our websites.

Comment: A few commenters contended that the regulatory text in the proposed rule did not provide sufficient detail regarding the information contained in the notice related to a denial of eligibility for an appeal. The commenters suggested that the eligibility denial notice should contain specific information to assist beneficiaries in understanding the reason for the denial as well as what information is necessary to cure the denial.

Response: We appreciate the suggestions made by the commenters. We believe the regulatory language regarding the content of the denial notice in § 405.932(d)(3)(ii) is sufficient

with respect to specifying the reason for denial of the appeal request (''The denial notice explains that the request is not eligible for an appeal, the reason(s) for the denial of the appeal request, and the process for requesting a review of the eligibility denial under § 405.932(e).''). However, we agree that it would be appropriate to specify that the denial notice include a statement about the information needed to cure the appeal request to establish eligibility. We view this as implied in providing the reason(s) for the denial but also see the value of including this additional requirement in the denial notice prepared by the eligibility contractor. Therefore, we are revising § 405.932(d)(3)(ii) to state that the denial notice explains that the request is not eligible for an appeal, the reason(s) for the denial of the appeal request, the information needed to cure the denial, and the process for requesting a review of the eligibility denial under § 405.932(e). We appreciate the feedback that we received from commenters on eligibility determinations and filing appeals under these new procedures. Based on analysis of the public comments, we will be finalizing the proposals related to such procedures as proposed with the exception of the amendments to §§ 405.932(c)(2) and 405.932(d)(3)(ii), described previously.

4. Conduct of Appeals by Processing Contractors

Currently, MACs perform the first level of administrative appeal for Medicare claims (see 42 CFR 405.940 through 405.958). We proposed a similar process for these new appeals, utilizing existing procedures, as appropriate, with MACs performing the first level of retrospective appeals under this rule. Specifically, we proposed that the MAC that currently has jurisdiction over Part A claims from the relevant hospital would be responsible for conducting the retrospective appeal as the processing contractor. Where we believed the procedures for the new retrospective appeals would need to differ from existing claims appeals procedures, we proposed new processes. For example, in § 405.931(b) and (c), we proposed that party status for these appeals be limited to the eligible class members (or their authorized representatives).

In § 405.932(f)(1), we proposed that if the processing contractor determines there is necessary information missing from the appeal case file, the processing contractor would attempt to obtain the information from the provider and/or the eligible party (or their representative), as applicable. We proposed that the processing contractor afford entities up to 60 calendar days to submit requested information. If the requested information is not submitted in the specified timeframe, we proposed that the processing contractor would make a decision based on the information available.

In proposed § 405.932(f)(3), we required processing contractors to issue a written decision within 60 calendar days of receipt of a valid appeal request from the eligibility contractor. However, in cases where the processing contractor needs additional information to conduct the appeal from the eligible party (or their representative) or a provider, in § 405.932(f)(1), we proposed that the time between the request for such information and when it is received (up to 60 calendar days) would not count towards the 60-calendar day adjudication timeframe. If the requested information is not sent to the processing contractor, then we proposed that the time afforded by the contractor for submission of the information would not count towards the adjudication timeframe. In effect, the 60-calendar day timeline on which the processing contractor must make its decision will be tolled during the period between the date the processing contractor requests information from the provider and/or the eligible party and the later of the date that information is received or the deadline by which the information is requested has passed.

Under proposed § 405.932(f) and (g), based on the information available, the processing contractors would determine whether the hospital admission, and as applicable, SNF services, satisfied the relevant criteria for Part A coverage at the time of the admission, notwithstanding subsequent reclassification by the hospital, and whether the hospital services, and as applicable, SNF services, should have been covered under Part A. If the processing contractor determines that the hospital admission and, as applicable, SNF services satisfied the relevant criteria for Part A coverage at the time services were furnished, it would render a favorable decision and would send written notice to the eligible party (or their representative). The notice would explain the rationale for, and effect of, the decision, similar to existing notices for redeterminations.

In § 405.932(g)(4), when applicable, we proposed that processing contractors would send notice of a favorable decision to the SNF that furnished services to the beneficiary in order to inform the SNF of the reason for the decision and the effect of the decision. In addition, under § 405.932(g)(2) and (6), processing contractors would send SNFs notice of a partially favorable decision where the beneficiary's hospital inpatient admission would have met the criteria for Part A coverage, but the SNF services subsequently received by the beneficiary do not meet the relevant criteria for Part A coverage (for example, if the services are determined not medically reasonable and necessary under section 1862(a)(1)(A) of the Act). The notice of a partially favorable decision sent to a SNF informs the SNF of the reason the hospital services were determined to meet the relevant criteria for Part A coverage, and the reasons the SNF services were determined not to be covered under Part A. We proposed that the processing contractor also explain that the notice is being sent to the SNF for informational purposes only, and that only the eligible party (or the eligible party's representative) may appeal the decision to the QIC under proposed § 405.934. An eligible party may appeal a partially favorable decision with respect to coverage of SNF services to the QIC under proposed § 405.934 in the same manner as unfavorable decisions with respect to Part A coverage of the hospital services. In addition, in § 405.932(g)(5), with respect to an appeal filed by a beneficiary not enrolled in Medicare Part B at the time of hospitalization, we proposed that processing contractors would send notice of a favorable decision to the hospital to inform the hospital of the reason for the decision and the effect of the decision.

Providers are reminded that under sections 1814 and 1866 of the Act, §§ 489.20 and 489.21 of the regulations, and the terms of the provider agreement, providers may not collect any amounts for covered services other than applicable coinsurance and deductible. Accordingly, in the case of a favorable appeal decision that involves SNF services paid for by the beneficiary, we proposed in § 405.932(g)(4) and (h)(2)(i) that SNFs would be required to refund any payments collected from the beneficiary for the covered SNF services (see 42 CFR part 489 Subpart D regarding the requirements for handling of incorrect collections). Similarly, in the case of a favorable appeal decision rendered for a beneficiary who was not enrolled in Medicare Part B at the time of hospitalization, we proposed in § 405.932(g)(5) and (h)(2)(ii) that hospitals would be required to refund any payments collected for the outpatient hospital services.

Furthermore, we believed that the Medicare statute requires a provider of services to submit new claims in order

to determine the amount of benefits due for covered services and to receive payment under Part A of the program. Under section 1814(a)(1) of the Act, and 42 CFR 424.33, and 42 CFR 424.51, payment for Part A services furnished to an individual may be made only to a provider of services eligible to receive payment under section 1866 of the Act after a request for payment (a claim) is filed with Medicare by the provider. The clarifying order issued by the court stated that the program is not required to unwind previously filed Part B outpatient hospital claims in order to make payment for covered SNF services in the case of a favorable decision (meaning for the purposes of effectuating a favorable decision, any existing Part B outpatient hospital claim will not be reopened or revised by the MAC to reflect an appeal decision that the class member's hospital admission satisfied the relevant criteria for Part A coverage at the time of the admission, and the hospital will not be required to submit a claim for inpatient services under Medicare Part A [13]). However, the clarification only applies to beneficiary class members who were enrolled in Medicare Part B at the time of hospitalization. Thus, in the case of a beneficiary class member who was not enrolled in Medicare Part B at the time of hospitalization, we proposed in § 405.932(h)(2)(ii) that following a favorable appeal decision and making any required refund for payments received for covered services, the hospital may submit a new Part A inpatient claim to Medicare in order to determine the appropriate amount of benefits and for Medicare to make payment for inpatient hospital services under Part A. We also proposed in § 405.932(h)(2)(ii) that the claim must be submitted by the hospital within 180 calendar days after the hospital receives its notice of a favorable appeal decision for the eligible party.

In addition, if a favorable appeal decision includes eligible SNF services that are covered, in § 405.932(h)(2)(i), we proposed that following a refund of amounts collected from the beneficiary, the SNF may then submit a claim (or claims) for such services to Medicare in order to determine the appropriate amount of benefits, and for Medicare to make payment for the covered SNF services. The SNF claim, following a favorable appeal decision (that is, the hospital admission satisfied the relevant criteria for Part A coverage as an inpatient at the time of admission and the SNF services met relevant Part A coverage criteria), would be processed without regard to the hospital's erroneous reclassification of the beneficiary as an outpatient receiving observation services. We also proposed in § 405.932(h)(2)(i) that the SNF submit the claim within 180 calendar days after receiving the notice of a favorable appeal decision for the eligible party.

If the processing contractor determines that the hospitalization did not meet applicable Part A inpatient coverage requirements, we proposed in § 405.932(g)(3) the MAC would send notice of its unfavorable decision to the eligible party (or their representative). If the processing contractor determines that the hospital admission meets applicable Part A inpatient coverage requirements, but the SNF services eligible for the appeal do not meet applicable coverage requirements, we also proposed in § 405.932(g)(2) that the processing contractor would send notice of its partially favorable decision to the eligible party (or their representative). The notice of an unfavorable or partially favorable decision would inform the eligible party (or their representative) of the right to request a reconsideration with a QIC under proposed § 405.934 and would provide detailed information about the requirements for filing the request and where the request must be filed.

We received several comments regarding the processing of retrospective appeals and the effectuation of favorable or partially favorable appeals.

Comment: A commenter requested clarification regarding coordination among MACs if a hospital claim and SNF claim are processed by different MACs. The commenter questioned how the MAC processing the appeal would get information about the SNF. The commenter also inquired about the process for handling requests from the eligibility contractor that are sent to the wrong MAC.

Response: We appreciate the commenter's questions about how contractors will coordinate activities to ensure appropriate information is available to the eligibility and processing contractors. We considered the concerns raised by the commenter as we were developing the procedures in the proposed rule and we intend to include a process for contractors to coordinate with each other and with CMS in the rare case of different contractors having responsibility for the SNF claim and the hospital claim. This will ensure information needed to request documentation will be made available to the appropriate contractor. We will also instruct contractors to work with CMS in the event that the eligibility contractor sends requests to the incorrect MAC. In turn, CMS will assist the eligibility contractor, as needed, to determine the appropriate processing contractor so the appeal will be handled in a timely manner.

Comment: A commenter expressed concern about estate recovery under the Medicaid program in situations under these new procedures where a beneficiary could not obtain Medicare coverage of SNF services, but ultimately received coverage of SNF services from Medicaid. The commenter suggested that CMS encourage states to use hardship waiver authority to relieve individuals of estate recovery for portions of SNF stays that Medicare should have covered.

Response: We appreciate the concerns raised by the commenter. If a State Medicaid agency determines that a deceased beneficiary may be subject to estate recovery, it may only make recoveries from the beneficiary's estate under certain circumstances, including when recovery would not create an undue hardship for survivors. States are required by section 1917(b)(3) of the Act to have procedures to waive estate recovery where it would create an undue hardship for the deceased Medicaid recipient's heirs. States have flexibility and discretion to design reasonable criteria for determining what constitutes an undue hardship and who may be afforded protection from estate recovery in such instances. The State plan needs only specify the criteria for waiver of estate recovery claims due to undue hardship. Individuals will need to work directly with their State Medicaid Agency to file an undue hardship claim.

Comment: Several commenters suggested CMS clarify that due to the COVID–19 public health emergency (PHE) and the waivers implemented by CMS with respect to the 3 consecutive day qualifying hospital stay (QHS) eligibility requirement for SNF benefits, that there should be no appealable SNF stays for the period in which the PHE waivers were in effect.

Response: We appreciate the commenters' suggestions on this issue. Under the terms of the court order and the proposed rule establishing eligibility for retrospective appeals (§§ 405.931 through 405.938), an eligible party may appeal the denial of Part A coverage. We anticipate an overwhelming majority of appeals filed under these new provisions will focus on denials of Part A SNF coverage due to financial liability for the denied SNF services. We

[13] We note that a previously paid claim is still subject to reopening under § 405.980 for other reasons unrelated to the appeal decision (for example, if payment for the claim was procured by fraud or similar fault).

agree with the commenter that appeals under these new provisions should not include SNF services that were paid by Medicare as the result of a SNF invoking the COVID–19 PHE waiver authority for a QHS (or services paid by a third-party payer as noted in § 405.932(b)(2)). Nevertheless, we would like to clarify that we are not restricting an eligible party's right to appeal the denial of Part A coverage for hospital services under these procedures even if the SNF services were covered by Medicare or a third-party payer; we do not believe that such a restriction is consistent with the court order in *Alexander.* However, following the clarifying order by the court which does not require the unwinding or adjustment of the Part B outpatient hospital claim following a favorable appeal decision, we do not expect many appeals to be filed if the beneficiary's SNF services were covered.

Comment: A few commenters suggested that we clarify how the new appeals process will interact with existing claims appeals processes. A commenter requested that we address situations where a hospital is pursuing a claim appeal under the existing claims appeals process and then an eligible party initiates a retrospective appeal under these new procedures. The commenter acknowledged there would likely be few such cases.

Response: We agree with the commenter that we expect very few, if any, situations where a claim for hospital outpatient services is pending in the claims appeal process and then an eligible party files an appeal for Part A coverage under the new process. However, in that unlikely situation, the determination of coverage under Part A for the hospital claim would be conclusive with respect to the hospital services and would be binding for purposes of the beneficiary's hospitalization.

To illustrate, under existing procedures in § 405.940, *et seq.,* if the hospital appealed a denial of coverage of outpatient hospital services for not being medically reasonable and necessary under section 1862(a)(1)(A) of the Act, that appeal would only address the coverage and payment of the outpatient services on the hospital's Part B claim submitted to Medicare. An appeal filed by a hospital under existing procedures would not address whether coverage under Part A would have been appropriate. However, if an eligible party filed an appeal for the denial of Part A coverage under the provisions in §§ 405.931 through 405.938, then that determination would be conclusive for the purposes of coverage for the hospital services. Adjudicators deciding an appeal of the Part B outpatient claim would be bound by the determination with respect to Part A coverage as a result of an appeal under §§ 405.931 through 405.938. Similarly, if the appeal under §§ 405.931 through 405.938 involves coverage of SNF services, the determination would be binding on any pending claims appeal under existing procedures.

In order to address the issue raised by the commenter, we are revising § 405.931 to add new paragraph (i) to explain that the determination of Part A coverage made in an appeal decision under these procedures is conclusive and binding with respect to coverage of such services under Part A for any other appeal under Part 405 Subpart I. Specifically, § 405.931(i) would be added to state that, for the purposes of appeals under §§ 405.931 through 405.938, the determination with respect to coverage under Part A is conclusive and binding with respect to the services furnished and shall be applied to any existing appeals with respect to coverage and payment for hospital services under Part B and SNF services (as applicable).

Comment: Several commenters expressed support for the process outlined in the proposed rule regarding applicable refunds to beneficiaries for out-of-pocket payments made following a favorable or partially favorable appeal decision. A commenter suggested that CMS clarify that ''family member'' in the context of out-of-pocket payments include individuals who are not biologically related to the eligible party. A commenter requested that CMS state that the application of 42 CFR part 489 Subpart D with respect to handling incorrect collections means that providers must issue refunds promptly (generally within 60 days of a binding favorable appeal decision) and must comply with existing legal protections. A commenter also suggested that CMS provide additional explanation for situations where a provider has changed ownership or has closed, and a refund is owed to a beneficiary. A commenter also indicated that CMS should consider how refunds will get to the appropriate individual, particularly with respect to appeals filed on behalf of deceased beneficiaries.

Response: We appreciate the commenters' support and suggestions on this issue. Our goal in creating this new retrospective appeals process is to implement the court order in a way that provides class members with a meaningful opportunity to appeal the denial of Part A coverage that is similar to the existing claim appeal process and provide a remedy for those class members who endured uncompensated or undercompensated care at SNFs. At the same time, there are limits on our authority to fashion remedies in effectuating favorable appeal decisions. For example, payment for hospital and SNF services may only be made to providers following submission of a claim by the provider. Section 1814(a)(1) of the Act; 42 CFR 424.33 and 42 CFR 424.51. In addition, existing policies for handling incorrect collections of funds from a beneficiary (42 CFR part 489 Subpart D) do not authorize the program to reimburse beneficiaries directly except in very limited circumstances (see § 489.42(a)). For this reason, we must rely on providers and the terms of their provider agreement to issue refunds to beneficiaries where applicable.

In the proposed rule, we explained that we are limiting our review of SNF services in these new appeals to situations where the beneficiary or a family member paid out-of-pocket for the SNF services (42 CFR 405.932(b)(2)). We explained that payments, including cost sharing payments, made by a third-party payer do not constitute out-of-pocket payments made on behalf of the eligible party. We agree with the commenter who suggested that for the purposes of determining whether there were out-of-pocket payments made for SNF services, we consider payments made by individuals who are not biologically related but who paid out-of-pocket expenses on behalf of a beneficiary to be considered as out-of-pocket payments made by a family member. This could include, for example, close family friends, a former spouse, a roommate, or other individuals who would not have a legal or contractual obligation to pay for a beneficiary's care. We are revising § 405.932(b)(2)(iii) to state that payments made by a family member (including payments made by an individual not biologically related to the beneficiary) for an eligible party's SNF services are considered an out-of-pocket payment for the eligible party.

With respect to the comments received about the timing of refunds that may be required following a favorable or partially favorable appeal decision, we reiterate our position as explained in the proposed rule that providers have an obligation to comply with applicable statutory and regulatory requirements with respect to charging for covered services. In the proposed rule (88 FR 89514), we stated that providers are reminded that under sections 1814 and 1866 of the Act, 42 CFR 489.20 and 489.21, and the terms

of the provider agreement, providers may not collect any amounts for covered services other than applicable coinsurance and deductible. Refunding amounts previously paid for services determined to be covered following an appeal is the responsibility of the provider, and must be made consistent with the provisions in part 489 Subpart D. We expect that the provider will promptly refund amounts incorrectly collected, meaning the refund should be issued within 60 days of receipt of the decision letter to avoid the set aside requirements in 42 CFR 489.41(b).

With respect to concerns about refunds getting to the appropriate individual in the case of deceased beneficiaries, we note that an appellant would need to establish authority to file on behalf of a deceased beneficiary as they do under existing appeals procedures (see 42 CFR 405.906(a)(1)). Coordination of any refund owed by a provider following a favorable appeal decision is a private matter between the provider and the individual entitled to a refund, and state law would govern in the case of a refund owed to a deceased beneficiary or their estate, or refunds owed by a provider that is no longer operating. CMS has limited authority under the statute to intervene. CMS may only make payment to an individual in situations where the provider invokes the set aside provision in § 489.41 and fails to issue a refund. CMS would then determine whether payment of an amount equal to the incorrect collection should be made under § 489.42. However, failure to issue a refund and retain funds from sources other than Medicare for covered services would constitute a violation of section 1866(a)(1)(A) of the Act and the terms of the entity's provider agreement.

Finally, in situations where there is change of ownership for a provider, obligations of the previous entity are generally transferred to the new owners. In rare situations where the new owners do not accept assignment of the provider agreement, including prior obligations, or in cases where the provider is no longer in operation, state law would apply with respect to the entity's obligations to remedy a debt.

Comment: A commenter indicated that the proposed rule did not consider the implications for the Medicare Secondary Payer (MSP) program and the impact on other insurers or payers involved in the beneficiary's insurance coverage.

Response: We appreciate the concern raised by the commenter. In the retrospective appeals process, we explained that following a favorable decision, to prevent duplicate payment, a provider who wishes to submit a claim for Part A payment would be obligated to refund amounts previously collected for Part B services determined, on appeal, to be covered under Part A. Providers would follow existing procedures for making refunds of amounts previously collected for such Part B services prior to submitting a Part A claim for payment as the services are considered non-covered under Part B. Then providers could collect payment for the covered Part A services based on the beneficiary's insurance coverage at the time the services were furnished. However, consistent with the court's clarifying order issued on December 9, 2022, with respect to appeals involving beneficiaries enrolled in both Medicare Part A and B at the time of hospitalization, we remind hospitals that they are not required to submit a claim for Part A hospital services. Absent a Part A claim, we will not reopen or unwind previous Part B outpatient hospital payments in order to make payment for any SNF services determined to be covered under Part A.

Comment: A few commenters requested that CMS allow providers up to 1 year, as well as extensions for good cause or hardships, to file a claim following a favorable appeal decision. Commenters also requested that CMS consider all options to facilitate the submission of claims for Part A services following a favorable retrospective appeal decision. A commenter suggested that the decision itself could be sufficient to adjudicate a Part A claim for payment. A commenter questioned whether hospitals could collect the Part A hospital inpatient deductible following refund of any Part B payments collected and submission of a Part A claim.

Response: We appreciate the concerns raised by commenters about billing for services following a favorable or partially favorable appeal decision. We acknowledge that submitting a claim may be complicated in situations where services were furnished many years ago, and in developing the procedures to implement the court order, we considered options with respect to claims for newly covered Part A services. As we stated in the proposed rule, under section 1814(a)(1) of the Act, and §§ 424.33 and 424.51, payment for Part A services furnished to an individual may be made only to a provider of services eligible to receive payment under section 1866 of the Act after a request for payment (a claim) is filed with Medicare by the provider. In addition, under section 1815(a) of the Act, providers must furnish information as requested in order to determine the amounts due for Part A services. Thus, while the coverage determination with respect to the Part A services is conclusive based on the appeal decision, we would not make payment for covered Part A services solely based on a favorable or partially favorable appeal decision without a Part A claim for payment from the provider, in light of section 1814(a)(1) of the Act. Moreover, an existing Part B outpatient claim cannot be ''adjusted'' into a Part A inpatient claim due to the different characteristics and requirements of inpatient and outpatient claims. (See 78 FR 50917, 50926 (August 19, 2013) where we explained that we could not ''adjust'' a Part A inpatient claim into a Part B claim for the purposes of Part B inpatient billing.) We are currently developing instructions for submission of these claims and will have a process approved and finalized shortly after this final rule is published.

However, we agree that extending the timeframe for providers to submit claims in response to a favorable or partially favorable decision is warranted in light of the complexities that may surround such submissions. Thus, we are adopting the commenters' suggestion to extend the deadline for providers to file a claim(s) from 180 calendar days to 365 calendar days from the date of receipt of the notice of a favorable or partially favorable appeal decision. Specifically, we are revising §§ 405.932(h)(2)(i), 405.932(h)(2)(ii), 405.934(d)(2)(i), 405.934(d)(2)(ii), 405.936(e)(2)(i), 405.936(e)(2)(ii), 405.938(d)(2)(i), and 405.938(d)(2)(ii) to replace ''180 calendar days'' with ''365 calendar days''. We note that this 365-calendar day timeframe to submit a claim is established solely in furtherance of implementing operational aspects of the court order in the *Alexander* case and is unrelated to existing rules for timely filing of claims in section 1814(a)(1) of the Act and 42 CFR 424.44. As suggested by commenters, we will also permit extensions to the claims filing deadline upon establishment of good cause. In determining whether a provider has established good cause when requesting an extension for filing a claim following a favorable or partially favorable appeal decision under these procedures, we will apply the provisions in § 405.942(b) and (c) to the provider's request.

We also remind hospitals that submission of a claim for Part A payment of inpatient hospital services is not required under these procedures, nor is submission of a claim prohibited. Hospitals may have received payment for Part B outpatient services at the time these services were furnished. As a

result of the clarifying order issued by the court, for beneficiaries who were enrolled in both Part A and Part B at the time of hospitalization, Medicare will not immediately unwind previously paid Part B outpatient claims in the case of a favorable or partially favorable appeal decision for Part A coverage of the hospital services. However, if a hospital chooses to submit a Part A inpatient claim for payment following a favorable or partially favorable decision, in order to prevent duplicate payment for services, we will unwind the Part B claim (by canceling the claim) before processing the Part A claim, and recover any monies paid to the hospital. The hospital would also need to refund any other payments collected for the outpatient services, including payments collected from any source related to coinsurance and deductibles for the outpatient services prior to submitting the Part A inpatient claim. Hospitals may then collect applicable cost sharing based on the beneficiary's insurance coverage at the time of hospitalization in accordance with the processed Part A claim.

In order to clarify these points, we are amending §§ 405.932(h)(1)(ii), 405.934(d)(1)(ii), 405.936(e)(1)(ii) and 405.938(d)(1)(ii) to state that following a favorable appeal decision, a prior Part B outpatient hospital claim will not be reopened and revised (that is, unwound) unless a hospital submits a Part A claim for inpatient services. These sections will be revised to read as follows: For the purposes of effectuating a favorable [decision type], unless a Part A claim is submitted by a hospital, any claims previously submitted for outpatient hospital services and payments made for such services (including any applicable deductible and coinsurance amounts) are not reopened or revised by the MAC, and payment, as applicable, for covered SNF services may be made by the MAC to the SNF without regard to the hospital claim.

We are amending §§ 405.932(h)(2)(ii), 405.934(d)(2)(ii), 405.936(e)(2)(ii) and 405.938(d)(2)(ii) and we are adding §§ 405.932(h)(2)(iii), 405.934(d)(2)(iii), 405.936(e)(2)(iii) and 405.938(d)(2)(iii) to clarify that if a hospital chooses to submit a Part A inpatient claim following a favorable appeal decision for any eligible party, the hospital must refund any payments collected for the outpatient hospital services prior to submitting a Part A inpatient claim in order to prevent receipt of duplicate payment, and to clarify that a refund of payments collected for the outpatient hospital services is required if the favorable or partially favorable appeal decision involves a beneficiary who was not enrolled in Medicare Part B at the time of hospitalization even if the hospital does not submit a Part A inpatient claim for payment. While we do not anticipate hospitals will submit Part A claims in situations where they previously received Part B payment for an outpatient claim, a refund would be required before the submission of a Part A inpatient claim submitted for any eligible party, and not limited to situations where a beneficiary was not enrolled in Part B at the time of hospitalization.

Accordingly, these sections are being revised to state that a hospital that furnished services to any eligible party (including those enrolled in both Medicare Part A and Part B at the time of hospitalization) must refund any payments collected for the outpatient hospital services prior to submitting a Part A inpatient claim for such services, and that the claim must be submitted within 365 calendar days of receipt of the notice of a favorable decision. These revisions also clarify that if a favorable or partially favorable decision is issued to a beneficiary who was not enrolled in Medicare Part B at the time of hospitalization, a refund is required for any amounts collected for the outpatient hospital services even if a Part A inpatient claim for payment is not submitted to the program.

Finally, we are adding §§ 405.932(h)(2)(iii), 405.934(d)(2)(iii), 405.936(e)(2)(iii) and 405.938(d)(2)(iii) to differentiate appeals involving beneficiaries who were enrolled in Medicare Part B at the time of hospitalization in order to clarify that hospitals must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services following a favorable or partially favorable decision for these beneficiaries, and the timeframe to submit such claims (365 calendar days).

Comment: Several commenters raised questions about billing for services following a favorable or partially favorable appeal decision. A commenter questioned how a favorable decision with respect to Part A coverage for both the hospital and SNF services would be effectuated with respect to the SNF if the SNF had previously submitted and received payment for Part B services, and now decides to submit a claim for covered Part A services. Commenters also raised questions about specific condition codes to be used in billing for services, how Common Working File (CWF) edits would be implemented to accommodate these new claims, and how these new claims would be identified by the MAC. The commenters requested that CMS acknowledge the complexity of billing for SNF services furnished prior to FY 2020 and that CMS address how this will be resolved in the final rule.

Response: Following a favorable appeal decision and after issuing a refund to the beneficiary for any out of pocket payments made for SNF services, if a SNF decides to submit a claim for covered Part A services, then in order to avoid duplicate payment, Medicare would recover the funds paid to the SNF for the Part B services to the extent such Part B services are included in the payment made for Part A services. Medicare would then process the Part A claim and make the appropriate payment to the SNF for covered services.

We appreciate the comments about the complexity of this billing process and understand the complexity involved not only in billing, but also in processing these claims manually. We anticipate that each situation will involve subtle differences that will need to be addressed on a case-by-case basis. We are currently working to make the necessary system changes to accommodate these claims and to create billing instructions that will be approved and finalized shortly after publication of this final rule. That will give providers some advance time to work internally and/or with billing agents to be able to submit claims following a favorable appeal. We will be working to implement condition codes and remarks codes to be used on claims submitted following a favorable decision so those claims may be identified by the MAC. We anticipate the process will be similar to the Part B inpatient rebilling process (*https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/MM8185.pdf*) implemented in response to CMS Ruling CMS–1455–R and the provisions in the Fiscal Year 2014 Hospital Inpatient Prospective Payment System final rule (CMS–1599–F, *https://www.govinfo.gov/content/pkg/FR-2013-08-19/pdf/2013-18956.pdf*). But we are unable to incorporate this operational guidance into this rulemaking.

Finally, we note that we agree with commenters who expressed similar concerns about the complexity of this process. As explained earlier, we are extending the time period to submit claims in response to a favorable or partially favorable decision to 365 calendar days from the date of receipt of the appeal decision and MACs will provide support, as needed, to providers who wish to submit Part A claims.

We appreciate the feedback that we received from commenters on the

procedures for appeals conducted by processing contractors. Based on analysis of the public comments, we will be finalizing the proposals related to such procedures as proposed except for the addition of §§ 405.931(i) and 405.932(h)(2)(iii), and the amendments to §§ 405.932(b)(2)(iii), 405.932(h)(1)(ii) and 405.932(h)(2)(i) and (ii), described previously.

5. Conduct of Reconsiderations by Qualified Independent Contractors

In § 405.934(a), we proposed that the second level of retrospective appeals be performed by QICs. As with the first level of appeal, we proposed that the second level of retrospective appeal generally follow existing procedures for reconsiderations outlined in §§ 405.960 through 405.978, as appropriate, except as specified in the provisions proposed in this rule. Under proposed § 405.934(a), eligible parties (or their representative) who are dissatisfied with a MAC's unfavorable decision in proposed § 405.932(g)(2) may file a request for reconsideration with the QIC within 180 calendar days of receipt of the MAC's notice. The MAC's decision would specify the elements required for the request for reconsideration, and we proposed that those elements would be the same as the existing requirements for a reconsideration set forth in § 405.964. Requests for reconsideration under § 405.934 that are untimely or incomplete would be handled consistent with existing procedures for dismissals in § 405.972.

Consistent with the conduct of reconsiderations under existing procedures in § 405.968, the QICs shall review all evidence furnished during the first level of appeal and any additional evidence submitted with the request for reconsideration. Under proposed § 405.934(c), the QIC determines if the inpatient admission, and as applicable, SNF services, satisfied the relevant criteria for Part A coverage at the time the services were furnished, then the QIC issues notice of its decision to the eligible party (or their representative).

We proposed in § 405.934(c)(3) that the QIC mail or otherwise transmit notice of its decision within 60 calendar days of receipt of the request for reconsideration. We also proposed to apply existing procedures in § 405.970 regarding the calculation of decision-making timeframes, and the provisions regarding the escalation of cases for a QIC's failure to meet such timeframes, as appropriate, to these new appeals. In proposed § 405.934(c)(4), the notice of a favorable decision sent by the QIC to the eligible party (or their representative) would include an explanation of the decision and information regarding the effect of the decision, as well as other information similar to that found in existing reconsideration notices under § 405.974.

In § 405.934(c)(5), when applicable, we proposed that QICs would send notice of a favorable reconsideration to the SNF that furnished services to the beneficiary in order to inform the SNF of the reason for its decision and the effect of the decision. In addition, in § 405.934(c)(6), with respect to an appeal filed by a beneficiary not enrolled in Medicare Part B at the time of hospitalization, we proposed that the QIC would send notice of a favorable decision to the hospital to inform the hospital of the reason for its decision and the effect of the decision. In addition, we proposed that the QIC would send the SNF notice of a partially favorable decision where the inpatient admission meets the criteria for Part A coverage, but the SNF services do not meet the relevant criteria for Part A coverage (for example, if the services are determined not medically reasonable and necessary under section 1862(a)(1)(A) of the Act). The notice of a partially favorable decision sent to a SNF would inform the SNF of the reason the hospital services were determined to meet the relevant criteria for Part A coverage, and the reason the SNF services were determined not to be covered under Part A. We proposed that the QIC also explain that the notice is being sent to the SNF for informational purposes only, and that only the eligible party may appeal the decision to an ALJ under § 405.936. An eligible party would have the right to appeal such a partially favorable decision with respect to the coverage of SNF services under proposed § 405.936 in the same manner as unfavorable decisions with respect to Part A coverage of the hospital services.

Consistent with the processes following a favorable first level of appeal decision, as previously described, in the case of a beneficiary who was not enrolled in Medicare Part B at the time of hospitalization, we proposed in § 405.934(d)(2)(ii) that following a favorable appeal decision and making any required refund for payments received for covered services, the hospital may submit a new Part A inpatient claim to Medicare in order to determine the appropriate amount of benefits, and for Medicare to make payment for inpatient hospital services. We also proposed in § 405.934(d)(2)(ii) that the claim must be submitted by the hospital within 180 calendar days after the hospital receives its notice of favorable reconsideration for the eligible party.

In addition, if a favorable appeal decision includes eligible SNF services that are covered, in § 405.934(d)(2)(i), we proposed that following a refund of amounts collected from the beneficiary, the SNF may then submit a claim (or claims) for such services in order to determine the appropriate amount of benefits, and that Medicare would make payment for the covered SNF services. We also proposed in § 405.934(d)(2)(ii) that the SNF submit the claim within 180 calendar days after receiving the notice of a favorable appeal decision for the eligible party.

If the QIC determines that the hospitalization did not meet applicable Part A inpatient coverage requirements, we proposed in § 405.934(c)(2) that the QIC would send notice of its unfavorable decision to the eligible party (or their representative). If the QIC determines that the hospital admission meets applicable Part A inpatient coverage requirements, but the SNF services eligible for the appeal do not meet applicable coverage requirements, we also proposed in § 405.934(c)(2) that the QIC would send notice of its partially favorable decision to the eligible party (or their representative). The notice of an unfavorable or partially favorable decision would inform the eligible party (or their representative) of the right to request a hearing before an ALJ (or review by an attorney adjudicator) under proposed § 405.936 and would provide detailed information about the requirements for filing the request and where the request must be filed.

We did not receive any comments on the proposed policies related to QIC reconsiderations. We are finalizing our policies as proposed with the exception of the following modifications, described in section III.A.4. of this final rule:

- Amending § 405.934(d)(1)(ii) to clarify that existing outpatient claims will not be unwound unless the hospital files a Part A inpatient claim following a favorable appeal decision.
- Amending §§ 405.934(d)(2)(i) and (ii) to extend the time for providers to file claims following a favorable decision to 365 calendar days.
- Adding § 405.934(d)(2)(iii) to clarify that hospitals must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services following a favorable or partially favorable appeal decision for beneficiaries who were enrolled in Medicare Part B at the time of hospitalization.

6. Conduct of Hearings Before Administrative Law Judges and Decisions by Administrative Law Judges or Attorney Adjudicators

Currently, the third level of claims appeals are performed by ALJs and attorney adjudicators within the HHS Office of Medicare Hearings and Appeals (OMHA). As with the first two levels of appeal, we proposed in § 405.936(b) that the third level of retrospective appeal generally follow existing procedures for claims appeals in §§ 405.1000 through 405.1063, as appropriate, except as specified in the provisions proposed in this rule. Under proposed § 405.936(a), eligible parties (or their representative) who are dissatisfied with either a QIC's dismissal of a request for reconsideration, or an unfavorable reconsideration in proposed § 405.934(c)(2), may file a request in writing with the OMHA within 60 calendar days of receipt of the QIC's notice. The reconsideration notice would specify the elements required for the request for hearing, and we proposed that these elements would mirror existing requirements for appeal requests in § 405.1014(a)(1). We also proposed that untimely or incomplete requests would be handled under existing procedures for dismissals in § 405.1014(e) and § 405.1052.

As we previously noted, in some respects, the nature of the appeals required by the court order dictate a new implementation approach that cannot utilize existing procedures. For example, ordinarily under current claims appeals procedures, adjudicators review claims that contain denied items or services to determine whether items and/or services billed on a Medicare claim are covered and whether payment may be made. In addition, under § 405.1006, billed charges on claims submitted to Medicare serve as the basis for determining the amount in controversy required for an appeal at the third level of appeal and for judicial review in federal district court. However, under the proposed process, with respect to the relevant hospital stay, there is no inpatient hospital claim and no denial of billed services.

For retrospective appeals, we proposed to incorporate the existing amount in controversy requirement required for a hearing before an ALJ or judicial review in federal court consistent with section 1869(b)(1)(E) of the Act and § 405.1006.[14] However, with respect to the methodology for calculating the amount in controversy, we cannot utilize the existing method for claims appeals in § 405.1006(d)(1) to calculate such amount. The procedures in existing regulations require the use of actual charges from the disputed claim(s) billed to Medicare, and in the scenario giving rise to appeal rights in the court order, no Part A inpatient claim will have been filed. Without a Part A inpatient claim, there are no billed charges for the denied Part A coverage to serve as the basis for calculating the amount in controversy. Other methods in § 405.1006(d) for calculating the amount in controversy are designed for appeals that are factually different than these new appeals, and thus, we did not believe it would be appropriate to adopt other existing calculation methods to apply them here.

In the case of a beneficiary who was enrolled in Medicare Part B at the time of hospitalization, we believe it would be appropriate to utilize the billed charges on a claim filed by the hospital for Part B outpatient hospital services as the basis for calculating the amount in controversy for these new appeals. Since we do not have a Part A inpatient claim for the hospital services furnished to the beneficiary, we do not have available to us the costs of the denied Part A services that are at issue in the appeal to serve as the basis for the amount in controversy. While the billed charges for outpatient services will differ from those that would have been billed on an inpatient claim, we believed it was reasonable to use the billed charges on the approved outpatient claim for the purposes of determining the amount in controversy, and in § 405.936(c)(2) we proposed including those charges in calculating the amount in controversy for a hearing before an ALJ and for judicial review in federal district court. We emphasized that, as explained in section III.A.4. of this rule, for beneficiaries enrolled in Part B at the time of hospitalization, we will not make an adjustment of payment related to the previously submitted Part B outpatient hospital claim (including any deductible and coinsurance amounts) when effectuating a favorable appeal decision. Nevertheless, we proposed that the billed charges for the outpatient hospital services would be included in determining whether the amount in controversy requirement is met because we do not have available to us the costs of the denied Part A hospital services at issue in the appeal and because we believe that for purposes of determining the amount in controversy it is appropriate to attribute a dollar amount to the hospital services at issue, even if ultimately we would not adjust the payment for the hospital services.

For any billed SNF services that are included in the appeal, the billed charges on a claim submitted by the SNF would be utilized in calculating the amount in controversy. However, in cases where a claim was not submitted by the SNF because the services were not covered, the amount the beneficiary was charged for SNF services, as reflected in an itemized statement received by the beneficiary or evidence of payments made by the beneficiary to the SNF, would be used in determining the amount in controversy.

Thus, we proposed in § 405.936(c)(2) that the billed charges on the Part B outpatient claim and the billed charges for any SNF claim at issue in the appeal, or the billed charges paid by the beneficiary in the absence of a claim, would serve as the amount in controversy for hearings before an ALJ and for judicial review in federal district court. Furthermore, as the cost sharing for a Part A inpatient claim will be different than the cost sharing for the Part B outpatient claim, we did not reduce the amount in controversy by any applicable cost sharing, or other payments made for the Part B outpatient hospital claim as we do for existing calculation methods. Nor did we factor in any cost sharing or payments made related to the SNF claim, as applicable, to reduce the amount in controversy.

For beneficiaries who are eligible parties because they were not enrolled in Medicare Part B at the time of their hospitalization, in most situations, we did not believe hospitals would have submitted a claim to the program for Part B outpatient services. Therefore, for beneficiaries who were not enrolled in Part B at the time of hospitalization and did not have a claim submitted to Medicare on their behalf for hospital outpatient services, we proposed in § 405.936(c)(3) to calculate the amount in controversy by using the hospital's billed charges to the beneficiary for such outpatient services. We believed the hospital's charges to the beneficiary, as reflected in an itemized statement received by the beneficiary, or evidence of payments made to the hospital, were a reasonable estimation of the financial impact of the denial of Part A coverage to the beneficiary and the amount at issue in the appeal. In addition, the

[14] For calendar year 2025, the minimum amount in controversy for a hearing at the OMHA level is $190, and for judicial review the minimum amount in controversy is $1,900. These amounts are calculated annually in accordance with section1869(b)(1)(E) of the Act and notice of the updated minimum amounts for each calendar year is published in the **Federal Register** and is available on *https://www.cms.gov/medicare/appeals-grievances/fee-for-service/third-level-appeal.*

billed charges for SNF services, if any, paid by the beneficiary would also be used in computing the amount in controversy for appeals involving beneficiaries not enrolled in Medicare Part B at the time of hospitalization.

Consistent with the conduct of appeals before ALJs and attorney adjudicators under existing procedures in §§ 405.1028 through 405.1030, we proposed that ALJs and attorney adjudicators review all evidence furnished during the first two levels of appeal and any additional evidence submitted by the beneficiary with the request for hearing or request for review of a dismissal. Under proposed § 405.936(d), the ALJ or attorney adjudicator determines if the inpatient admission, and as applicable, SNF services, satisfied the relevant criteria for Part A coverage at the time the services were furnished, and then issues notice of the decision to the eligible party (or their representative). In proposed § 405.936(d)(2), we explained that the notice of an unfavorable decision or partially favorable decision (that is, a decision where Part A coverage is approved for the hospital admission, but Part A coverage is not approved for applicable SNF services that are at issue in the appeal) would be sent to the eligible party (or their representative). In proposed § 405.936(d)(3), the notice of a favorable decision sent to the eligible party (or their representative) would include an explanation of the decision and information regarding the effect of the decision, as well as other information similar to that found in existing notices under § 405.1046.

In § 405.936(d)(4), when applicable, we proposed that the ALJ or attorney adjudicator would send notice of a favorable reconsideration to the SNF that furnished services to the beneficiary in order to inform the SNF of the reason for the decision and the effect of the decision. In addition, in § 405.936(d)(5), with respect to an appeal filed by a beneficiary not enrolled in Medicare Part B at the time of hospitalization, we proposed that the ALJ or attorney adjudicator would send notice of a favorable decision to the hospital to inform the hospital of the reason for the decision and the effect of the decision. In the case of a partially favorable decision, we proposed in § 405.936(d)(2) that notice would be sent to the SNF as an informational copy, and in proposed § 405.936(d)(6) we specified the elements included in the notice sent to the SNF. The notice of a partially favorable decision sent to a SNF would inform the SNF of the reason the hospital services were determined to meet the relevant criteria for Part A coverage, and the reason the SNF services were determined not to be covered under Part A. We proposed that the ALJ or attorney adjudicator also explain that the notice is being sent to the SNF for informational purposes only, and that only the eligible party may appeal the decision to the Council under § 405.938.

In § 405.936(d)(7), we proposed to utilize the existing procedures in § 405.1016 regarding the calculation of timeframes within which ALJs and attorney adjudicators must issue decisions, including applicable waivers and extensions to the adjudication timeframe, and the option for an eligible party (or their representative) to escalate an appeal for failure to issue a decision in the applicable timeframe.

Consistent with the processes at the first two levels of appeal, as previously described, in the case of a beneficiary who was not enrolled in Medicare Part B at the time of hospitalization, we proposed in § 405.936(e)(2)(ii) that following a favorable appeal decision and making any required refund for payments received for covered services, the hospital may submit a new Part A inpatient claim to Medicare in order to determine the appropriate amount of benefits, and for Medicare to make payment for inpatient hospital services. We also proposed in § 405.936(e)(2)(ii) that the claim must be submitted by the hospital within 180 calendar days after the hospital receives its notice of favorable decision for the eligible party.

In addition, if a favorable appeal decision includes eligible SNF services that are covered, in § 405.936(e)(2)(i), we proposed that following a refund of amounts collected from the beneficiary, the SNF may then submit a claim (or claims) for such services in order to determine the appropriate amount of benefits, and for Medicare to make payment for the covered SNF services. We also proposed in § 405.936(e)(2)(i) that the SNF submit the claim within 180 calendar days after receiving the notice of a favorable appeal decision for the eligible party.

If the ALJ or attorney adjudicator determines that the hospital admission did not meet applicable Part A inpatient coverage requirements, we proposed in § 405.936(d)(2) and (d)(3)(vii) the ALJ or attorney adjudicator would send notice of the unfavorable decision to the eligible party (or their representative). If the ALJ or attorney adjudicator determines that the hospital admission meets applicable Part A inpatient coverage requirements, but the SNF services eligible for the appeal do not meet applicable coverage requirements, we also proposed in § 405.936(d)(2) that the ALJ or attorney adjudicator would send notice of its partially favorable decision to the eligible party (or their representative). The notice of an unfavorable or partially favorable decision would inform the eligible party (or their representative) of the right to request review by the Council under proposed § 405.938 and would provide detailed information about the requirements for filing the request and where the request must be filed.

In proposed § 405.936(e) and (f), we explain the effect of an ALJ or attorney adjudicator decision as binding on the eligible party unless it is further appealed or reopened. The reopening of an ALJ or attorney adjudicator decision would be processed under existing procedures in § 405.980(d) and (e). The effect of an ALJ or attorney adjudicator decision is consistent with the effect of decisions at other levels in the appeals process, as previously described. We proposed that an eligible party (or their representative) who is dissatisfied with an unfavorable decision by an ALJ or attorney adjudicator may request review by the Council under proposed § 405.938(a), and the ALJ or attorney adjudicator decision notice would provide detailed information about the process for filing such a request.

We did not receive any comments on the proposed policies related to ALJ hearings and decisions by ALJs or Attorney Adjudicators. We are finalizing our policies as proposed with the exception of the following modifications, described in section III.A.4. of this final rule:

- Amending § 405.936(e)(1)(ii) to clarify that existing outpatient claims will not be unwound unless the hospital files a Part A inpatient claim following a favorable appeal decision.
- Amending § 405.936(e)(2)(i) and (ii) to extend the time for providers to file claims following a favorable decision to 365 calendar days.
- Adding § 405.936(e)(2)(iii) to clarify that hospitals must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services following a favorable or partially favorable appeal decision for beneficiaries who were enrolled in Medicare Part B at the time of hospitalization.

7. Conduct of Review by the Medicare Appeals Council

Under § 405.938, we proposed that retrospective reviews at the fourth level of appeal would be conducted by the Council and would generally follow existing procedures for claims appeals

in §§ 405.1100 through 405.1130, except as specified in the provisions proposed in this rule. Under proposed § 405.938(a), eligible parties (or their representative) who are dissatisfied with either a dismissal of a request for hearing by an ALJ or attorney adjudicator, or an unfavorable ALJ or attorney adjudicator decision in proposed § 405.936(d)(2) may file a request in writing with the Council within 60 calendar days of receipt of the notice from the ALJ or attorney adjudicator. The request must include the elements specified in the notice issued by the ALJ or attorney adjudicator, and we proposed to use the existing requirements for requests for Council review in § 405.1112. We proposed that untimely or incomplete requests would be handled under existing procedures in §§ 405.1100 through 405.1116.

We proposed that the Council would review appeal requests and requests for review of dismissal actions under existing procedures in §§ 405.1100 through 405.1132, as applicable. Under proposed § 405.938(c)(1), the Council makes a decision or remands the case to an ALJ or attorney adjudicator. We proposed in § 405.938(c)(2) that the Council may adopt, modify, or reverse the decision of an ALJ or attorney adjudicator, consistent with existing Council procedures. In § 405.938(c)(3), we proposed the Council would send notice of its decision, or its remand to an ALJ or attorney adjudicator, to the eligible party (or their representative), and we proposed that a decision would contain information regarding the effect of a favorable decision. In the case of an unfavorable or partially favorable decision, we proposed that the Council include information about filing a request for judicial review under existing procedures in 405.1136. We also explained in proposed § 405.938(c)(3) that a partially favorable decision issued by the Council refers to a determination that the inpatient admission satisfied the relevant criteria for Part A coverage, but the SNF services did not satisfy the relevant criteria for Part A coverage. Notice of a partially favorable decision is sent to the eligible party (or their representative), and to the SNF that furnished services under appeal, but for informational purposes only.

In addition, we proposed in § 405.938(c)(4), when applicable, the Council would send notice of a decision favorable to an eligible party to the hospital and the SNF that furnished services. The notice would explain the effect of the decision as specified in proposed § 405.938(d), including the provider's obligation to refund payments collected for services determined to be covered following the appeal. The notice would also explain, as applicable, the process for a SNF or a hospital to submit a claim for the covered services to determine the amount of benefits due following the refund of payments previously collected.

In § 405.938(c)(5), we proposed to utilize the existing procedures in § 405.1100 regarding the calculation of timeframes within which the Council must issue decisions, including applicable waivers and extensions to the adjudication timeframe,[15] and the option for an eligible party (or their representative) to escalate an appeal for failure to issue a decision in the applicable timeframe.

In proposed § 405.938(e) and (f), we explained that a Council decision is considered final and binding on the eligible party unless it is reopened and revised, or in the case of an unfavorable decision, a Federal district court issues a decision modifying the Council decision. The reopening of a Council decision would be processed under existing procedures in § 405.980(d) and (e). The effect of a favorable Council decision is consistent with the effect of decisions at other levels in the appeals process, as previously described. We proposed in § 405.938(e)(1) that an eligible party (or their representative) who meets the requirements to escalate a case under § 405.1132 or is dissatisfied with an unfavorable decision by the Council, may request judicial review consistent with existing procedures in §§ 405.1132 through 405.1136. Based on its existing procedures, the Council's decision notice would provide detailed information about the process for filing such a request.

We did not receive any comments on the proposed policies related to Appeals Council review. We are finalizing our policies as proposed with the exception of the following modifications, described in section III.A.4. of this final rule:

- Amending § 405.938(d)(1)(ii) to clarify that existing outpatient claims will not be unwound unless the hospital files a Part A inpatient claim following a favorable appeal decision.
- Amending § 405.938(d)(2)(i) and (ii) to extend the time for providers to file claims following a favorable decision to 365 calendar days.
- Adding § 405.938(d)(2)(iii) to clarify that hospitals must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services following a favorable or partially favorable appeal decision for beneficiaries who were enrolled in Medicare Part B at the time of hospitalization.

8. Judicial Review

We proposed in § 405.938(f)(1) that eligible parties dissatisfied with a final decision of the Council whose claims meet the amount in controversy requirement in proposed § 405.936(c) may request judicial review in Federal district court under the existing procedures in § 405.1136. In addition, under proposed § 405.938(f)(2), an eligible party (or their representative) who satisfies the amount in controversy requirement in proposed § 405.936(c) and is entitled to escalate a case from the Council to Federal district court upon satisfying the criteria set forth in § 405.1132, may request judicial review under the existing procedures in § 405.1136.

We did not receive any comments on the proposed policies related to judicial review. We are finalizing our policies as proposed.

We appreciate the support and feedback we have received from the commenters on our proposals related to the retrospective appeals process. After review and consideration of all comments, we are finalizing the regulations for the retrospective appeal procedures as proposed with the following modifications:

- We are adding § 405.931(i) to clarify that the coverage decision for a retrospective Part A patient status appeal is conclusive for any pending claim appeal.
- At § 405.932(b)(2)(iii) we are clarifying that a family member may include individuals who are not biologically related to the beneficiary (solely for the purpose of determining whether out of pocket payments were made for SNF services, making those services eligible for an appeal).
- At § 405.932(c)(2) we are extending the timeframe for providers to respond to a request for medical records to aid in establishing a beneficiary's eligibility for an appeal from 60 calendar days to 120 calendar days.

[15] For example, under § 405.1106(a), if a party submits a timely filed request for Council review with an entity other than the entity specified in the notice of the ALJ's or attorney adjudicator's action, the Council's adjudication period to conduct a review begins on the date the request for review is received by the entity specified in the notice of the ALJ's or attorney adjudicator's action. In other words, if an ALJ decision specifies that a party must submit a request for Council review with the Council, and the party mistakenly files their request with, for example, OMHA, then the Council's adjudication time period does not begin until the Council receives the request for review from OMHA.

• At § 405.932(d)(3)(ii) we are requiring that the eligibility contractor's notice of denial of eligibility will also include an explanation of the information needed to cure the denial.

• At §§ 405.932(h)(1)(ii), 405.932(h)(2)(ii), 405.934(d)(1)(ii), 405.934(d)(2)(ii), 405.936(e)(1)(ii), 405.936(e)(2)(ii), 405.938(d)(1)(ii) and 405.938(d)(2)(ii) we are revising the regulation text to clarify that in the case of a favorable appeal decision, a hospital who chooses to submit a Part A inpatient claim must refund any payments received for the Part B outpatient claim before submitting the Part A inpatient claim. If a Part A claim is submitted, the previous Part B outpatient claim will be reopened and canceled, and any Medicare payments will be recouped to prevent duplicate payment. In addition, we are revising the regulation text to clarify that in the case of a favorable decision for a beneficiary who was not enrolled in Medicare Part B at the time of hospitalization, the hospital must refund any payments collected for the outpatient services even if the hospital chooses not to submit a Part A claim for payment to the program.

• At §§ 405.932(h)(2)(i) and (ii), 405.934(d)(2)(i) and (ii), 405.936(e)(2)(i) and (ii) and 405.938(d)(2)(i) and (ii) we are amending the content of decision letters to specify that a provider's claim filing timeframe will be 365 calendar days following a favorable or partially favorable decision under the retrospective appeals process.

• We are adding §§ 405.932(h)(2)(iii), 405.934(d)(2)(iii), 405.936(e)(2)(iii) and 405.938(d)(2)(iii) to clarify the effect of favorable appeals involving beneficiaries who were enrolled in Medicare Part B at the time of hospitalization to explain that hospitals must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services.

In addition, in drafting this final regulation we identified several erroneous cross-references in the proposed regulations text that we will be correcting. Specifically—

• In proposed § 405.931(a)(1), the reference to § 405.931(b)(1) is revised to read § 405.931(b);

• In proposed § 405.932(c)(2), the reference to § 405.931(b)(1) is revised to read § 405.931(b);

• In proposed § 405.932(d)(2)(ii), the reference to § 405.932(e) is revised to read § 405.932(f); and

• In proposed § 405.932(f)(3), the reference to paragraph (e)(1) is revised to read (f)(1).

After publication of this final rule regarding the procedures for these new appeals, we intend to specify the implementation date for filing appeal requests for retrospective and prospective appeals. When the prospective process is fully implemented, eligible beneficiaries who are hospitalized and receive notice of their appeal rights and wish to pursue an appeal will be expected to utilize the prospective procedures (proposed §§ 405.1210 through 405.1212). We will announce the implementation dates on *cms.gov* and/or *Medicare.gov.*

B. Prospective Appeal Rights

1. Overview

This final rule also establishes and implements a new notice requirement and an expedited appeals process, on a prospective basis, for certain beneficiaries whose status was changed from inpatient to outpatient receiving observation services while they were still in the hospital. The expedited appeals process parallels the process in effect for inpatient hospital discharge appeals set forth at §§ 405.1205 and 405.1206, with some differences. In its order dated March 26, 2020, the court indicated that HHS should use a process for the expedited appeals that is ''substantially similar'' to the existing process for expedited hospital discharge appeals at §§ 405.1205 through 405.1208; under that hospital discharge appeals process, beneficiaries receive a notice of their rights and may request an expedited determination by a Quality Improvement Organization (QIO) about the hospital's decision to discharge the beneficiary. While the processes are largely similar, a notable difference is that the issue under appeal in this process relates to the change of status from an inpatient to an outpatient receiving observation services. This change of status may affect cost sharing for the hospital stay as well as whether any post hospital care in a skilled nursing facility would be covered by Medicare.

CMS contracts with QIOs, pursuant to Title XI, Part B of the Act and section 1862(g) of the Act, to perform certain statutorily required functions and contractual quality improvement and other activities for the purposes of improving the quality of care furnished to Medicare beneficiaries with respect to Medicare covered items and services. The QIO Program is part of the HHS' national quality strategy for providing quality and patient centered care to Medicare beneficiaries. Section 1154(a)(1) of the Act establishes certain review functions of QIOs, including that QIOs review the services furnished to Medicare beneficiaries by physicians, other healthcare practitioners, and institutional and non-institutional providers of services (as defined in section 1861(u) of the Act and including hospitals). In addition, under section 1154(a)(18) of the Act, QIOs must also provide, subject to the terms of their contract with CMS, such other activities as the Secretary determines may be necessary for the purposes of improving the quality of care furnished to individuals with respect to items and services for which payment may be made under Medicare. This flexibility allows CMS to establish and further define the types of reviews performed by the QIOs in order to meet evolving needs and issues pertaining to healthcare delivered under the Medicare program.

As discussed in sections II. and III.A. of this rule, a recent court decision requires the Secretary to implement an appeal process for certain Medicare beneficiaries that is substantially similar to the existing hospital discharge appeals conducted by QIOs under §§ 405.1205 through 405.1208. See *Alexander* v. *Azar,* 613 F. Supp. 3d 559 (D. Conn. 2020)), *aff'd sub nom., Barrows* v. *Becerra,* 24 F.4th 116 (2d Cir. 2022). These new review and appeals activities are within the scope of the Secretary's authority under section 1154(a)(18) of the Act to contract with QIOs to perform additional activities that are not already specified in section 1154 of the Act or other provisions. Section 1155 of the Act governs appeals of QIO determinations that are made under Title XI, subpart B, which includes section 1154 of the Act. Therefore, the proposed new QIO determinations, performed under section 1154(a)(18) of the Act, are subject to the appeal process specified in section 1155 of the Act.[16] Based on the QIOs' expertise and longstanding performance of similar functions, CMS has determined that the QIOs are the most appropriate entity to perform beneficiary-initiated appeals regarding hospital reclassifications of inpatients to outpatients receiving observation

[16] Under section 1155 of the Act, a beneficiary who is entitled to benefits under title XVIII (that is, a Medicare beneficiary) and who is dissatisfied with a determination made by a QIO in conducting its review responsibilities shall be entitled to a reconsideration of such determination by the reviewing organization (that is, the QIO). For the purposes of these appeals, section 1155 of the Act authorizes the QIO to conduct a reconsideration of its expedited determination regarding the hospital reclassification under § 405.1211 to determine if an eligible beneficiary is entitled to coverage under Part A of the program.

services proposed in §§ 405.1211 through 405.1212.

We proposed an expedited appeals process that would be available to beneficiaries [17] who, after formally being admitted as an inpatient, have subsequently been reclassified by the hospital as an outpatient while the beneficiary is still in the hospital, received observation services following the reclassification, and met one of the following two criteria:

- Their stay in the hospital was at least 3 days but they were an inpatient for fewer than 3 days.
- They did not have Medicare Part B coverage (these eligible beneficiaries would not need to remain in the hospital for at least 3 days to be eligible for an appeal).

We proposed in new § 405.1210(a)(3) the criteria that must be met for a beneficiary to be eligible for the new prospective appeal rights. We proposed to require hospitals to deliver, as soon as possible after certain conditions are met and prior to release from the hospital, a new standardized beneficiary notice, informing eligible beneficiaries of the change in their status, the resulting effect on Medicare coverage of their stay, and their appeal rights if they wish to challenge that change. This new notice will be called the Medicare Change of Status Notice (MCSN).[18] This new notice follows the format and structure of the Important Message from Medicare (IM), which is the notice hospitals are required, by § 405.1205, to provide to beneficiaries to inform them of their right to appeal an inpatient hospital discharge. See section IV.D. of this final rule for details on how to obtain a copy of the MCSN.[19]

We considered alternatives to creating a new notice for this process. One consideration was standardizing and adding appeals information to the required written Condition Code 44 notification used by hospitals to inform beneficiaries when their status is changed from inpatient to outpatient after review by a hospital utilization review committee and the entire episode will be billed as outpatient. However, those eligible for this new process would be a small subset of the population receiving the existing Condition Code 44 notification. Specifically, individuals would not only require a change of status from inpatient to outpatient, they must also meet the criteria set forth in proposed § 405.1210 (a)(2) and (3) to pursue an appeal regarding a change in status. The vast majority of beneficiaries receiving the existing notification of inpatient to outpatient change will not be eligible for this new appeals process and would likely find the inclusion of information about an appeals process for which they are not eligible confusing. We also considered adding appeals information to the Medicare Outpatient Observation Notice (MOON). The MOON (42 CFR 489.20(y)) is used to inform beneficiaries who receive observation services for a certain amount of time that they are not hospital inpatients, but rather outpatients receiving observation services. However, like the change in status notice mentioned earlier, the MOON would be overbroad and the vast majority of beneficiaries receiving it would not be eligible for an appeal in this new process. Further, per section 1866(a)(1)(Y) of the Act, the MOON is only required for beneficiaries who have been outpatients receiving observation services for more than 24 hours, yet we proposed that, for prospective appeals, beneficiaries reclassified from inpatients to outpatients receiving observation services be eligible for an appeal if any amount of time is spent in observation following the status change (in this respect, we are expanding the population of beneficiaries eligible for an appeal beyond the class as defined by the court, and not limiting eligibility to those beneficiaries who have received a MOON). Because the MOON is not required for observation stays shorter than 24 hours, using the MOON would likely result in not all eligible beneficiaries receiving notification of their appeal rights under the proposed new process. We concluded that a targeted appeals notice, delivered only to those beneficiaries eligible for this specific appeal, would be the most effective and efficient means of informing eligible beneficiaries of their appeal rights.

The proposed MCSN contains a similar layout and language to the IM and includes information on the change in coverage, a description of appeal rights and how to appeal, and the implications for SNF coverage following the hospital stay. We believed that by proposing the delivery of this largely generic notice, the notice delivery burden on hospitals would be as minimal as possible, without any adverse effect on patient rights.

We reviewed the notice delivery procedures for the IM notice related to inpatient hospital discharges and have mirrored that process in this new process, wherever possible. In proposing this approach, our goal was to design notice procedures that balance a beneficiary's need to be informed about his or her appeal rights in an appropriate and timely manner, without imposing unnecessary burdens on hospitals.

We proposed to require hospitals to deliver the notice to eligible beneficiaries as soon as possible after a beneficiary is eligible for this process per § 405.1210(a)(2) and (3), but no later than 4 hours prior to release from the hospital. For beneficiaries with Part B, we proposed that the notice must be delivered as soon as possible after the hospital reclassifies the beneficiary from inpatient to outpatient receiving observation services and the third day in the hospital is reached. Beneficiaries will likely not reach this required third day in the hospital until very close to release from the hospital. This is because these will be beneficiaries that hospitals have determined do not need an inpatient level of care and thus, the overall length of the hospital stay is not expected to exceed a few days. For beneficiaries without Medicare Part B coverage, we proposed that hospitals must deliver the notice as soon as possible after the change in status from inpatient to outpatient receiving observation services because a 3-day hospital stay is not required for these beneficiaries to be part of the class specified in the court order.

We believed the approach we proposed would not be overly burdensome for hospitals as the proposed notice is standardized and requires very little customization by the hospital before delivery. The proposed notice was modeled after the existing hospital discharge appeals notice (IM), and like that notice, does not require extensive time for hospitals to prepare and deliver to beneficiaries. We believed that the number of beneficiaries that are eligible for this proposed appeal process would be significantly lower than the volume that receive the hospital discharge appeals notification. (Please see section IV.B. for more information on assumptions and estimates related to this proposed appeals process.) Additionally, the delivery of the MCSN notice to the beneficiary would mimic the process already in place for hospitals delivering

[17] Since the court order specifically requires the provision of appeal rights to a defined set of class members, and that definition does not include the provider of services (that is, hospitals and SNFs), we are limiting party status for these new appeals to the defined class members. We note that this limitation currently exists for hospital discharge appeals procedures in §§ 405.1205 and 405.1206, where a provider of services does not have party status.

[18] OMB control number 0938–1467.

[19] Section IV.D. of this final rule states that to obtain copies of the supporting statement and any related forms, individuals should visit the CMS website at *https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995/pra-listing.*

the IM, so implementing this process should not be overly difficult or burdensome.

One notable difference, as compared to that for inpatient hospital discharge appeals, is that under this new appeals process beneficiaries will not have financial liability protection for hospital services received while their appeal is adjudicated. Section 1869(c)(3)(C)(iii)(III) of the Act, which provides beneficiaries with coverage during the inpatient hospital discharge appeal, only applies to beneficiaries being discharged from a Medicare covered inpatient hospital stay, and thus would not be applicable to beneficiaries pursuing an appeal regarding the change in status from inpatient to outpatient receiving observation services.

We proposed that the QIOs perform these reviews. The nature of these reviews is consistent with the mission and functions of the QIO Program. QIOs have contracts with CMS under section 1862(g) of the Act and Part B of Title XI of the Act to perform certain statutorily required reviews of the services furnished to Medicare beneficiaries and to implement quality improvement initiatives involving Medicare beneficiaries, providers, and their communities. (See 42 CFR parts 475 through 480.) Historically, QIOs have performed expedited discharge reviews for beneficiaries appealing inpatient discharges (42 CFR 405.1205 through 405.1208, 422.620 and 422.622) as well as similar expedited reviews for termination of provider services in non-hospital settings (42 CFR 405.1202 through 405.1204, 422.624, and 422.626). Currently, these reviews, as well as other case reviews related to the quality of care received by Medicare beneficiaries, compliance with certain conditions of coverage for inpatient services, and reviews of the validity of certain diagnostic and procedural information supplied by hospitals among other types of care reviews, are performed by the Beneficiary and Family Centered Care QIOs (BFCC–QIOs), while quality improvement initiatives are performed by a different type of QIO. We stated that if the proposed rule was finalized, we would require the BFCC–QIOs to perform this new type of appeal because their scope of knowledge, expertise and experience with beneficiary appeals and Medicare coverage ensures an adequate and reliable review.

Finally, the court order only requires that an *expedited* appeals process be made available to class members ''who have stayed, or will have stayed, at the hospital for 3 or more consecutive days.'' For class members who lacked Part B and did not stay in the hospital for 3 or more consecutive days, it would appear that a non-expedited appeals process might be sufficient. Nonetheless, we proposed to use the expedited process for all prospective appeals, with minor differences depending on whether the expedited appeal request is made timely. In other words, an eligible beneficiary may request the QIO review at or around the time of receiving the notice in a hospital, or after a claim is filed, and in both instances, beneficiaries will be afforded a review and determination by the QIO. An appeal filed outside of the expedited timeframes may be referred to herein as a standard or untimely appeal.

Comment: The vast majority of commenters supported the proposed prospective appeals process that would provide eligible beneficiaries with the right to pursue an appeal regarding a hospital reclassification from inpatient to outpatient receiving observation services. Many commenters stated the policy would protect beneficiary access to medically necessary post-acute care services, specifically skilled nursing and occupational therapy services. Several commenters noted appreciation that the prospective appeals process would protect beneficiaries from the potentially detrimental effects of hospital status changes. A few commenters believed the appeals process would increase transparency for beneficiaries receiving hospital care.

Response: We appreciate the commenters' support for the proposed prospective appeals process.

Comment: Multiple commenters strongly recommended CMS finalize and implement the proposed prospective appeals process as soon as possible, with a commenter suggesting beneficiaries have lacked recourse to hospital reclassifications for too long already. Conversely, several commenters requested CMS delay implementation of the prospective appeals process for at least 1 year to allow hospitals to better understand their responsibilities and have time to integrate the appeals processes into existing workflows, with a commenter urging CMS to not finalize the proposed rule without addressing commenters' concerns and reducing the potential administrative burden the process would place on hospitals. Lastly, a commenter sought clarification on the implementation timeline and whether the prospective appeals process would be permanent.

Response: We appreciate the commenters' perspectives on the policy's implementation schedule. When considering the implementation timeline, we are balancing the need to provide beneficiaries access to the prospective appeals process as soon as possible with the time needed for finalizing guidance and notices and educating the industry on the new requirements, as well as the time needed by hospitals to integrate the new process into their existing workflows. We believe scheduling implementation as soon as operationally feasible not only meets the Court's order but strikes the proper balance between ensuring beneficiaries are adequately protected and providing hospitals sufficient lead time to prepare for and comply with the new requirements.

Comment: Multiple commenters strongly recommended CMS monitor hospital compliance with the prospective appeals process after implementation and to identify unintended consequences and make updates to the appeals process as necessary. A commenter suggested specifically monitoring the impact the prospective appeals process may have on SNF intake and hospital length of stay statistics. Another commenter suggested CMS monitor the impact the prospective appeals process may have on quality improvement reporting programs.

Another commenter suggested CMS coordinate and align the proposed appeals process with the Medicare Secondary Payer (MSP) program and ensure beneficiaries rights and benefits are not adversely affected. Another commenter predicted hospital inpatient admissions would decrease as a result of the proposed prospective appeals process because hospitals would want to avoid having their reclassifications effectively overturned.

Response: We appreciate the input from commenters and the suggested areas for increased monitoring as we implement the new prospective appeals process. While we did not propose to establish any oversight programs specific to the new appeals process, we plan to utilize existing program oversight authorities related to Medicare provider agreements to ensure industry compliance. We note, however, as explained in the proposed rule, the class of beneficiaries eligible to appeal a denial of Part A coverage relating to a hospital reclassification from inpatient to outpatient receiving observation services in any given year is relatively small (we estimated hospitals will deliver 15,655 beneficiary notices and the QIOs will process approximately 8,000 appeals, per year). Because of the relative few numbers of appeals, and proportionally fewer anticipated appeal

overturns, we do not believe this new appeals process will have a disruptive effect on other areas of the Medicare program, including the MSP program operations. Similarly, we do not believe approximately 8,000 annual appeals will meaningfully affect the regimented decision-making currently used by hospitals when determining the medical necessity of inpatient admissions for millions of beneficiaries annually. Nevertheless, if in our monitoring, we identify the new appeal process having unintended adverse consequences on the Medicare program, beneficiaries, or the hospital industry, we will respond with additional rulemaking or guidance, as we deem appropriate.

Comment: Multiple commenters urged CMS to conduct education and outreach to ensure impacted beneficiaries and their representatives are aware of the new prospective appeals process. A commenter suggested outreach efforts should specifically focus on culturally diverse populations, beneficiaries with limited English-speaking, and beneficiaries with visual or hearing impairments. The commenter also suggested CMS educate SHIPs and other beneficiary-assistance programs on the finalized prospective appeal procedures. In addition, several commenters suggested CMS also ensure the hospital industry is properly educated on the requirements of the new appeals process. Lastly, a commenter suggested CMS provide beneficiaries with educational material on Medicare inpatient coverage criteria and the reasons hospitals decide to reclassify them from inpatient to outpatient receiving observation services.

Response: We appreciate the commenters' suggestions for ensuring beneficiaries, associated assistance programs, and the hospital industry are properly informed of their respective rights and requirements of the prospective appeals process. As we finalize the prospective appeals requirements, we plan to add information on the appeals process to Medicare publications, manuals, and websites, as necessary and appropriate. Through this process we can explore whether providing information related to criteria for Medicare Part A coverage of inpatient admissions and common rationales for hospitals reclassifying certain beneficiaries from inpatient to outpatient receiving observation services will help beneficiaries understand the new prospective appeals process. Beneficiaries do not need prior knowledge of their appeal rights in order to avail themselves of the prospective appeals process, as relevant appeal submission information will be included in the Medicare Change of Status Notice (MCSN).

Comment: A commenter sought clarification whether the prospective appeals process requirements apply to MA enrollees with several commenters recommending that CMS expand the prospective appeals process to the MA program.

Response: The retrospective appeals process (addressed in section III.A. of this final rule) and the prospective appeals process (addressed in section III.B. of this final rule) do not apply to the MA program and will not be available for MA plans for MA enrollees. We did not propose extending application of the prospective appeals requirements to the MA program. We explained in the proposed rule that the terms of the court order refer to denials of Part A coverage. Consistent with the court order, the appeals processes in this rule do not extend to enrollees in MA plans. MA plan enrollees have existing rights that afford enrollees the ability to appeal a plan organization determination where the plan refuses to provide or pay for services, in whole or in part, including the type or level of services, that the enrollee believes should be furnished or arranged for by the MA organization (see 42 CFR 422.562(b)(4)). For example, if an MA plan refuses to authorize an inpatient admission, the enrollee may request a standard or expedited plan reconsideration of that organization determination pursuant to §§ 422.578 through 422.590, and 422.633. As such, we are declining commenters' suggestions to extend the prospective appeals processes in this rule to MA enrollees. To the extent we identify additional processes that may be necessary for the MA program, any such proposals would be subject to notice and comment rulemaking. We note that MA enrollees do have access to QIO reviews of quality of care concerns, hospital discharges, and terminations of services furnished by home health agencies (HHAs), skilled nursing facilities (SNFs), and comprehensive outpatient rehabilitation facilities (CORFs) that is similar to the QIO reviews available for Original Medicare beneficiaries. *See* §§ 422.562(a)(2)(ii), 422.564(c) and (e)(3), 422.622 through 422.626.[20]

Comment: A few commenters requested that CMS define certain terms related to the prospective appeals process. A commenter requested that CMS explain ''what is considered a change in patient status'' and how such a change must be documented. Another commenter requested that CMS define a ''formal admission.'' The same commenter also requested that CMS clarify when a beneficiary is considered discharged or released from the hospital.

Response: We proposed at § 405.1210(a)(2) that, for purposes of the prospective appeals process, a change of status occurs when a beneficiary is reclassified from an inpatient to an outpatient receiving observation services (as defined in § 405.931(h)). As we discussed in the proposed rule, hospitals are already required to deliver the written Condition Code 44 notification to enrollees whose status is changed from inpatient to outpatient after review by a hospital utilization review committee and the entire episode will be billed as outpatient. As this process is already in place, we did not propose any new documentation requirements related to a beneficiary's change in status and will not be making any modifications in this final rule.

We did not propose specific definitions for the terms ''formal admission'' or ''discharge'' since these terms are frequently used in the healthcare industry and, as used in the preamble of the proposed rule and at proposed §§ 405.1210(a)(3)(i) (for ''formally admitted'') and 405.1210(a)(3)(iv) (for ''discharge''), their meaning should be ascribed to their common usage and parlance in the healthcare context. Therefore, we decline the commenter's suggestion to establish these definitions in this final rule.

Comment: A commenter disagreed with CMS's proposal to allow hospitals to bill beneficiaries for reasonable costs associated with duplicating and delivering documentation provided to the QIO, when requested by the beneficiary, believing it was extremely burdensome on the beneficiary.

Response: We proposed at § 405.1211(d)(2) a requirement for hospitals, upon request, to provide a beneficiary with any documentation, including written records of any information provided by telephone, it provides to the QIO. We explained in the proposed rule that we intended for § 405.1211(d)(2) to operate the same way as the existing regulation at § 405.1206(e)(3), specifically that the hospital may charge the beneficiary a reasonable amount to cover the costs of duplicating and delivering the requested materials. We note that the proposal mirrors an existing policy that has been in effect for many years, and from our

[20] The Independent Review Entity (IRE) referenced in §§ 422.624 and 422.626 is the BFCC–QIO.

programmatic experience, it has not shown to be burdensome on beneficiaries. Thus, we do not agree with the commenter that the proposed regulation is unduly burdensome and are finalizing § 405.1211(d)(2) as proposed.

Comment: A commenter requested the QIOs publish detailed annual reports on the new appeals process, including data on the number of appeals, the appeal dispositions, the general geographic location area of appeal requests, and information confirming whether beneficiaries are being reimbursed upon a successful appeal. Another commenter recommended CMS publish statistics on the number of times the ALJ overturns a QIO decision under the new appeals process. The commenter suggested to apply the data as a quality measure when considering renewing the QIO contracts.

Response: We did not propose and are not finalizing a process to publicly disclose any data related to the new prospective appeals process. CMS routinely tracks the timeliness of resolving beneficiary appeals for internal monitoring and evaluation purposes, and will do so for these new prospective appeals. We appreciate the commenters' interest in program transparency and may consider requiring such data disclosures at a later time.

We appreciate the comments received on the general structure of the proposed prospective appeals process. After consideration of the comments, we are finalizing these provisions as proposed.

2. Notifying Eligible Beneficiaries of Appeal Rights When a Beneficiary Is Reclassified From an Inpatient to an Outpatient Receiving Observation Services (§ 405.1210)

To implement the changes discussed previously, we proposed to revise Subpart J of 42 CFR 405 to add new §§ 405.1210 through 405.1212. These new proposed regulations were largely modeled after the existing regulations at §§ 405.1205 through 405.1206 controlling notices to beneficiaries and the QIO review of hospital discharges.

Proposed new § 405.1210(a) set forth the applicability and scope of this new appeals process along with definitions of specific terms used in the proposed new regulations. Specifically, in § 405.1210(a)(1) we proposed to define a hospital as, for purposes of the new notice requirements and appeals process, any facility providing care at the inpatient hospital level, to include short term or long term, acute or non-acute, paid through a prospective payment system or other reimbursement basis, limited to specialty care or providing a broader spectrum of services and including critical access hospitals (CAHs). This broad definition tracks § 405.1205(a).

Paragraphs (a)(2) and (a)(3) of proposed § 405.1210 addressed the circumstance and eligibility of beneficiaries for appeals in this new process. A change in status occurs when a hospital reclassifies a beneficiary from an inpatient to an outpatient receiving observation services. The phrase ''outpatient receiving observation services'' used in §§ 405.1210 through 405.1212 was used as defined in proposed § 405.931(h) to mean when the hospital changes beneficiary's status from inpatient to outpatient while the beneficiary is in the hospital and the beneficiary subsequently receives observation services following a valid order for such services. An eligible beneficiary, consistent with the court order, would be one who: (1) was formally admitted as a hospital inpatient; (2) while in the hospital was subsequently reclassified as an outpatient receiving observation services; and (3) either (A) was not enrolled in Part B coverage at the time of the beneficiary's hospitalization, or (B) stayed at the hospital for 3 or more consecutive days but was classified as an inpatient for fewer than 3 days. We also proposed to be explicit in new § 405.1210(a)(iv)) that the period ''3 or more consecutive days'' is counted using the existing rules for determining coverage of SNF services under section 1861 of the Act and § 409.30 of this chapter. This meant that the admission day is counted as a day, but the discharge day is not. For example, if a beneficiary is admitted to a Medicare covered inpatient hospital stay on a Monday and discharges on the following Wednesday, Monday, and Tuesday are counted towards the ''3 or more consecutive days'', but Wednesday is not.

The provisions of proposed § 405.1210(b) are designed to track closely with the provisions of § 405.1205 that require delivery of a notice to beneficiaries about inpatient hospital discharges. We proposed in § 405.1210(b)(1) that hospitals would be required to deliver a standardized, largely generic, notice informing eligible beneficiaries about the availability of the new appeals process.

We proposed to require hospitals to deliver the notice to eligible beneficiaries as soon as possible after a beneficiary is eligible for this process per § 405.1210(a)(2) and (3) and no later than 4 hours prior to release from the hospital. For beneficiaries with Part B, we proposed that the notice must be delivered as soon as possible after the hospital reclassifies the beneficiary from inpatient to outpatient receiving observation services and the third day in the hospital is reached. For beneficiaries without Medicare Part B coverage, we proposed that hospitals must deliver the notice as soon as possible after the change in status from inpatient to outpatient receiving observation services because a 3-day hospital stay is not required for these beneficiaries to be eligible for an appeal.

Per proposed § 405.1210(b)(2), the new notice would include (1) the beneficiary's right to request an expedited determination regarding the decision to change the beneficiary's status from an inpatient to an outpatient receiving observation services, including a description of the process as specified in § 405.1211, and the availability of possible appeals procedures if the beneficiary's request is untimely; (2) an explanation of the implications of the decision to change the status of the eligible beneficiary from an inpatient to an outpatient receiving observation services, the potential change in beneficiary hospital charges resulting from a favorable decision, and subsequent eligibility for Medicare coverage for SNF services; and (3) any other information required by CMS. As to category 2 (see § 405.1210(b)(2)(ii)) regarding the implications of the decision, this notice would describe for eligible beneficiaries the possible changes in the charges for their hospital stay as well as the potential for non-coverage if they enter a SNF after the hospital stay.

Proposed new § 405.1210(b)(3) and (4) provided that notice delivery would be valid when the notice is delivered as required in § 405.1210(a)(3) and the beneficiary signs and dates the notice to indicate receipt and that the beneficiary understands the notice. Further, if a beneficiary refuses to sign the notice to acknowledge receipt, the hospital may annotate its copy of the beneficiary's notice to indicate the refusal. The date of refusal would be considered the date of receipt of the notice. The hospital would be required to maintain a copy of the signed or annotated notice as part of its records regarding the stay, per federal or state law.

As with existing beneficiary notice requirements, hospitals generally would need to determine whether a patient is capable of comprehending and signing the notice. Hospitals would be required to comply with applicable State laws and CMS guidance regarding the use of representatives and have procedures in

place to determine an appropriate representative.

We received the following comments regarding our proposed requirements related to notification of appeals rights.

Comment: Multiple commenters were supportive of our proposal to require hospitals to deliver a standardized notice to eligible beneficiaries, informing them of the change in their hospital status, the resulting effect on Medicare coverage of their stay, and their appeal rights.

Several commenters approved of the proposed requirement for hospitals to deliver the standardized notice as soon as possible after a beneficiary becomes eligible for the appeal process. A commenter agreed that timely notice will provide beneficiaries with an opportunity to properly evaluate whether they want to pursue an appeal relating to their status change before leaving the hospital, consider whether to enter a SNF for post-acute care, and resolve questions about liability for their hospital stay. Lastly, another commenter agreed that a targeted appeals notice, delivered only to those eligible to appeal, would be the most effective and efficient means of informing eligible beneficiaries of their appeal rights.

Response: We appreciate the commenters' support and agree that it is imperative eligible beneficiaries receive notice of the change in their hospital status, the resulting effect on Medicare coverage of their stay, and information on their appeal rights in a format and manner that is readily understandable.

Comment: Many commenters urged CMS to apply specific revisions to the proposed MCSN. A few commenters suggested we ensure the final MCSN clearly describes, using plain language, the fact that the beneficiary was reclassified from inpatient to outpatient receiving observation services and the availability of appeal rights. Other commenters requested CMS ensure the finalized MCSN accurately describes the benefits and risks of the proposed appeal process.

A commenter suggested we incorporate check boxes to the list of ramifications for hospitals to use when completing the MCSN. The commenter believes the check boxes will assist beneficiaries in identifying the information that is relevant to them and may reduce hospital burden when delivering the MCSN by reducing the number of beneficiary questions. The same commenter suggested we add a new section explaining that beneficiaries without Part B may be charged for the full cost of their stay. Another commenter felt the MCSN is directed to a broader class of beneficiaries than set forth at § 405.1210(a) and suggested all the elements from § 405.1210(a) be listed on the MCSN.

Several commenters suggested we remove from the beneficiary acknowledgement and signature block the statement ''I also understand if I win my appeal, my hospital charges will be different and possibly higher.'' The commenters found the tone of this language alarming and believe the statement may act to deter beneficiaries from appealing their reclassification when, in many cases, the beneficiary's risk of higher hospital charges is relatively low.

Other commenters recommended we add a disclaimer to the proposed MCSN explaining beneficiaries do not have financial liability protection while their appeal is pending. Several commenters requested we add a statement to the proposed MCSN advising beneficiaries that leaving the hospital will not impact a pending appeal and they will still receive notice of the appeal decision. Similarly, a commenter predicted beneficiaries would be concerned about the impact leaving the hospital would have on a pending appeal.

A commenter suggested we reorder the list of potential ramifications from a status reclassification, found in the introductory paragraph, to have information related to SNF coverage precede, rather than follow, information related to changes to the beneficiary's hospital bill. The commenter reasoned SNF eligibility is relevant to all beneficiaries that receive the MCSN, has a greater financial impact, and has a more immediate impact on a beneficiary's health than potential changes to a beneficiary's hospital charges.

Response: We appreciate the commenters' support and wide range of suggested modifications for the proposed MCSN [21] and we will be incorporating several commenters' suggested edits to the proposed MCSN that we believe will increase beneficiary understanding of the status change and the potential ramifications.

We added check boxes to the list of potential ramifications for the hospital staff to indicate which items apply to the beneficiary receiving the notice. We also added an explanation that eligible beneficiaries without Part B may be charged for the full cost of the outpatient stay, due to the hospital status change. Further, we simplified and streamlined language throughout the notice, including in the list of potential ramifications, to increase readability.

We also revised the MCSN to confirm that a beneficiary may initiate a standard appeal after leaving the hospital and to clarify that a beneficiary who requested a timely expedited determination will receive notice of the QIO decision even if they leave the hospital before the decision is made. We agree with commenters on the importance of including these clarifications on the MCSN to enhance beneficiaries understanding and comfortability with the new appeals process.

In addition, we added text to the MCSN to explain if the beneficiary remains in the hospital during the appeals process and they receive an unfavorable appeal decision, the beneficiary could be responsible for the cost of the Part B coinsurance and applicable deductible for any covered services and the full cost of any non-covered services received during the appeals process. We agree with commenters on the importance of beneficiaries understanding that the appeals process does not provide the same liability protections afforded when being discharged from a covered inpatient stay. However, we did not add an explanation that a hospital could release a beneficiary during an appeal, as suggested by some commenters, because hospital decisions related to safely releasing patients following treatment falls outside the scope of this appeals process. Hospitals must continue to assess the appropriateness of release by applying the beneficiary's particular medical circumstances, using their usual operating procedures, and in accordance with all applicable laws.

We have removed from the beneficiary acknowledgement and signature block text stating beneficiaries may face higher hospital charges upon a successful appeal. We agree with commenters that some beneficiaries could be alarmed by such a warning and potentially not proceed with an appeal they otherwise would want to pursue.

We did not believe it necessary or prudent to add details on the criteria necessary for a beneficiary to receive the MCSN and pursue an appeal relating to their hospital status reclassification. We believe including such detailed information about the appeals criteria would likely be confusing to beneficiaries and is unnecessary for them to decide whether to appeal. Importantly, the MCSN will only be

[21] Section IV.D. of this final rule states that to obtain copies of the supporting statement and any related forms, individuals should visit the CMS website at *https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995/pra-listing.*

delivered to those beneficiaries eligible to appeal.

Finally, while we agree that Medicare not covering a SNF stay following a status change from inpatient to outpatient receiving observation services is an important ramification for beneficiaries, we did not reorder the list in the notice to reflect this. Through the course of consumer testing of the MCSN after reordering the notice to list SNF coverage information before information on potential hospital coverage, it was apparent that discussing SNF coverage after discussing the hospital coverage was confusing to beneficiaries.[22]

Comment: A commenter suggested the proposed MCSN be further developed with beneficiary input to ensure that the information conveyed by the notice is accessible and understandable to beneficiaries.

Response: We agree seeking beneficiary input is vital when developing new notices and that it is essential for the MCSN to clearly inform the beneficiary of their change in status and related financial implications as well as how they may appeal this change. To that end, we edited the proposed MCSN to use research-based plain language that should be more understandable to beneficiaries. In addition, before distribution, the MCSN will have undergone consumer testing. We will also continue to refine the notice for future revisions.

Comment: A commenter recommended we require hospitals specify the exact appeal timeframes and deadlines for each beneficiary that receives the MCSN.

Response: We appreciate the commenter's intent to have beneficiaries receive as personalized a notice as possible. We proposed for the MCSN to contain a statement that, if a beneficiary wishes to pursue an appeal, the beneficiary should request an appeal as soon as possible and before leaving the hospital, which is the proposed deadline for an expedited determination. We believe such a statement is preferable to a customized notice as it sufficiently advises beneficiaries of their appeal timeframes while not further increasing the burden that would come from hospitals having to customize each notice before delivery. We also are hesitant to create a notice with a glut of dates and information that could inadvertently lead to beneficiary confusion and may detract from other important and actionable material on the MCSN. We note this level of information is consistent with similar appeals notices, such as the IM, that have not elicited complaints related to uncertainty of when to appeal.

Comment: A few commenters asserted that hospitals only change a beneficiary's status from inpatient to outpatient when they are certain the change is appropriate and that the guidelines for inpatient versus outpatient coverage and payment are complicated. The commenters suggested the MCSN include specific information on the criteria for Medicare inpatient coverage and medical review for inpatient admissions to inform beneficiaries. One of the commenters also suggested such information and additions to the MCSN would assist preventing potential overuse of the proposed appeals process.

Response: We appreciate the commenters' perspective on the appropriateness of hospital decisions to change a beneficiary's status from inpatient to outpatient receiving observation services. However, the purpose of the proposed prospective appeal process is not to validate the hospital change of status decision, but to provide beneficiaries with the ability to pursue an appeal relating to a change in a beneficiary's status, when certain criteria are met, because of the substantial impact these decisions may have on beneficiaries. We believe a core component of creating an effective appeals process is to ensure ease of access and understanding for Medicare beneficiaries. We do not believe including detailed coverage criteria in the MCSN would promote beneficiary understanding on the effect of their change in status or their right to appeal such change. Indeed, considering the commenters' acknowledgement that coverage and medical review criteria are complicated, we believe including this information on the MCSN would only risk confusing beneficiaries and possibly dissuading them from requesting appeals.

Lastly, we are unclear of the commenter's meaning when they expressed concern of potential overuse of the appeals process. In accordance with the Court's order, access to the prospective appeals process is limited to eligible beneficiaries. Once the appeal process is established, we strongly believe all eligible enrollees who wish to pursue a valid appeal should have the ability to do so with reasonable ease. We believe including complex coverage criteria on the notice, with a stated purpose to dissuade otherwise valid appeals, would be antithetical to the Court's order and our proposed goals. Therefore, we decline the commenter's suggestion to include material in the MCSN when the inclusion is intended to reduce otherwise valid appeals.

Comment: Multiple commenters provided feedback on the proposed requirements related to the timing of delivery of the notice. A few commenters were uncertain when the MCSN must be delivered, some commenters requested that hospitals be given more time for delivery, and another commenter requested a flexible delivery timeframe. Commenters based their feedback on wanting to minimize the risk of confusion on the part of the beneficiary, reduce provider burden, and not wanting to delay hospital releases (and affecting beneficiary options for SNF placement).

Response: We proposed a requirement at § 405.1210(b) that hospitals would be required to deliver a standardized notice informing eligible beneficiaries of their right to appeal a denial of Part A coverage relating to a hospital's decision to reclassify them from inpatient to outpatient receiving observation services. We proposed at § 405.1210(b)(1) to require hospitals to deliver the notice to eligible beneficiaries as soon as possible after the beneficiary is eligible for this process per § 405.1210(a)(2) and (3) and no later than 4 hours prior to release from the hospital. This means, for beneficiaries with Part B, the notice must be delivered as soon as possible after the hospital reclassifies the beneficiary from inpatient to outpatient receiving observation services and after the beneficiary has been in the hospital for 3 consecutive days. For beneficiaries without Part B, hospitals must deliver the notice as soon as possible after the change in status from inpatient to outpatient receiving observation services because a 3-day hospital stay is not required for these beneficiaries to be eligible to appeal.

We believe the MCSN delivery timeframes, as with other beneficiary notices, appropriately balance the interests of beneficiaries with the necessary burden placed upon hospitals. As we explained in the proposed rule, we reviewed the notice delivery procedures for other beneficiary notices, specifically the IM notice related to inpatient hospital discharges, and have mirrored those processes for delivery of the MCSN, wherever possible. Accordingly, the timeframe to deliver the MCSN is 4 hours prior to a beneficiary's scheduled release time from the hospital, as is existing practice for the IM. We believe it impractical to expect a beneficiary to understand the ramifications of their status change and have time to fully

[22] This testing methodology is set forth and approved in OMB collection 0938–1382 Gen IC #11.

consider whether they wish to file an appeal before leaving the hospital if the notice were to be given closer to the beneficiary's release.

Comment: Several commenters questioned the hospital's role in delivering the MCSN. A commenter requested that CMS provide clear directives for hospitals to operationalize the delivery of the MCSN and integrate the notice into existing hospital workflows.

Commenters also requested clarification in the following areas:

- Is a hospital required to verbally explain the MCSN to beneficiaries and, if so, specify how detailed the explanation must be?
- When must a hospital deliver the MCSN in circumstances where a beneficiary's hospital status is reclassified shortly after their formal inpatient admission and then remains in outpatient receiving observation for 3 days?
- Must a beneficiary receive 4 hours of observation services after receiving the standardized notice?
- Should hospitals document when a beneficiary voluntarily leaves the hospital less than 4 hours from receiving the MCSN?
- To what extent are hospitals required to document delivery of the MCSN when a beneficiary refuses to sign the notice?

A few commenters suggested that CMS prohibit hospitals from filling in the date and time in the beneficiary signature block because it may result in inaccurate information. Another commenter supported CMS' proposal for hospitals to annotate the MCSN if a beneficiary refuses to sign or acknowledge receipt.

Response: We proposed at § 405.1210(b)(3) that a hospital's delivery of the notice is considered valid when the hospital issues the notice timely, in accordance with § 405.1210(b)(1), the notice contains all required elements, in accordance with § 405.1210(b)(2), and the eligible beneficiary or their representative signs and dates the notice to indicate receipt and comprehension of its contents.

We did not propose to require hospital staff to orally convey the information on the MCSN to eligible beneficiaries. Instead, the hospital is only required to complete and timely deliver the MCSN while ensuring the beneficiary can comprehend its contents. As we explained in the proposed rule, as with existing beneficiary notice requirements, hospitals generally would need to determine whether a patient is capable of comprehending and signing the MCSN. We continue to believe that the clinicians treating a beneficiary are in the best position to determine whether their patients are capable of receiving and comprehending a notice, and whether a representative should be contacted. It would not be practicable to establish specific criteria to ascertain whether a hospital properly assessed beneficiary 'understanding' for the purposes of receiving the MCSN. The determination should fall within the practiced day-to-day assessments a hospital is making when communicating with, and providing care to, beneficiaries.

We note, the proposed requirement at § 405.1210(b)(1) only governs the timeframes in which hospitals must deliver the MCSN to eligible beneficiaries. We did not propose to require hospitals to render observation services during that timeframe nor did we propose to restrict beneficiaries from choosing to leave the hospital earlier than their scheduled release time. Instead, we expect for hospitals to build this relatively brief 4-hour window into their standard patient release planning processes, as appropriate, for beneficiaries receiving the MCSN, and for delivery to occur, no later than, 4 hours from the anticipated end of medically necessary services. Hospitals are already adept at timing the issuance of other beneficiary notices to correspond with the end of medically necessary services. In the event a beneficiary voluntarily leaves the hospital prior to the hospital's schedule time of release, the hospital may document the time of and circumstances surrounding the beneficiary's departure on their copy of the MCSN.

If the beneficiary or their representative refuses to sign the notice, we proposed at § 405.1210(b)(4) to permit a hospital to annotate its copy of the notice of the beneficiary's refusal to sign. The hospital would be required to maintain a copy of the signed or annotated notice as part of its records regarding the stay, pursuant to federal and state law. In the December 2023 proposed rule (88 FR 89521), we further explained that a hospital would need to determine whether the beneficiary is capable of comprehending and signing the notice in the same manner as existing beneficiary notice requirements.

As suggested by some commenters, the proposed delivery requirements do not permit hospital staff to prefill the date and time elements of the beneficiary receipt acknowledgement section before delivery of the MCSN. Proposed § 405.1210(b)(3)(A) states valid delivery of the MCSN only occurs when, among other criteria, an ''eligible beneficiary (or the eligible beneficiary's representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents [or when annotated if the beneficiary refuses to sign the notice].'' Because a beneficiary's acknowledgement of receipt and comprehension is recorded through their (or their representative's) signing and dating the document, hospital staff must not prefill these sections before delivery. Our proposed rules do not prevent hospital staff from assisting beneficiaries with completing the necessary elements after delivery.

We agree with commenters that the hospital responsibilities for delivering the MCSN should be delineated as clearly as possible and appreciate the interest in appropriately implementing the MCSN into hospital workflows. Following finalization of this rule, we plan to issue sub-regulatory guidance to further explain specific operational practices as we have for other beneficiary notices.

Comment: A commenter sought clarification on the consequences hospitals would face for failing to deliver the MCSN in accordance with the proposed requirements.

Response: We did not propose and are not finalizing new consequences or penalties for hospitals that specifically fail to comply with the prospective appeal requirements. Hospitals will continue to be subject to existing enforcement actions related to non-compliance with Medicare conditions of participation. As always, we would determine the degree and manner of any potential enforcement action on a case-by-case basis.

Comment: Multiple commenters suggested the proposed MCSN should not be finalized because the notice was too confusing for beneficiaries and hospitals. Several commenters worried the proposed MCSN would confuse beneficiaries by unnecessarily adding to the amount of documentation beneficiaries already receive.

A few commenters suggested the proposed MCSN might confuse beneficiaries in situations where the beneficiary receives notice of their right to appeal, through the proposed MCSN, before they receive notice of their reclassification. (The commenters incorrectly inferred the purpose of the MOON is to notify beneficiaries that they have been reclassified from inpatient to outpatient receiving observations services.)

Some commenters expressed concern that the MCSN could be confused with other existing standardized notices,

such as the MOON and other commenters suggested CMS not create a new standardized notice but, instead, incorporate language on hospital status reclassifications into the MOON or, in the alternative, require delivery of the new notice at the same time as the MOON.

Response: We appreciate and share the commenters' mindfulness for avoiding beneficiary and hospital confusion related to the proposed MCSN. We explained in the proposed rule that after determining the need for beneficiaries to receive notice of their right to appeal, we considered several options and, ultimately, decided the creation of a new standardized notice that would only be provided to eligible beneficiaries would be the least confusing and burdensome option available. In addition, we mirrored the notice delivery procedures to the IM notice procedures, a beneficiary notice with which hospitals are already familiar. We believe this approach balances a beneficiary's need to be informed of their appeal rights in an appropriate and timely manner, without imposing unnecessary burdens on hospitals.

We do not agree with commenters that merely creating a new beneficiary notice will inevitably lead to beneficiary confusion. While CMS has several beneficiary notices that must be delivered by hospitals, each has a discrete purpose and not all are provided at one time. As we have explained, the MCSN is a dedicated notice that will only be provided to the relatively few eligible beneficiaries who have the right to appeal based on a hospital reclassification from inpatient to outpatient receiving observation services. This means most beneficiaries will not receive the notice, drastically reducing the risk of beneficiary confusion. In addition, to enhance comprehension, we derived much of the verbiage used on the MCSN from other consumer-tested CMS beneficiary notices. Because of the narrow scope of the MCSN, the limited audience that will receive the notice, and our focus to use clear and concise language to convey the purpose of the notice, we believe we have taken all necessary steps to limit beneficiary and hospital confusion.

We explained in the proposed rule that we considered alternatives to creating a new notice for this process, including adding appeals information to the MOON or other existing beneficiary notifications. However, as discussed in the proposed rule, the vast majority of beneficiaries receiving the MOON will not be eligible for an appeal under this new process. Therefore, we believe using the MOON instead of, or in addition to, the MCSN, would be confusing to the nearly 600,000 beneficiaries receiving the MOON per year who would not be eligible for this appeal process.

Further, the MOON is only required for beneficiaries who have been outpatients receiving observation services for more than 24 hours. We proposed, however, the prospective appeals process would be available to eligible beneficiaries that received observation services for any amount of time after their reclassification from inpatient to outpatient. Therefore, because the MOON is not required for observation stays shorter than 24 hours, using the MOON, or attaching delivery of the MCSN to delivery of the MOON, would result in eligible beneficiaries not receiving notification of their right to appeal regarding a hospital status reclassification.

We also do not agree that beneficiaries will be confused if they receive the MCSN before the MOON. The MOON does not indicate whether the hospital has changed the beneficiary's status from inpatient to outpatient receiving observation services and, importantly, would not be required to be delivered to beneficiaries that have had their status changed and receive less than 24 hours of observation services. Instead of the MOON, hospitals are currently required to provide a written Condition Code 44 notification to inform beneficiaries when their status is changed from inpatient to outpatient after review by a hospital utilization review committee and the entire episode will be billed as outpatient.

We decided against adding information on the prospective appeals process to the Condition Code 44 notice, however, because the number of beneficiaries eligible for this new appeals process would only be a small subset of the population receiving the existing Condition Code 44 notification. Therefore, we believe the MCSN and Condition Code 44 notification have distinct roles that will also provide complementary information to beneficiaries eligible for this appeals process.

Comment: Multiple commenters generally asserted the requirement for hospitals to deliver a new standardized notice specific to beneficiaries reclassified from inpatient to outpatient receiving observation services is too burdensome for hospitals and recommended against finalizing the policy. A commenter suggested the new delivery requirement, combined with existing workforce issues, would create an undue burden for hospitals and would be logistically almost impossible for hospitals to comply. Another commenter suggested hospitals already struggle with the timely delivery of the MOON and IM and adding another notice with a shorter deadline would compound an already administratively burdensome process. A commenter asserted the notice requirement would be an enormous burden on hospitals for what is estimated to be a small volume of appeals.

A commenter predicted the notice requirement would exacerbate hospital nursing shortages because the QIOs will need to hire new staff, thereby decreasing the pool of hirable nurses. A few commenters recommended CMS minimize the role of providers in delivering the proposed MCSN to protect the providers' patient care time. However, another commenter recommended CMS require hospitals use clinical staff to deliver the notice.

Response: We estimated in the proposed rule that hospitals would be required to give 15,655 MCSNs to beneficiaries each year, which we acknowledged is likely an overestimation based on limitations to our data collection. The current number of Medicare-certified hospitals in the country is approximately 6,162. Therefore, we estimate a single Medicare-certified hospital would deliver on average fewer than 3 notices, per year. While we understand the act of delivering new notices, even in a low volume, is an appreciable increase in responsibilities for hospitals, we do not believe the new appeals process will significantly affect operations or staffing within hospitals.

As we explained in the proposed rule, when considering developing the MCSN we needed to balance hospital burden with the need to appropriately notify beneficiaries of their appeal rights. We strongly believe the use of a dedicated, standardized notice, delivered by hospital staff to patients while still in the hospital is the most efficient and effective manner by which to inform beneficiaries of their appeal rights. We considered but ruled out adding the appeals language to existing beneficiary notices because, primarily, the appeals information would not be applicable to most beneficiaries receiving those notices. In addition, we are wary of adding too much information onto a single notice as consumer research consistently demonstrates that beneficiaries are not adept at self-selecting information. We, therefore, believe using a notice exclusively for those beneficiaries eligible to pursue an appeal relating to a hospital status

reclassification will ensure beneficiaries understand their appeal rights and how to exercise them.

The proposed delivery requirements for the MCSN were derived from the existing procedures hospitals must follow when delivering the IM. Our intention for mirroring the delivery processes was to leverage the familiarity that existing hospital processes and staff have with the IM procedures to more easily incorporate the new MCSN delivery requirements. Further, we developed the new MCSN to be a largely generic notice that would only require hospital staff to complete a few fields before delivering to the beneficiary. We strongly believe that considering the limited estimated volume of MCSNs hospitals would need to deliver annually, the similarity between the IM and new MCSN delivery procedures, and the familiarity existing hospital processes and staff have with the IM, will allow for hospital compliance with very limited increase in burden.

Finally, while we used a registered nurse's hourly rate to compute our burden calculation, we would like to clarify that there is no requirement for hospitals to use clinical personal to deliver the MCSN. As with similar notices, such as the IM and MOON, we do not feel it appropriate or necessary to regulate which hospital staff are capable of delivering the MCSN. Such decisions are best left to hospitals to make based on their internal protocols and staffing requirements. In regard to the impact the new appeals process will have on QIO-hiring demands, we estimated that the QIO will receive an estimated 8,000 appeals per year. While we do anticipate the QIO will need to hire additional clinical staff to review the increasing appeal volume, we do not anticipate an impact on hospital hiring practices on a national level. Thus, we do not foresee this new appeals process having a significant impact on clinical care resources or the demand for nurse labor.

We appreciate the feedback we received from commenters on the notification requirements. We will be finalizing the proposals at § 405.1210 as proposed. (We note that changes to the MCSN will be reflected in OMB control number 0938–1467 which is discussed in section IV.B.2. of the final rule.)

3. Expedited Determination Procedures When a Beneficiary Is Reclassified From an Inpatient to an Outpatient Receiving Observation Services (§ 405.1211)

Proposed new § 405.1211 sets forth the procedures for the new expedited QIO review leading up to issuance and effect of the QIO's determination. We stated in the proposed rule that proposed § 405.1211 would establish the responsibilities of the hospitals, QIOs, and beneficiaries relative to the process.

Proposed § 405.1211(a) described a beneficiary's right to request an expedited determination by a QIO when they are reclassified by their hospital from an inpatient to an outpatient receiving observation services, and the beneficiary meets the criteria to be eligible for an appeal as established in § 405.1210(a)(3). As previously discussed, QIOs are experienced in performing expedited appeals for beneficiaries in a hospital setting and thus, are well prepared to implement and execute this new appeals process in an effective and expeditious manner. Currently, Beneficiary and Family Centered QIOs (BFCC–QIOs) perform the case review functions that are similar to the reviews that would be required by §§ 405.1211 and 405.1212, so we proposed to assign these new reviews to BFCC–QIOs under our contracts with them; in the event that CMS reconsiders in the future how QIO functions are assigned and the categorization of QIOs, we stated that we intended that the type of QIOs that perform case review functions (see 42 CFR 405.1200 through 405.1208, 475.102, 476.1 *et seq.*) would also perform these new reviews of changes in status.

In new § 405.1211(b), we proposed the process for eligible beneficiaries to request an expedited determination by the QIO. First, the eligible beneficiary's request must be by telephone to the QIO, or in writing. We did not propose any parameters of what a request in writing would constitute, but it could be an email or fax transmitted to the QIO. We also proposed at § 405.1211(b)(1) the timeframe for requesting such an appeal: eligible beneficiaries would be required to request an appeal to the QIO prior to release from the hospital. The notice required under proposed § 405.1210 would identify the BFCC–QIO that serves the geographic area that includes the hospital so that this information is available to the eligible beneficiary.

Proposed sections 405.1211(b)(2) and (b)(3) explained the responsibilities of beneficiaries to discuss the case, if requested by the QIO, and their right to submit written evidence to be considered by the QIO. Per proposed § 405.1211(b)(4), if an eligible beneficiary requests an appeal timely, they would not be billed during the QIO appeals process. However, if the appeal is untimely, the hospital may bill a beneficiary before this QIO process is complete; proposed paragraphs (b)(4) and (e) make this clear. Finally, we also proposed, in § 405.1211(b)(5), that an eligible beneficiary may file a request for review by the QIO regarding the change in status after the deadline established in proposed § 405.1211(b)(1) (that is, the beneficiary may file the request after release from the hospital) but that the QIO's determination will be provided on a different timeframe and the eligible beneficiary will not be entitled to the billing protection proposed in paragraph (e). Keeping untimely appeals with the QIO will provide beneficiaries with a decision far sooner though (2 calendar days), than if those beneficiaries were provided with the timeframes set forth in the standard claims appeals (60 days at the first level of the claims appeals process). We proposed that these untimely requests may be made at any time in order to afford maximum opportunity for beneficiaries to exercise their appeal rights. Of most concern are those beneficiaries who may have had a SNF stay following their change in status from an inpatient to an outpatient receiving observation services. These beneficiaries should have the maximum opportunity to appeal and potentially obtain coverage for what might have been a costly out-of-pocket outlay.

Proposed § 405.1211(c)(1) through (c)(5) described the procedures that the QIO would be required to follow in performing the expedited determination. We proposed at § 405.1211(c)(1) that the QIO must immediately notify the hospital that a request for an expedited appeal has been made. In addition, as proposed in § 405.1211(c)(2) and (3), the QIO would be required to determine whether valid notice was delivered and examine medical and other relevant records that pertain to change in status. As proposed at § 405.1211(c)(4) and (5), the QIO would be required to solicit the views of the beneficiary and provide the hospital an opportunity to explain why the reclassification of the beneficiary from an inpatient to an outpatient receiving observations services is appropriate. The QIO will review the information submitted with the appeal request and any additional information it obtains to determine if the inpatient admission satisfied the relevant criteria for Part A coverage at the time the services were furnished.

Proposed section 405.1211(c)(6) addressed the timing of the QIO's determination. Per proposed paragraph (c)(6)(i), the QIO must render a decision and notify all relevant persons and entities within 1 calendar day of receiving all requested pertinent

information if the eligible beneficiary requested the expedited determination as specified in proposed § 405.1211(b)(1) (that is, no later than the day of release from the hospital). Based on current experience regarding documentation submitted by hospitals under other expedited beneficiary appeal timeframes, we did not anticipate that the QIO will encounter delays in receiving any information necessary from the hospital once the hospital is notified of the appeal (see proposed § 405.1211(d)(1)). This timeframe is as rapid as possible to minimize potential liability for beneficiaries as well as to maximize their potential for coverage in a SNF should they obtain a favorable decision by the QIO. A Medicare covered SNF stay must begin within 30 days of a beneficiary's discharge from a hospital. To that end, QIOs would make their decisions as quickly as possible so beneficiaries receiving favorable decisions will have time to plan for and begin a SNF stay within the 30-day parameter.

Proposed § 405.1211(c)(6)(ii) provided that the 1 calendar day QIO decision deadline does not apply if a beneficiary makes an untimely request for an expedited appeal, but that the QIO would still accept the request and render a decision within 2 calendar days after the QIO receives all requested information that the hospital must provide per proposed § 405.1211(d)(1).[23] This provides a beneficiary with the maximum ability to exercise their right to an expedited appeal, and the opportunity to obtain SNF coverage within the Medicare coverage limitation of 30 days after leaving a hospital, should their appeal to the QIO be favorable.

In § 405.1211(c)(7) we proposed that if the QIO does not receive the information needed to make its decision, the QIO may move forward and make a decision based on the information it has at the time. This is to protect the interests of the beneficiary by ensuring they receive their decision within the QIO's required timeframes of 1 calendar day for a timely request and 2 calendar days for an untimely request.

The QIO decision, as required by proposed § 405.1211(c)(8), must be conveyed to the eligible beneficiary, the hospital, and SNF (if applicable) by telephone followed by a written notice. We proposed that the QIO's written notice of its determination must include the basis for the determination, a detailed rationale for the QIO decision, an explanation of the Medicare payment consequences of the determination, and information about the beneficiary's right to an expedited reconsideration as set forth in § 405.1212, including how and in what time period a beneficiary may make that reconsideration request. The basis of a decision is a description of, and citations to, the Medicare coverage rule, instruction, or other policies applicable to the review. A detailed rationale is an explanation of why services do or do not meet the relevant criteria for Part A coverage based on the facts specific to the beneficiary's situation and the QIO's review of the pertinent information provided by the hospital (as with other expedited beneficiary appeals of hospital discharges and service terminations).

Proposed § 405.1211(d) set forth the responsibilities of hospitals in the expedited appeals process. Section 405.1211(d)(1) provided that the hospital must supply all information that the QIO needs, no later than noon of the calendar day after the QIO notifies the hospital of the appeals request. We also proposed that at the discretion of the QIO, the hospital must make the information available by phone or in writing (with a written record of any information not transmitted initially in writing). Section 405.1211(d)(2) required that hospitals, upon request, must provide the beneficiary any documentation, including written records of any information provided by telephone, it provides to the QIO. We proposed that this obligation work the same way that it does under § 405.1206(e)(3), specifically that the hospital may charge a reasonable amount to cover the costs of duplicating and delivering the requested materials and must accommodate such a request by no later than close of business of the first day after the material is requested by the beneficiary or the beneficiary's representative.

In § 405.1211(e), we proposed that a hospital may not bill a beneficiary who has appealed timely for any services at issue in the appeal until the expedited determination process (and reconsideration process) is complete. Although there is liability protection in the inpatient discharge expedited appeals process under section 1869(c)(3)(C)(iii) of the Act (incorporating the financial liability protection in section 1154(e)(4) of the Act in effect prior to the enactment of section 1869(c)(3)(C) of the Act), there is no statutory provision protecting the beneficiary from financial liability for the hospital stay and services furnished during the pendency of the QIO's review proposed here. Therefore, we proposed only that the hospital may not bill the beneficiary until after the QIO has issued its determination. This proposal mirrored existing procedures for the similar expedited appeals procedures the termination of non-hospital services found at § 405.1202(g). This process would not extend coverage available to beneficiaries during an appeal, which is consistent with § 405.1202(g).

Proposed § 405.1211(f) set forth that a QIO determination is binding for payment purposes on the beneficiary, hospital, and MAC, unless the beneficiary pursues an expedited reconsideration per § 405.1212. The decision is binding for purposes of payment only, such that if the hospital submits a claim under Part A, CMS will make payment.

We received the following comments regarding our proposed requirements related to the prospective appeal determination procedures.

Comment: Many commenters expressed approval that the proposed prospective appeals process would be available to all beneficiaries who have been reclassified by a hospital from an inpatient to an outpatient receiving observation services, rather than limiting the class of eligible beneficiaries to those who receive a MOON, which is only required to be delivered when outpatient services reach 24 hours in duration. Multiple commenters strongly supported that beneficiaries with Part A but not Part B would not need to remain in the hospital for at least 3 days in order to be eligible for an appeal.

Response: We thank the commenters for their support of the proposed prospective appeals policy and our expansion of the population of beneficiaries eligible for an appeal.

Comment: Multiple commenters sought clarification on the criteria required for beneficiaries to access the proposed prospective appeals process. A few commenters questioned whether a beneficiary who is reclassified from inpatient to outpatient but does not receive observation services may appeal the reclassification. A few commenters questioned whether it was CMS's intent to require a beneficiary to receive the MOON in order to be eligible to appeal regarding a hospital status reclassification.

A commenter questioned whether a beneficiary may use the proposed appeals process when they have been reclassified from inpatient to outpatient receiving observation services, do not

[23] The proposed regulations text at § 405.1211(c)(6)(ii) contained a typographical error that stated that the QIO must render a decision for untimely requests within 1 day. This was an error that will be corrected in this final rule.

have Medicare Part B, but have other insurance coverage for outpatient observation services. A few commenters questioned whether a beneficiary must specify they are seeking SNF care in order to request an appeal. A commenter questioned how the proposed appeals process would be affected if a beneficiary exhausts their Medicare inpatient coverage and whether beneficiaries, in those circumstances, could pursue an appeal under the proposed prospective appeals process.

Response: We proposed at § 405.1211(a) that a beneficiary has the right to request an appeal by a QIO when they are reclassified by their hospital from an inpatient to an outpatient receiving observation services, and the beneficiary meets the eligibility criteria established in § 405.1210(a)(3). Pursuant to proposed § 405.1210(a)(3), an eligible beneficiary would be one who was formally admitted as a hospital inpatient, was subsequently reclassified as an outpatient receiving observation services, and either was not enrolled in Medicare Part B at the time of the beneficiary's hospitalization or stayed in the hospital for 3 or more consecutive days but was classified as an inpatient for fewer than 3 days.

We explained in the proposed rule the provisions of the prospective appeals process are intended to implement the District Court order in *Alexander* v. *Azar,* 613 F. Supp. 3d 559 (D. Conn. 2020), *aff'd sub nom., Barrows* v. *Becerra,* 24 F.4th 116 (2d Cir. 2022). The Court's order required new appeal procedures be afforded to a specific class of Medicare beneficiaries who, among other criteria, have or will have been subsequently reclassified by the hospital as an outpatient receiving observation services. In accordance with the court order, we established the beneficiary eligibility criteria for this new appeal process at § 405.1210(a)(3), which requires eligible beneficiaries to have been reclassified by their hospital to an outpatient receiving observation services, among other criteria. We defined the phrase ''outpatient receiving observation services'' at proposed § 405.931(h) to mean when the hospital changes the beneficiary's status from inpatient to outpatient while the beneficiary is in the hospital and the beneficiary subsequently receives observation services following a valid order for such services. Thus, we believe it to be explicitly clear that a beneficiary must have received at least some observation services after being reclassified from an inpatient to outpatient in order to be eligible for the proposed appeals process.

As discussed in the proposed rule, a beneficiary does not need to receive the MOON in order to be eligible to request a prospective appeal. The MOON is a beneficiary notice furnished by a hospital to beneficiaries who receive observation services as an outpatient for more than 24 hours. However, in accordance with the proposed § 405.1210(a)(3) beneficiaries are eligible for the prospective appeals process after being reclassified from inpatient to outpatient receiving observation services if any time is spent in observation following the reclassification. Thus, the MOON is not required to be received by, and likely would not be received by many, beneficiaries in order to be eligible to appeal regarding a hospital status change under the new process. We acknowledge, as we did in the proposed rule, that this policy expands the population of beneficiaries eligible for an appeal beyond the class defined by the court in *Alexander.*

As we have previously explained, eligible beneficiaries include those whose hospital status was changed from inpatient to outpatient receiving observation services and were not enrolled in Medicare Part B at the time. We did not propose to include consideration of non-Medicare insurance among the required elements for appeal eligibility and do not believe it is prudent to do so now for several reasons. First, we do not believe verifying non-Medicare insurance in real-time during a fast-moving expedited process would be practical without risking delays to the appeal decisions if the QIO must first confirm a beneficiary does not have other outpatient insurance coverage. In addition, a beneficiary's possession of non-Medicare outpatient insurance does not actually guarantee coverage in all circumstances. Such decisions would be made on a case-by-case basis by the other insurer. Lastly, the Medicare program does not limit a beneficiary's appeal eligibility based on having outside insurance in other circumstances. Thus, we do not believe it reasonable to limit a beneficiary's right to appeal under the prospective appeals process merely because they may possess outpatient insurance coverage from another source.

Similarly, we did not propose at § 405.1210 (a), establishing the scope of prospective appeals process, a requirement for beneficiaries to request SNF services to be eligible to pursue an appeal regarding a hospital reclassification from inpatient to outpatient receiving observation services. While we expect SNF coverage to be a driving factor for many beneficiaries considering whether to pursue a prospective appeal, this is not the only reason an appeal might be warranted. For example, a beneficiary may want to appeal because they expect that their out-of-pocket costs would be lower as an inpatient or, in another case, the beneficiary may not have Part B and would want to appeal in order to not be liable for the full cost of the hospital stay. More importantly, some beneficiaries may not want to enter post-acute SNF care and, in those cases, we do not feel it would be just to condition a beneficiary's ability to pursue an appeal regarding a hospital reclassification on the requirement that they seek SNF care. Thus, while eligibility for a covered SNF stay is an important consideration for many beneficiaries considering an appeal, we believe it would be improper to significantly limit the class of eligible beneficiaries by requiring a beneficiary to seek SNF care as a prerequisite for appealing based on a hospital reclassification.

Finally, an implicit requirement for beneficiaries seeking inpatient coverage through the prospective appeals process is having available Medicare Part A benefits. The proposed appeals process, as with other similar appeals processes, does not override statutory benefit limits, such as the availability of inpatient hospital days. Should a beneficiary begin an appeal and it becomes evident that inpatient days are exhausted, the appeal decision will be unfavorable. Even if the QIO is unaware that the beneficiary had exhausted their inpatient days, the usual claim edits would trigger, and coverage would not be available to the beneficiary upon the submission of a claim. This appeals process does not confer benefits in excess of Medicare statutory limits.

Comment: A commenter recommended CMS permit SNF staff to file appeals under the prospective appeals process on behalf of eligible beneficiaries. The commenter asserted beneficiaries often lack the necessary support to work through appeals processes on their own and SNFs would be motivated to ensure they receive proper payment for services they render. Another commenter questioned whether hospital staff may assist a beneficiary in the proposed appeals process by answering questions and guiding the beneficiary through the appeals process.

Response: We appreciate the commenter's suggestion to permit a SNF to file an appeal on behalf of an enrollee; however, we do not agree that

party status should be extended to providers for the new appeals process. The prospective appeals process, proposed at §§ 405.1210 through 405.1212, is available to eligible beneficiaries who, after formally being admitted as an inpatient, have subsequently been reclassified by the hospital as an outpatient receiving observation services. We explained in the proposed rule that the court order specifically required the provision of appeal rights to a defined set of class members, and that definition did not include the provider of services (that is, hospitals and SNFs). Accordingly, we proposed limiting party status for these new appeals to the defined class members. The same limitation currently exists for hospital discharge appeals procedures in §§ 405.1205 and 405.1206, where a provider of services does not have party status.

While we are not extending party status to SNFs or other provider types, we are not modifying existing rules related to appointed representatives who may act on behalf of a beneficiary, nor have we restricted hospital or provider staff from assisting beneficiaries as they navigate their status reclassification and appeals process. We believe hospital and other provider staff already routinely engage in support activities for beneficiaries in their care and we endorse providers extending such support to eligible beneficiaries appealing based on a hospital reclassification. We do not believe it is necessary to strictly define or limit the type of support that may be provided to an eligible beneficiary but believe such support could include answering questions, providing explanations on the reclassification and appeals process, or assisting the beneficiary or their representative in contacting a State Health Insurance Program, 1–800–MEDICARE, or the QIO. We note that we do not believe support includes hospital staff completing the beneficiary specific portions of the MCSN that document the beneficiary's comprehension of the notice and the date/time of receipt before delivery to the beneficiary.

Comment: Multiple commenters commended CMS for not placing a deadline on when an eligible beneficiary may submit an appeal request to the QIO after leaving the hospital. A few commenters sought clarification on whether there is a deadline for eligible beneficiaries to submit an appeal to the QIO after leaving the hospital.

Response: We thank commenters for their support on the proposed appeal submission timeframes and for recognizing our intent to afford beneficiaries maximum flexibility when considering whether to request an appeal under the prospective appeals process. We proposed in § 405.1211(b)(5) that an eligible beneficiary may file a request for review by the QIO regarding their change in hospital status after the deadline established for expedited determinations, at proposed § 405.1211(b)(1). More specifically, the beneficiary may file an appeal request after they are released from the hospital. In addition, we proposed that these untimely appeal requests, which we also referred to as ''standard'' appeal requests, may be made ''at any time.'' We did not propose a deadline for these appeal requests in order to afford beneficiaries flexibility when exercising their appeal rights, especially those who may have had a SNF stay following their change in status from inpatient to outpatient receiving observation services. We continue to believe beneficiaries should have the maximum opportunity to pursue an appeal regarding their status change and potentially obtain coverage for SNF services which they may have paid out-of-pocket.

Comment: A commenter suggested CMS extend the timeframe for eligible beneficiaries to request an expedited determination to 48 hours after leaving the hospital. The commenter explained that an extended submission timeframe would better protect a beneficiary's rights by affording the shortest appeal decision timeframe available.

Response: We understand and appreciate the commenter's intent to provide beneficiaries with as long as possible to request and receive an expedited determination from the QIO. When proposing the expedited appeal submission timeframe, we weighed the benefit of providing beneficiaries ample time to submit an appeal request with ensuring beneficiaries submit the appeal request as soon as possible. Because there is no liability coverage during the proposed appeals process, we believe it is in beneficiaries' best interest to receive an appeal decision as soon as possible. In addition, we believe rapid decisions will provide beneficiaries with a more accurate picture of their inpatient coverage status and better inform their future financial and health care decisions, such as electing post-acute care services. If a beneficiary obtains a favorable decision from the QIO, a rapid decision will also maximize their potential for coverage in a SNF or other post-acute care facility.

We believe the proposed policy requiring beneficiaries to submit an expedited appeal before leaving the hospital strikes an effective balance that incentivizes beneficiaries to submit appeals quickly, so to receive a faster appeal decision, with ensuring untimely appeals are still processed expeditiously. An expedited appeal timely submitted to the QIO will be decided within 1 calendar day of receiving all relevant requested information. An untimely expedited appeal submission to the QIO will be decided within 2 calendar days of receiving all relevant requested information. This policy, while slightly slower than the expedited determination timeframes, still provides beneficiaries with a decision far sooner than if they had to request an appeal under the standard claims appeal timeframes (60 days at the first level of the claims appeals process).

Comment: Multiple commenters sought clarification from CMS on whether the proposed regulations require hospitals to retain beneficiaries for the duration of an expedited QIO review. A few commenters suggested CMS clarify that the QIO must continue to process an expedited determination request whether the beneficiary is present in the hospital or not. Several commenters recommended CMS permit hospitals to discharge or release beneficiaries from the hospital, as reasonable and necessary, during the pendency of an expedited determination. Other commenters warned the proposed policy will needlessly delay beneficiaries' safe release from hospitals and warned that requiring hospitals to keep beneficiaries in the facilities would increase the risk of beneficiaries contracting hospital infections and may lead to increased mortalities.

Response: We did not propose and are not finalizing a requirement that would restrict hospitals from safely releasing eligible beneficiaries that are awaiting a decision from the QIO on an expedited determination request. We explained in the proposed rule that the court in *Alexander* indicated that HHS should use a process for expedited appeals regarding hospital status changes that is ''substantially similar'' to the existing process for expedited hospital discharge appeals at §§ 405.1205 through 405.1208. While we believe we have appropriately followed the direction of the court, we noted in the proposed rule that there are certain differences between the proposed expedited determination process and the existing hospital discharge appeals process. Most notably, we explained that the proposed expedited determination process does not afford beneficiaries

protection from financial liability for services furnished during the pendency of the QIO's review. Instead, we proposed that the hospital may not bill the beneficiary until after the QIO has issued its expedited determination or issued a decision in response to a timely reconsideration request, as applicable. We noted that this billing protection does not extend coverage to beneficiaries during the appeal, which is consistent with § 405.1202(g).

Although we believed the policy was clearly described in the proposed rule, as several commenters had similar misunderstandings, we explicitly state here that the new appeals process does not direct hospitals to house or treat a beneficiary with medically unnecessary care during the pendency of their appeal. Hospitals should continue to follow all existing federal, state, and local rules and internal standard operating procedures when considering the release of a beneficiary who no longer requires hospital services. The only interaction this appeals process has with an eligible beneficiary's release from the hospital is the proposed requirement for hospitals to deliver the MCSN no later than 4 hours before the beneficiary's release from the hospital. We continue to believe that hospitals are equipped to accurately estimate, to within 4 hours, when an enrollee will cease to need medical care and should be able to comply with the MCSN delivery requirement.

Because we did not propose and are not finalizing a requirement that restricts hospitals from releasing eligible beneficiaries during an appeal, we do not believe we need to address the comments related to unnecessarily housing patients that do not need hospital-level care in hospitals.

Comment: Multiple commenters requested CMS clarify whether enrollees receive financial liability protection for services received while their appeal is pending. Several commenters urged CMS to hold beneficiaries harmless for the costs of services received while an expedited appeal is pending. These commenters suggested CMS will violate the court's direction that CMS should use a process for the expedited appeals that is ''substantially similar'' to the inpatient hospital discharge appeals process if beneficiaries are not held financially harmless while an expedited appeal is pending.

Several commenters requested guidance on how to code and bill beneficiaries for time spent in the hospital during their appeal. These commenters incorrectly believed the hospital could not release patients during the appeals process and suggested the hospital would need to bill for custodial care. Similarly, other commenters questioned how to properly inform a beneficiary that they will be financially liable for services received during their appeal.

Response: We appreciate the commenters' concerns and interests in protecting beneficiaries' financial liability during the expedited appeals process. As we previously explained, we believe the proposed structure of the expedited appeals process complies with the court order indicating we should use a process for expedited appeals regarding hospital status changes that is ''substantially similar'' to the existing process for expedited hospital discharge appeals at §§ 405.1205 through 405.1208. Nevertheless, there are certain important differences between the two appeals processes. Most notably, the proposed expedited determination process does not afford beneficiaries protection from financial liability for services furnished during the pendency of the QIO's review. As discussed in the proposed rule, Section 1869(c)(3)(C)(iii)(III) of the Act (by incorporating the financial liability protection in section 1154(e)(4) of the Act in effect prior to the enactment of section 1869(c)(3)(C)) provides beneficiaries with coverage during the inpatient hospital discharge appeal process. However, this statute only applies to beneficiaries being discharged from a Medicare covered inpatient hospital stay. Under the proposed appeals process, beneficiaries are eligible to appeal based on a hospital's reclassification of their inpatient status to outpatient receiving observation services. Because the new appeals process is not an appeal of a covered inpatient hospital discharge, section 1869(c)(3)(C)(iii)(III) is inapplicable to the new appeals process. Thus, we did not propose and are not finalizing financial liability protections for eligible beneficiaries that appeal regarding a hospital reclassification from inpatient to outpatient receiving observation services.

We note that most of the commenters requesting guidance on notification and coding related to billing beneficiaries during the appeals process seem to misinterpret our proposed regulations to require hospitals to retain beneficiaries during the appeals process even if they no longer meet the requirements for medically necessary care. As we addressed in a previous comment, the proposed appeals procedures do not prevent hospitals from safely releasing beneficiaries based on their particular medical circumstances. Therefore, hospitals should continue to follow all existing federal, state, and local requirements for providing, and notifying beneficiaries of their financial liability related to non-covered care.

Comment: A few commenters urged CMS to grant beneficiaries presumptive SNF coverage from the date a prospective appeal is requested to at least the date of the QIO decision.

Response: While we appreciate the commenters' suggestion, we decline to create a policy that would provide presumptive SNF coverage for the days in which a prospective appeal is being adjudicated by the QIO. To qualify for SNF services coverage, section 1861(i) of the Act requires Medicare beneficiaries to have a medically necessary 3-consecutive-day inpatient hospital stay within 30 days of admission to a SNF. However, beneficiaries eligible for the proposed prospective appeals process had their hospital status changed from inpatient to outpatient receiving observation services. This means the beneficiaries may not have acquired the necessary 3-day stay to qualify for SNF coverage. Indeed, this is one of the primary reasons the court in *Alexander* directed CMS to create an expedited determination process for eligible beneficiaries. Therefore, in order to meet the 3-day stay requirement, as established by statute, most eligible beneficiaries would have to receive a favorable decision from the QIO. If CMS were to provide presumptive SNF coverage for the days in which a QIO is adjudicating a prospective appeal, but then a beneficiary did not receive a favorable decision from the QIO, the SNF stay would likely result in non-covered SNF care, with potentially significant beneficiary out-of-pocket expenses, regardless of any previous presumption of coverage. We believe the commenters' suggestion would, therefore, lead to inequitable outcomes for beneficiaries that receive unfavorable QIO decisions.

Comment: Multiple commenters supported our proposed requirement prohibiting hospitals from billing eligible beneficiaries until the expedited determination and reconsideration, when applicable, processes are complete. A commenter sought clarification on the appropriate time to bill a beneficiary for services after an expedited determination has been made. The commenter also questioned whether the hospital should rescind a bill issued to a beneficiary in the time between when the beneficiary received an expedited determination and requested a timely reconsideration. Separately, a few commenters requested

CMS extend the beneficiary billing protections for expedited appeals to untimely appeals.

Response: We appreciate the commenters support for our proposal. We proposed in § 405.1211(e) that a hospital may not bill a beneficiary who requested a timely appeal for any services at issue in the appeal until the expedited determination process (and reconsideration process, when applicable) is complete. This policy mirrors existing procedures for appeals related to the termination of non-hospital services found at § 405.1202(g). If a hospital inadvertently bills a beneficiary during a period in which the proposed requirements restrict hospital billing, we agree with the commenter that the hospital should immediately rescind the bill.

With respect to extending beneficiary billing protections for untimely appeals, we appreciate the commenters' suggestion and interest in enhancing beneficiary protections. However, pursuant to our proposed policy, eligible beneficiaries may at any time request a standard (that is, untimely) appeal relating to a hospital's decision to reclassify their status from inpatient to outpatient receiving observation services. While this policy provides beneficiaries with maximum flexibility when considering an appeal relating to a hospital reclassification, the timing of appeal requests could be unpredictable and, in some cases, a standard appeal request could be submitted after a beneficiary receives a hospital bill. We believe adopting such a proposal would be administratively impractical for hospitals to comply with as they could not be expected to reasonably anticipate when they would be barred from billing a beneficiary.

Comment: A commenter suggested the adjudication timeframes for ''regular appeals'' could result in financial uncertainty for hospitals as organizations could wait 2 years before the issuance of a final decision.

Response: We are unclear how the commenter estimated hospitals may have to wait 2 years before receiving a final decision. We posit the commenter considered the potential cumulative adjudication times if an eligible beneficiary appealed an adverse expedited reconsideration decision to the ALJ or beyond. Nevertheless, as stated in the proposed rule at §§ 405.1211(e) and 405.1212(e), a hospital is only prohibited from billing a beneficiary during the expedited levels of the determination and reconsideration processes. However, hospitals are permitted to bill beneficiaries after the QIO expedited determination and reconsideration levels of appeal are complete. As with other Medicare expedited and claim appeal processes, the higher levels of administrative appeal may not conclude until well after the service and billing are completed. Even so, we do not believe the proposed appeals adjudication timeframes would introduce significant financial uncertainty for hospitals due to the very low anticipated first level appeals volume of around 8,000 appeals nationally, per year.

Comment: Multiple commenters sought clarification on the impact of a beneficiary receiving a favorable expedited or standard determination from the QIO. Their questions were as follows:

- Upon the QIO issuing a favorable expedited determination to a beneficiary who remained in the hospital during their appeal, is the hospital required to present the IM before the beneficiary may be discharged?
- Would a beneficiary in that scenario be able to appeal the hospital inpatient discharge to the QIO, if desired?
- Upon a successful appeal, must a new inpatient order be entered or is the hospital reclassification decision considered null and void?
- Must the inpatient order be revised if a beneficiary received a favorable standard appeal decision and already released from the hospital?
- May a hospital collect the Part A deductible from the beneficiary upon a favorable determination by the QIO? (The commenter also wanted CMS to understand that some beneficiaries may have higher out-of-pocket costs when they receive a favorable appeal, due to the higher Part A deductible.)
- Must hospitals use a specific condition code when rebilling a Part A claim after a favorable standard appeal decision that was requested after the hospital had billed Part B?

Another commenter suggested hospitals should not have to refund to an eligible beneficiary any payments collected prior to the beneficiary receiving a favorable standard appeal decision from the QIO. The commenter suggested the Part B claim should be reopened instead and the hospital should be paid any remaining balance before the hospital is required to refund the beneficiary, as necessary.

Response: We did not propose and are not finalizing any changes to other hospital notice delivery requirements. If a beneficiary is still present in the hospital when a hospital's reclassification is reversed by a QIO, the beneficiary would again be deemed an inpatient under the original hospital admission order for purposes of Medicare Part A coverage. Hospitals would then be required to follow all applicable Medicare inpatient requirements when treating and discharging the beneficiary to include following the standard IM delivery guidelines set forth at § 405.1205(1). However, we expect most beneficiaries will receive their appeal decisions after being released from the hospital as hospitals historically have reclassified beneficiaries close to termination of hospital services. We will issue instructions for the submission or adjustment of claims affected by a disregarded reclassification in program instructions following this rule. The instructions will make use of existing standard claim coding and submission processes familiar to the affected providers.

We appreciate the feedback we received from commenters on the expedited determination procedures. Based on analysis of the public comments, we will be finalizing these provisions as proposed.

4. Expedited Reconsideration Procedures When a Beneficiary Is Reclassified From an Inpatient to an Outpatient Receiving Observation Services (§ 405.1212)

In new § 405.1212 we proposed to set forth the procedures for the new expedited reconsideration process. Proposed § 405.1212 contained the responsibilities of the hospitals, QIOs, and beneficiaries relative to the reconsideration process.

Proposed § 405.1212(a) described an eligible beneficiary's right to request an expedited reconsideration by a QIO when they are dissatisfied with the expedited determination decision by the QIO.

In § 405.1212(b) we proposed a process for beneficiaries to request an expedited reconsideration by a QIO. Proposed paragraph (b)(1) provided that beneficiaries must request an appeal to the QIO no later than noon of the calendar day following the initial notification of the expedited determination by the QIO. Under this proposal, the earlier of the calendar day of the QIO's notification of the beneficiary by telephone or in writing of its determination (under § 405.1211(c)(8)) would start the timeframe for the beneficiary to request an expedited reconsideration. The beneficiary's request for a reconsideration may be in writing or by telephone.

Proposed §§ 405.1212(b)(2) and (b)(3) also explained the responsibilities of beneficiaries to discuss the case, if

requested by the QIO, as well as beneficiaries' right to submit written evidence to be considered by the QIO. Finally, proposed (b)(4) and (b)(5) stated that if a beneficiary requests an appeal timely, they would not be billed until the QIO makes its reconsideration decision; however, if the beneficiary's request for an expedited reconsideration is untimely, the hospital may bill a beneficiary before the reconsideration determination has been made.

Proposed §§ 405.1212(c)(1) through 405.1212(c)(4) described the procedures that the QIO must follow in performing the expedited reconsideration. Specifically, we proposed in § 405.1212(c)(1) that the QIO must immediately notify a hospital that a request for an expedited reconsideration has been made; this means that the notice to the hospital must be the day the QIO receives the request for expedited reconsideration. Per proposed § 405.1212(c)(2), the QIO would be required to offer both the beneficiary and the hospital an opportunity to provide further information. An example of further information from the hospital could include an explanation of why the beneficiary was reclassified from an inpatient to an outpatient receiving observation services. Similarly, an example of further information from the eligible beneficiary could include an explanation of why inpatient status should have been maintained.

Proposed § 405.1212(c)(3)(i) provided that the QIO must render a decision and notify all relevant persons and entities within 2 calendar days of receiving all information necessary to complete the appeal if the beneficiary requested the reconsideration by noon of the day after receiving notice of the QIO's determination under § 405.1211. This timeframe is as rapid as possible to minimize potential liability for beneficiaries as well as to maximize their potential for coverage in a SNF should they obtain a favorable reconsideration decision by the QIO. A Medicare-covered SNF stay must begin within 30 days of a beneficiary's discharge from a hospital. To that end, we proposed a review process for QIOs to make their decisions as quickly as possible so beneficiaries receiving favorable decisions will have time to plan for and begin a SNF stay within the 30-day limit for coverage.

Proposed § 405.1212(c)(3)(ii) provided that if a beneficiary makes an untimely request for an expedited reconsideration, the QIO must still accept the request and render a decision within 3 calendar days. Under this proposal, the 2-calendar day QIO decision deadline does not apply in the case of an untimely request for an expedited reconsideration. However, the expeditious 3-day untimely timeframe affords a beneficiary the ability to exercise their right to an expedited appeal and potentially be entitled to SNF coverage within the 30-calendar day time limit for SNF coverage following hospital release, should they receive a favorable expedited reconsideration determination from a QIO.

The QIO decision, as required by proposed § 405.1212(c)(4)(i–iv), must include the basis and detailed rationale for the QIO decision. The basis of a decision is a description of, and citations to, the Medicare coverage rule, instruction, or other policies applicable to the review. A detailed rationale includes the facts specific to the beneficiary's situation and a detailed explanation of why the inpatient admission did or did not satisfy the relevant criteria for Part A coverage at the time the services were furnished. The decision must also include the potential financial ramifications, such as deductibles or coinsurance for the beneficiary, the beneficiary's right to a hearing by an ALJ, and how a beneficiary may make a request for an expedited reconsideration.

Proposed § 405.1212(d) set forth the responsibilities of hospitals in the expedited appeals process. As proposed, a hospital may, but is not required to, submit evidence to be considered by a QIO in making its reconsideration decision. If a hospital does not furnish a QIO with requested additional information, the QIO may proceed to make a decision based on the information used in the expedited determination. This is to protect the interests of the beneficiary by ensuring they receive their decision within the QIO's [24] required timeframes of 2 calendar days for a timely request and 3 calendar days for an untimely request. This proposed policy is consistent with obligations on hospitals in the second level expedited review of a hospital discharge and on providers of services in the second level expedited review of a termination of provider services (§ 405.1204(e)).

In § 405.1212(e) we proposed that a hospital may not bill a beneficiary who has appealed timely for any services at issue in the appeal until the expedited reconsideration process is complete.

Proposed § 405.1212(f) set forth that a QIO reconsideration is binding on the beneficiary, hospital, and MAC unless the beneficiary pursues an appeal with an ALJ in accordance with 42 CFR part 478 subpart B. This concept is consistent with the existing claims appeals process currently established under §§ 405.1000 through 405.1140. The decision is binding for purposes of payment only, such that if the hospital submits a claim under Part A or Part B, CMS will make payment.

Per section 1155 of the Act, a beneficiary who is dissatisfied by a QIO's reconsideration of its initial decision may seek additional administrative review and, ultimately, judicial review, if the amount in controversy limits are met.[25] Our proposal followed that process.

We received the following comments regarding our proposed requirements related to the prospective appeal reconsideration procedures.

Comment: Several commenters supported the proposed reconsideration procedures when a beneficiary is reclassified from an inpatient to an outpatient receiving observation services. A commenter believed the proposed timelines for beneficiaries to request, and QIOs to render, a reconsideration decision were reasonable and would protect the ability of beneficiaries to potentially obtain SNF benefits within the 30-day period following release from a hospital.

Response: We thank the commenters for their support.

Comment: A commenter suggested CMS harmonize the proposed prospective appeals procedures with existing Parts A and B claims appeal procedures because the commenter believed the proposed appeal procedures do not clearly identify if beneficiaries may continue to appeal after receiving an unfavorable QIO reconsideration decision.

Response: We explained in the proposed rule that a beneficiary who is dissatisfied by a QIO's reconsideration of its initial determination may seek additional administrative review and, ultimately, judicial review, if the amount-in-controversy limits are met. This means a beneficiary may appeal an adverse QIO reconsideration decision to an ALJ, if the amount in controversy is $200 or more, then to the Medicare Appeals Council (MAC), and, if the MAC denies the request for review or issues an unfavorable decision, to

[24] We referred to ''BFCC–QIO'' in the proposed rule but note that we are making a technical change at § 405.1211(d) to change to ''QIO'' so that it comports with all other references to the QIO in this subpart.

[25] Under section 1155 of the Act, for an appeal with an ALJ, the amount in controversy must be $200 or more, and for judicial review, the amount in controversy must be $2,000 or more.

federal district court, as long as the amount in controversy is $2,000 or more.

Comment: A commenter asserted beneficiaries should be given up to 24 hours to request an appeal of a QIO expedited determination, rather than noon of the next day, as was proposed in § 405.1212 (b). The commenter was concerned that beneficiaries may not understand the appeals process in time to receive an expedited reconsideration. Another commenter generally suggested beneficiaries receive more time to request an expedited reconsideration.

Response: We appreciate the commenters' interest in providing beneficiaries sufficient time to request a timely reconsideration. We proposed the expedited reconsideration request timeframes to mirror appeal submission timeframes for similar processes, such as inpatient hospital discharge appeals. In our experience, beneficiaries have sufficient opportunity to request an expedited reconsideration under the proposed timeframes. Additionally, when a QIO provides an expedited determination by phone, the QIO personnel will ask the beneficiary, or their representative, if the beneficiary would like to request an expedited reconsideration during the same phone call. This means a beneficiary, or their representative, may immediately request a second-level appeal (an expedited reconsideration) at the time they receive their first-level decision (expedited determination), without having to take any additional actions.

We note that even if the beneficiary fails to timely request an expedited reconsideration, the QIO will process an untimely request and the beneficiary will receive a decision in 3 calendar days (instead of 2 calendar days, which is the expedited processing timeframe).

Comment: A commenter requested that CMS acknowledge that hospitals may submit claims and receive Part A payment for services that are on appeal to an ALJ under the proposed prospective appeals process.

Response: We believe the commenter meant to request that CMS confirm that hospitals may bill Medicare and receive Part B payment while an appeal regarding a hospital status change is pending before an ALJ. If a hospital decides to reclassify a beneficiary from inpatient to outpatient receiving observation services, then the hospital would only bill Medicare under Part B. Nevertheless, we confirm that a hospital may bill Medicare for covered services while an appeal is pending at the ALJ.

Comment: A commenter requested CMS clarify which beneficiary notice a hospital must deliver to a beneficiary to notify them of their financial liability following an unfavorable expedited reconsideration decision.

Response: We proposed at § 405.1212(c)(4)(i) through (iv) that a QIO reconsideration decision must include, among other items, the potential financial ramifications, such as deductible and coinsurance for the beneficiary. Thus, the QIO is responsible for informing a beneficiary of their potential financial liability related to an unfavorable reconsideration decision.

We appreciate the feedback we received from commenters on the expedited reconsideration procedures. Based on analysis of the public comments, we will be finalizing these provisions as proposed.

5. Conforming Changes Beneficiary Notice of Discharge or Change in Status Rights (§ 489.27)

In conjunction with the proposed notice provisions §§ 405.1210 through 405.1212, we proposed to make conforming changes to a related existing regulatory provision. We proposed to amend the provider agreement requirements in § 489.27(b) to cross-reference the proposed notice requirements. Thus, proposed § 489.27(b) specified that delivery of the proposed appeals notice was required as part of the Medicare provider agreement. Lastly, to account for this conforming change, we proposed to change the title of § 489.27 to include ''change in status'' to more accurately reflect the actions that would require the issuance of a notice.

We did not receive any comments on the proposed changes related to these conforming changes. As a result, we are finalizing our policies as proposed.

6. Conforming Changes to Quality Improvement Organization (QIO) Review Regulations

We also proposed to amend the QIO regulations at § 476.71(a) to conform with the proposed changes in review responsibilities at §§ 405.1210 through 405.1212. The proposed amendment to the QIO regulations would add a new review type to the currently enumerated list of reviews performed by QIOs, specifically for beneficiary appeals regarding hospital reclassifications of a fee-for-service beneficiary's inpatient status to that of outpatient receiving observation services when the eligibility requirements to file a prospective appeal being finalized in this rule are met. The beneficiary eligibility requirements for filing expedited appeals and the required processes for those appeals are described in sections III.B.1. through III.B.5. of this final rule. This proposed amendment to the QIO regulation specified that QIOs perform review functions for these beneficiary appeals in a manner that is consistent with other QIO review functions while ensuring alignment with the proposed beneficiary eligibility and process requirements for such appeals.

The QIO regulations at 42 CFR 476.1(a) define ''QIO review'' as a review performed in fulfillment of a contract with CMS, either by the QIO or its subcontractors. Under regulations at § 476.71, the QIO's review responsibilities include: (1) whether services are or were reasonable and medically necessary for diagnosis or treatment; (2) whether the quality of the services meets professionally recognized standards of health care, as determined through the resolution of oral beneficiary complaints; (3) whether care and services furnished or proposed on an inpatient basis could be effectively furnished more economically on an outpatient basis or in another inpatient setting; (4) diagnostic related group (DRG) validation of diagnosis and procedure information provided by hospitals; (5) the completeness, adequacy and quality of hospital care provided; (6) medical necessity, reasonableness and appropriateness of hospital admissions and discharges; (7) medical necessity, reasonableness and appropriateness of inpatient hospital care for which additional outlier payment is sought; and (8) whether a hospital has misrepresented admission or discharge information resulting in unnecessary or multiple admissions, or inappropriate billing.

We stated in the proposed rule that our proposed amendment to § 476.71(a) would add paragraph (9) to this list of QIO review responsibilities to include the new beneficiary-initiated appeals for when a hospital reclassifies certain fee-for-service beneficiaries' admission status from inpatient to that of outpatient.

In considering the existing hospital discharge appeals process, CMS determined that the circumstances for these new appeals, and the potential impact of such appeal decisions on Part A coverage for subsequent care in other settings, necessitated a new notification process and review timelines which differ from the processes that govern the existing hospital discharge appeals process. These new appeals are discussed in section III.B. of this final rule and appear at §§ 405.1210 through 405.1212.

The proposed amendment to the QIO regulations, as previously discussed, applied to the processes and timeframes

for the new appeals discussed in section III.B. of this final rule, which have been designed to meet the needs of beneficiaries who have had their inpatient status reclassified to outpatient receiving observation services.

In general, we received comments that were supportive of having the BFCC–QIOs conduct the new expedited and standard appeals and reconsiderations as a new type of QIO review under proposed § 476.71(a)(9), and for which QIOs would follow the processes specified under §§ 405.1211 and 405.1212.

Comment: Commenters indicated that QIOs' expertise conducting similar types of beneficiary appeals as well as reviewing patient status under the 2-midnight rule places them in an ideal position to review the new appeals under the prospective appeals process.

Response: We thank the commenters for their recognition of the QIOs' experience with beneficiary appeals and ability to conduct these new beneficiary appeals. QIOs have been performing expedited reviews for beneficiaries appealing inpatient discharges and termination of provider services in non-hospital settings for decades. We believe placing responsibility for reviewing the new prospective appeals with the QIOs will ensure consistent and timely review.

CMS is finalizing the conforming change to the QIO regulation as proposed, which adds the new prospective appeals to the enumerated list of QIO review responsibilities under § 476.71(a)(9).

A few commenters requested further clarification on specific topic areas which we address below.

Comment: A few commenters requested clarification on the decision-making criteria that would be used by the BFCC–QIOs for whether an inpatient admission order was valid; citing the potential for uncertainty, inconsistency and discretion in medical decision making.

Response: Consistent with existing CMS medical review guidance, in determining whether an initial inpatient admission met the criteria for Part A coverage, the QIOs would only consider the medical evidence which was available to the physician at the time an admission decision was made. Information which became available only after admission (for example, test results) would not be taken into consideration ''except in cases where considering the post-admission information would support a finding that an admission was medically necessary'' as stated in the Medicare Benefits Policy Manual, Ch. 1, § 10.

Comment: A commenter requested clarification regarding whether the QIOs will be staffed over weekends and holidays to conduct appeals and whether hospitals are expected to respond to requests from QIOs for patient records (as described in proposed § 405.1211(d)(1)) over weekends.

Response: We clarify that pursuant to their contracts, BFCC–QIOs are required to maintain operations 24 hours a day, 7 days a week. Should a beneficiary file a request for an expedited appeal over a weekend or holiday, the QIO will proceed with contacting the hospital to notify the hospital of the request and obtain medical documentation for the appeal. The hospital is required to respond by noon of the calendar day after the QIO notifies the hospital of the request for an expedited appeal.

However, should a beneficiary or their representative request that the hospital provide them with a copy of the records it provided to the QIO for the appeal, the hospital will be required to provide the records by no later than close of business of the first day after the material is requested by the beneficiary or the beneficiary's representative under 42 CFR 405.1211(d)(2). We clarify that for administrative functions ''close of business'' generally means 5:00 p.m. in the hospital's time zone.

Comment: A few commenters requested clarification on how the QIO will communicate decisions to the hospital and to the beneficiary.

Response: QIOs employ multiple modes of communication with beneficiaries and providers during current expedited appeals processes under 42 CFR 405.1202 and will do so for the expedited appeals finalized in this rule. These multiple modes of communication are used by the QIOs to ensure timely intake, patient record requests, and communication of decisions to both beneficiaries and providers. Currently a beneficiary appeal may be initiated via phone but would be formalized in writing by the QIO as required for expedited appeals under 42 CFR 405.1202(e)(8). QIO patient record requests for appeals, and appeal status tracking typically occur via web-based systems and phone. Under §§ 405.1211 and 405.1212, QIOs are required to notify the eligible beneficiary, the hospital, and SNF, if applicable, of their decision by telephone and issue written decisions for both initial determinations and reconsiderations.

Comment: Commenters suggested that CMS provide clear and objective guidelines for the BFCC–QIOs to follow when conducting the new appeals to ensure consistency.

Response: We appreciate the commenters' suggestion and will consider developing further implementation guidance for the BFCC–QIOs.

Comment: A commenter suggested that the BFCC–QIOs should issue written notices of their decisions to both the beneficiaries and the hospitals that contain the reasons and evidence for their determinations.

Response: We appreciate the need for beneficiaries and hospitals to understand the basis and rationale for the QIO's decision. Under §§ 405.1211 and 405.1212, QIOs are required to issue written decisions for both initial determinations and reconsiderations. These written decisions contain the reasons for their decision-making and the content that was evaluated to make their decisions.

Comment: A commenter suggested that CMS track the timeliness of the BFCC–QIOs in adjudicating the appeals and to report information on these and other appeals to the public.

Response: CMS routinely tracks the timeliness of resolving beneficiary appeals and will do so for these new prospective appeals. We appreciate the public's interest in ensuring accountability for the timely conduct of these appeals and may consider additional reporting in the future.

Comment: A few commenters suggested that CMS establish an electronic means for the BFCC–QIO to provide updates on appeals to hospitals.

Response: The QIOs currently maintain electronic/web-based means of communicating with providers for beneficiary appeals—both for patient record requests, and for appeal decisions.

Comment: A commenter expressed concern that the BFCC–QIOs may not have adequate resources to conduct these reviews, and this may divert resources from other areas like quality improvement and quality reporting. The BFCC–QIOs may need to hire a large number of clinical staff for these appeals, thus contributing to healthcare workforce shortages. Another commenter was concerned that the new appeals could negatively affect the QIOs' ability to work on quality reporting and improvement programs for hospitals.

Response: We do not believe the new appeals process will significantly affect operations or staffing within hospitals due to the low annual volume anticipated. While we anticipate the BFCC–QIOs will need to hire additional

clinical staff to review the additional appeals, we do not anticipate this would have an impact on the clinical workforce on a national level. Thus, we do not foresee this new appeals process having a significant impact on clinical care resources.

We thank the commenters for their feedback and recommendations for the prospective appeals process. After consideration of the public comments, we will be finalizing our policies as proposed. However, we note that we are making the following editorial/technical corrections:

• In § 405.1211(c)(6)(ii), we are correcting a typographical error in the proposed regulations text and stating that for untimely requests, the QIO must make a determination within 2 calendar days.

• In § 405.1211(d), we are changing ''BFCC–QIO'' to ''QIO'' to comport with all other references to the QIO in this subpart.

• In § 405.1211(d)(7), we are making technical edits for clarity.

• In § 405.1212 —

++ In paragraph (c)(3)(i), we are revising the phrase ''A timely request from in accordance'' to ''A timely request in accordance'';

++ In paragraph (c)(4), we are revising the phrase ''When the QIO issues an reconsideration'' to ''When the QIO issues a reconsideration'', and

++ In paragraph (d), we are revising the phrase ''beyond that furnished to the BFCC–QIO'' to ''beyond that furnished to the QIO'' to be consistent with other references to the QIO.

• In § 476.71(a)(9), we are correcting the cross-reference in the last sentence of the paragraph to refer more broadly to ''§ 405.1212''.

As noted previously, after publication of this final rule regarding the procedures for these new appeals, we intend to specify the implementation date for filing appeal requests for retrospective and prospective appeals. When the prospective process is fully implemented, eligible beneficiaries who are hospitalized and receive notice of their appeal rights and wish to pursue an appeal will be expected to utilize the prospective procedures (proposed §§ 405.1210 through 405.1212). We will announce the implementation dates on *CMS.gov* and/or *Medicare.gov.*

C. Other/Out of Scope Comments

We also received comments that are outside the scope of this rulemaking, summarized as follows.

Comment: Several commenters urged CMS to address policy issues related to outpatient stays and observation services and the impact on SNF coverage for Medicare beneficiaries. Some commenters recommended that CMS count all time in the hospital towards satisfying the requirement of a 3-day qualifying inpatient hospital stay for SNF coverage. A commenter suggested that CMS directly address the issue of long outpatient stays with hospitals to avoid the need for beneficiaries to use an appeals process when they disagree with their outpatient status. The commenter suggested that CMS should implement policies to prohibit or severely restrict hospital reclassifications from inpatient to outpatient and long outpatient stays, and further suggested that hospitals should bear the burden of justifying long outpatient stays (lasting more than two-midnights).

Response: We appreciate the concerns raised by commenters related to observation services and long outpatient stays. This final rule implements the court order in *Alexander* v. *Azar* for the limited purpose of establishing appeal processes for certain Medicare beneficiaries who are initially admitted as hospital inpatients but are subsequently reclassified as outpatients receiving observation services during their hospital stay and meet other eligibility criteria. It is beyond the limited scope of this rule to address the concerns raised by commenters regarding observation services, the counting of all hospital days towards satisfying the statutory requirement of a 3-day qualifying inpatient hospital stay for SNF coverage, and restricting hospital decisions regarding the length of outpatient stays or reclassifications. CMS acknowledges this feedback and may further consider it in future policymaking.

D. Severability

The various provisions of this final rule are intended to implement the court order in *Alexander* v. *Azar,* 613 F. Supp. 3d 559 (D. Conn. 2020), *aff'd sub nom., Barrows* v. *Becerra,* 24 F.4th 116 (2d Cir. 2022). As detailed in the preamble, this final rule establishes processes for retrospective appeals and prospective appeals (standard prospective appeals and expedited prospective appeals). To the extent a court may enjoin any part of this final rule, the Department intends that other provisions or parts of provisions remain in effect. For example, the portions of this rule addressing retrospective appeals and prospective appeals are mutually severable from each other. Per the court order, the retrospective appeals process applies to class members whose due process rights may have been violated prior to the availability of the procedural protections set forth in the prospective appeals process, whereas the prospective appeals process applies to class members whose due process right may be violated in the future. In addition to applying to different beneficiaries, the retrospective and prospective appeals processes involve different timeframes for the reviews to take place, different contractors to perform the reviews, and potentially different claims. The existence of the prospective appeals process does not depend on the existence of the retrospective appeals process, and vice versa. These distinct processes can function independent of each other and are thus mutually severable. This example is not intended to be exhaustive and should not be viewed as an intention by HHS to consider specific provisions of the rule as not severable from other provisions of the rule. To the extent a court enjoins any part of this final rule, the other provisions of the rule would still further the purpose of implementing the court order and establishing appeals processes for qualifying beneficiaries.

We did not receive comments on this issue, and we intend to apply the concept of severability to this final rule as described.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to the Office of Management and Budget (OMB) for review and approval. For the purpose of the PRA and this section of the final rule, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements and

comments are responses are discussed in the following.

A. Wage Estimates

1. Private Sector

To derive average costs, we used wage data from the U.S. Bureau of Labor Statistics' (BLS) May 2023 National Occupational Employment and Wage Estimates (*https://www.bls.gov/oes/2023/may/oes_nat.htm*). In this regard, Table 1 presents BLS' mean hourly wage, our estimated cost of fringe benefits and other indirect costs, and our adjusted hourly wage.

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and other indirect costs ($/hr)	Adjusted hourly wage ($/hr)
Registered Nurse	29–1141	45.42	45.42	90.84

As indicated, we are adjusting our hourly wage estimate by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and other indirect costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate the total cost is a reasonably accurate estimation method.

2. Beneficiaries

We believe that the cost for beneficiaries undertaking administrative and other tasks on their own time is a post-tax wage of $23.18/hr.

The Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices [26] identifies the approach for valuing time when individuals undertake activities on their own time. To derive the costs for beneficiaries, a measurement of the usual weekly earnings of wage and salary workers of $1,117 [27] for 2022, divided by 40 hours to calculate an hourly pre-tax wage rate of $27.93/hr. This rate is adjusted downwards by an estimate of the effective tax rate for median income households of about 17 percent or $4.75/hr ($27.93/hr × 0.17), resulting in the post-tax hourly wage rate of $23.18/hr ($27.93/hr − $4.75/hr). Unlike our State and private sector wage adjustments, we are not adjusting beneficiary wages for fringe benefits and other indirect costs since the individuals' activities, if any, would occur outside the scope of their employment.

[26] *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//176806/VOT.pdf.*

[27] *https://fred.stlouisfed.org/series/LEU0252881500A.*

B. Information Collection Requirements (ICRs)

This final rule sets forth new appeals procedures as required by the court order in the case *Alexander* v. *Azar,* 613 F. Supp. 3d 559 (D. Conn. 2020)), *aff'd sub nom., Barrows* v. *Becerra,* 24 F.4th 116 (2d Cir. 2022). Certain beneficiaries in Original Medicare, who are initially admitted to a hospital as an inpatient by a physician or otherwise qualified practitioner but whose status during their stay was changed to outpatient receiving observation services by the hospital, thereby effectively denying Part A coverage for their hospital stay, may pursue an appeal under this final rule. The appeal is filed with Medicare to decide if the inpatient admission meets the relevant criteria for Part A coverage.

1. ICRs Regarding Retrospective Appeals Requests (§ 405.932)

The provisions in new § 405.932 were submitted to OMB for review under control number 0938–1466 (CMS–10885). OMB will issue the control number's expiration date upon their approval of the final rule's collection of information request. The issuance of that date can be monitored at *www.Reginfo.gov.*

As discussed in section III.A.3. of this final rule, § 405.932 establishes that eligible parties may file in writing an appeal related to a change in patient status which resulted in the denial of Part A coverage. A written appeal request must be received by the eligibility contractor no later than 365 days after the implementation date of the final rule. Details regarding the deadline to file an appeal and where such appeals should be filed would be posted to *Medicare.gov* and/or *CMS.gov* once the retrospective appeals process is operational. The written request must include the following information:

- Beneficiary name.
- Beneficiary Medicare number (the number on the beneficiary's Medicare card).
- Name of the hospital and dates of hospitalization.
- Name of the SNF and the dates of stay (as applicable).

If the appeal includes SNF services not covered by Medicare, the written request must also include an attestation to the out-of-pocket payment(s) made by the beneficiary for such SNF services and must include documentation of payments made to the SNF for such services.

We estimate that it would take an individual approximately 30 minutes (0.5 hr) to complete the appeal request including the attestation and documentation of out-of-pocket payments for SNF services and submit the completed information to the eligibility contractor. Because this is a new appeal right and associated process, CMS does not have precise data and cannot meaningfully estimate how many individuals may request an appeal under the new appeals process. However, we believe that the closest equivalent is using the rate of individuals who appeal denials of initial claim determinations under the claim appeals process at the first level of appeal to a MAC (which is 3 percent) and aligning it with the appeal rates of higher levels of appeal (ranging from 21 percent to 27 percent) to arrive at an estimate of 20 percent. This estimate reflects our expectation that eligible parties in this process will be more motivated than in the claim appeals process to avail themselves of this unique opportunity for a retrospective appeal on potentially high dollar claims.

Based on these data, we estimate that the total number of eligible beneficiaries is 32,894.[28] Assuming that 20 percent of

[28] The data used in this report came from the 2022 CMS Part B institutional administrative claims data for 100 percent of Medicare beneficiaries enrolled in the fee-for-service (FFS) program, which

individuals (6,579 = 32,894 × 0.20) who are eligible to appeal will file a request, we estimate a one-time burden of 3,290 hours (6,579 requests × 0.5 hr/request) at a cost of $76,262 (3,290 hr × $23.18/hr).

2. ICRs Regarding Notifying Beneficiaries of Appeal Rights When Hospital Inpatient Coverage Is Reclassified to Coverage as an Outpatient Receiving Observation Services (§ 405.1210)

The provisions in new § 405.1210 were submitted to OMB for review under control number 0938–1467 (CMS–10868). OMB will issue the control number's expiration date upon their approval of the final rule's collection of information request. The issuance of that date can be monitored at *reginfo.gov*.

Section 405.1210 requires hospitals to deliver, prior to release from the hospital, a standardized notice informing eligible beneficiaries of the change in status from an inpatient to an outpatient receiving observation services, and their appeal rights if they wish to challenge that change.

The Medicare Change of Status Notice (MCSN) is new and is intended to be furnished only to those beneficiaries eligible for this specific new appeal process. The MCSN notice contains only two fields that hospitals must complete: (1) the beneficiary's name, and (2) the beneficiary's identifier number. The remaining information (information on the change in coverage, a description of appeal rights and how to appeal, and the implications for skilled nursing facility coverage following the hospital stay) is standardized.

For beneficiaries with Medicare Part B coverage, hospitals will be required to deliver the notice to eligible beneficiaries as soon as possible after hospital reclassifies the beneficiary from an inpatient to an outpatient and the beneficiary has stayed in the hospital for 3 or more consecutive days but was an inpatient for fewer than 3 days. The notice must be delivered no later than 4 hours before the beneficiary is released from the hospital.

For beneficiaries without Medicare Part B coverage, hospitals will be required to deliver the notice to eligible beneficiaries as soon as possible after the change from inpatient to outpatient with observation services is made as a 3-day hospital stay is not required for these beneficiaries. The notice must be delivered no later than 4 hours before the beneficiary is released from the hospital.

We estimate it would take 10 minutes (0.1667 hr) at $90.84/hr for a Registered Nurse to complete the two data fields and deliver each notice to the applicable beneficiary.

The 10-minute estimate is same as that for our Important Message from Medicare (CMS–10065/10066; OMB 0938–1019), which the proposed MCSN notice is modeled after.

In 2022 there were approximately 15,655 instances where hospital stays met the criteria for an appeal.[29] With regard to this final rule we estimate that hospitals would be required to give an estimated 15,655 MCSN notices to beneficiaries each year. In aggregate, we estimate an annual hospital burden of 2,610 hours (15,655 notices × 0.1667 hr/notice) at a cost of $237,092 (2,610 hr × $90.84/hr).

Please note, our data does not permit us to determine whether the observation services occurred prior to the initial inpatient stay or followed the change in status from inpatient to outpatient, as required to qualify for an appeal. As a result, 15,655 MCSN notices likely overstates the number of beneficiaries eligible for an appeal.

Please see section IV.D. of this final rule for information on how to view the draft standardized notice and supporting documentation.

3. ICRs Regarding Applicable QIO Review Regulations (§ 476.71 and § 476.78)

In section III.B. of this final rule, we provided that the QIOs will review the prospective expedited appeals under their contracts with the Secretary. CMS expects to revise the BFCC–QIO's contracts under the 13th Statement of Work to include the new prospective expedited appeals requirements after publication of the final rule. The additional costs to the government for the BFCC–QIOs to review the new appeals would include payment for the additional level of effort associated with communicating with beneficiaries and hospitals for the duration of the appeal, collecting and reviewing patient records, performing reconsiderations if requested, and providing case files requested for further levels of review if needed. It also would include the cost of reimbursing hospitals for the submission of patient records for prospective expedited appeals. Hospitals would submit patient records and request reimbursement from the QIO using the process established in the existing memorandums of agreement (MOAs) under § 476.78(a) between hospitals and the QIO having jurisdiction over the particular State in which the hospital stay occurred.

As discussed in section III.B. of this final rule, hospitals will be required to submit patient records to the QIOs for prospective expedited appeals under § 405.1211(d). Existing QIO regulations at § 476.78(b)(2) and (c) require providers and practitioners to electronically submit patient records to the QIOs for purposes of one or more QIO functions and allow for the reimbursement of providers and practitioners by the QIO for the electronic submission of patient records for one or more QIO functions at a rate of $3.00 per submission under § 476.78(e)(2). Hospitals that have waivers for the required electronic submission of records under § 476.78(d) may be reimbursed by the QIO at a rate of $0.15 per page for submission of the patient records under § 476.78(e)(3).

The estimation methodology used to determine the reimbursement rates for electronic and non-electronic submission of patient records for one or more QIO functions is discussed further in section IX.A. of the preamble of the Fiscal Year (FY) 2021 Hospital Inpatient Prospective Payment System (IPPS)/Long-Term Care Prospective Payment System (LTCH PPS) final rule (85 FR 58977 through 58985). This estimation methodology is appropriate when applied to the proposed prospective expedited appeals due to the substantial similarity of its requirements and processes to those of other QIO functions upon which these rates were determined.

In section III.B.6. of this final rule, we established the addition of a QIO review type at § 476.71(a)(9) making the QIO's review of the prospective expedited appeals under proposed § 405.1211(d) a QIO function using our authority in section 1154(a)(18) of the Act. As established earlier in the ICR section, the prospective appeals process would constitute a CMS administrative action toward a specific individual or entity. Thus, the preparation and submission of the appeal, supporting documentation needed for the appeal, and communications between the QIO and parties to the appeal are not subject to

are available from the Integrated Data Repository (IDR). The IDR contains a subset of data transmitted by the Common Working File (CWF), a computerized database maintained by CMS in connection with its processing and payment of Medicare claims.

[29] The data used in this report come from the 2022 CMS Part B institutional administrative claims data for 100 percent of Medicare beneficiaries enrolled in the fee-for-service (FFS) program, which are available from the CMS Chronic Condition Data Warehouse (*www2.ccwdata.org/web/guest/home*), accessed August 2023.

the PRA as stipulated under 5 CFR 1320.4(a)(2).

C. Summary of Annual Burden Estimates for Changes

TABLE 2—ANNUAL REQUIREMENTS AND BURDEN ESTIMATES

Regulation section(s) under Title 42 of the CFR	OMB Control No. (CMS ID No.)	Respondents	Total responses	Time per response (hours)	Total time (hours)	Labor cost ($/hr)	Total cost ($)
§ 405.932	0938–1466 (CMS–10885)	32,894 beneficiaries	6,579	0.5 (30 min)	3,290	23.18	76,262
§ 405.1210	0938–1467 (CMS–10868)	6,162 hospitals	15,655	0.1667 (10 min)	2,610	90.84	237,092
Total		39,056	22,234	varies	5,900	varies	313,354

D. Submission of Comments

We have submitted a copy of this final rule to OMB for its review of the rule's information collection requirements. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the collections discussed previously, please visit the CMS website at *https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995/pra-listing,* or call the Reports Clearance Office at 410–786–1326.

Comment: Multiple commenters believed CMS underestimated the burden estimates related to hospitals timely delivering the new MCSN. A commenter believes the estimated annual volume of expedited appeals is generally understated because it failed to include appeals from beneficiaries with Part A but without Part B. Another commenter suggested CMS should be able to easily calculate the average annual number of eligible beneficiaries without Part B and should publish the number.

Another commenter disputed our estimate that the MCSN would take hospital staff 10 minutes to prepare and deliver because it does not account for any time the staff will need to answer beneficiary questions upon delivery. Another commenter stated the burden estimate failed to account for the hospital time and resources needed, including the hiring of new personnel, to establish a new workflow, to provide requested records to the QIO, and to rebill claims and refund beneficiaries who obtained a successful appeal.

Response: We acknowledge that the proposed rule estimates did not include hospital reclassifications of beneficiaries from inpatient to outpatient receiving observation services for beneficiaries that did not have Medicare Part B. Based on certain data collection limitations, it is not possible for CMS to fully estimate the number of beneficiaries with Part A but not Part B who are eligible to appeal in this process. Hospital stays for this population without Part B coverage who were changed from inpatient to outpatients receiving observation services are not reflected in Medicare claims data, as non-covered Part B claims are generally not submitted to Medicare. Nevertheless, we did attempt to obtain estimates from the data that was available and only a handful of such non-covered Part B claims existed per year.

In the proposed rule, we estimated the time it would take a hospital registered nurse to complete the MCSN to be 10 minutes as this is the longstanding estimate for delivery of the IM, a very similar notice. Throughout multiple public comment periods as part of the PRA renewal process, we have not received any comments or concerns regarding delivery of the IM or our estimated time to complete delivery of the notice. We also cannot account for all circumstances and our estimates only represent the average time we expect for notice preparation and delivery. We note that because this is a new appeals process, we must provide these estimates in the absence of historical data. However, we will update these estimates in each MCSN PRA renewal cycle. Finally, we acknowledge we did not provide burden estimates for hospital activities beyond delivering the new notice. We have not previously calculated the burden of activities ancillary to the appeals process, such as rebilling or submitting documentation to the QIO, for the IM or the Notice of Medicare Non-Coverage, which have similar notice and appeals processes for termination of coverage of sub-acute care. Therefore, we do not have data available to utilize for such an estimate. Even if we were to attempt such an estimate, we believe it would be impossible to provide an accurate estimate due to the variation in hospital size and workflow approaches. Nevertheless, we believe the financial impact and resource expenditure for hospitals delivering the MCSN to be minimal as hospitals already have processes and personnel in place that regularly deliver beneficiary notices with similar delivery requirements of the MCSN. We expect hospitals can incorporate this new notice into their well-established practices for pre-release paperwork delivery by caseworkers and other hospital staff.

Comment: A commenter requested CMS provide guidance in the final rule on the expected impact to Medicare Supplement Insurance plans serving FFS beneficiaries, including impacts on cost-sharing, due to the proposed appeals processes.

Response: We do not anticipate the proposed prospective appeals process will impact existing policies related to Medicare Supplement Insurance plans. We acknowledge that a beneficiary's cost-sharing may at times increase or decrease due to a favorable QIO decision, which in turn may potentially affect the amounts covered by an enrolled Medicare Supplement Insurance plan. However, we do not have the historical data necessary to accurately estimate any potential change in total payments made by Medicare Supplement Insurance plans.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and

equity). The Executive Order 14094 entitled ''Modernizing Regulatory Review'' (hereinafter, the Modernizing E.O.) amended section 3(f) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f)(1) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year. A regulatory impact analysis (RIA) must be prepared for the rules with significant regulatory action/s as per section 3(f)(1) ($200 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a significant rule under section 3(f)(1).

We are making the determination that the new appeals process will not have a significant financial impact on the Medicare program or interested parties based on our assumption about the overall number of projected appeals. While it is difficult to project how many beneficiaries will pursue appeals under this new process, overall, we anticipate a relatively low volume of retrospective appeals. We estimate that the total number of eligible beneficiaries for the retrospective process is 32,894.[30] We are projecting approximately 6,600 appeals at the first level of appeal (MAC level); 5,000 appeals at the second level of appeal (QIC Level); 2,800 appeals at the third level of appeal (ALJ level); and 150 at the Medicare Appeals Council. There will be administrative costs associated with tasking a contractor to serve as a point of contact and clearinghouse for incoming retrospective appeals requests.

We also anticipate a very low volume of prospective and standard appeals on an ongoing basis. We estimate that around 15,655 notices informing beneficiaries of their change in status and informing them of their right to appeal will be delivered annually.[31] We are estimating an appeal rate of 50 percent, which would result in about 8,000 appeals per year.

While our estimates reflect a relatively low number of appeals, we acknowledge that there will be administrative costs for hospitals to accommodate the new appeals process, as well as costs associated with modifying contracts for MACs, QICs, and the BFCC–QIOs to perform the retrospective, prospective and standard appeals.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $9.0 million to $47.0 million in any 1 year. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this would not have a significant economic impact on a substantial number of small entities. In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital at 42 CFR 412.108 as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2024, that threshold is approximately $183 million. This rule will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on September 27, 2024.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Diseases, Health facilities, Health professions, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 476

Grant programs—health, Health care, Health facilities, Health professions, Health records, Peer Review Organization (PRO), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405 continues to read as follows:

Authority: 42 U.S.C. 263a, 405(a), 1302, 1320b–12, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr, and 1395ww(k).

■ 2. Subpart I is amended by adding an undesignated center heading after § 405.930 and §§ 405.931, 405.932, 405.934, 405.936, and 405.938 to read as follows:

Retrospective Appeals for Changes in Patient Status That Resulted in Denial of Part A Coverage for Hospital Services

Sec.
405.931 Scope, basis, and definitions.
405.932 Right to appeal a denial of Part A coverage resulting from a change in patient status.
405.934 Reconsideration.
405.936 Hearings before an ALJ and decisions by an ALJ or Attorney Adjudicator.
405.938 Review by the Medicare Appeals Council and judicial review.

§ 405.931 Scope, basis, and definitions.

(a) *Scope and basis.* The provisions in §§ 405.931 through 405.938—

(1) Implement a federal district court order requiring appeal rights for

[30] The data used in this report came from the 2022 CMS Part B institutional administrative claims data for 100 percent of Medicare beneficiaries enrolled in the fee-for-service (FFS) program, which are available from the Integrated Data Repository (IDR). The IDR contains a subset of data transmitted by the Common Working File (CWF), a computerized database maintained by CMS in connection with its processing and payment of Medicare claims.

[31] The data used in this report come from the 2022 CMS Part B institutional administrative claims data for 100 percent of Medicare beneficiaries enrolled in the fee-for-service (FFS) program, which are available from the CMS Chronic Condition Data Warehouse (*www2.ccwdata.org/web/guest/home*), accessed August 2023.

hospital stays on or after January 1, 2009, for a specified class of beneficiaries under certain conditions (defined in § 405.931(b)) who were admitted to a hospital as inpatients, but were subsequently reclassified by the hospital as outpatients receiving observation services; and

(2) Apply to retrospective appeals, that is, appeals for hospital outpatient services, and as applicable, post-hospital extended care services in a skilled nursing facility (SNF services), furnished to eligible parties as defined in paragraph (b) of this section before the implementation of the prospective appeal process set forth in §§ 405.1210 through 405.1212.

(b) *Definitions.* For the purposes of the appeals conducted under §§ 405.931 through 405.938, the following definitions apply:

Eligible party means a beneficiary who, on or after January 1, 2009, meets the following criteria, and is, thus, eligible to request an appeal under §§ 405.931 through 405.938:

(i) Was formally admitted as a hospital inpatient.

(ii) While in the hospital was subsequently reclassified as an outpatient receiving observation services (as defined in § 405.931(h)).

(iii) Has received an initial determination (as defined in § 405.920) or a Medicare Outpatient Observation Notice (MOON) (as described in § 489.20(y)) indicating that the observation services are not covered under Medicare Part A.

(iv)(A) Was not enrolled in the Supplementary Medical Insurance program (that is, Medicare Part B coverage) at the time of beneficiary's hospitalization; or

(B) Stayed at the hospital for 3 or more consecutive days but was designated as an inpatient for fewer than 3 days, unless more than 30 calendar days has passed after the hospital stay without the beneficiary's having been admitted to a SNF.

(v) Medicare beneficiaries who meet the requirements of the paragraph (iv)(A) or (B) of this definition but who pursued an administrative appeal and received a final decision of the Secretary before September 4, 2011, are excluded from the definition of an eligible party.

Eligibility contractor means the contractor who meets all of the following:

(i) Is identified on the *Medicare.gov* website for accepting appeal requests.

(ii) Receives appeal requests and makes determinations regarding eligibility for the appeal under §§ 405.931 through 405.938.

(iii) Issues notices of eligibility.

(iv) Refers valid appeal requests to the processing contractor for a decision on the merits of the appeal.

Processing contractor means the contractor responsible for conducting the first-level appeal and issuing a decision on the merits of the appeal. Appeals under § 405.932 are conducted by the MAC who, at the time of the referral of the request for appeal under § 405.932(d)(2), has jurisdiction over claims submitted by the hospital where the eligible party received the services at issue.

(c) *Party to an appeal.* For the purposes of the appeals conducted under §§ 405.931 through 405.938, an eligible party is the only party to the appeal. The provisions of § 405.906 do not apply to appeals processed under these provisions, and the provider that furnished services to an eligible party may not file a request for an appeal and is not considered a party to any appeal decision or determination.

(d) *Authorized representatives, appointed representatives, or representatives of a deceased eligible party.* For the purposes of appeals conducted under §§ 405.931 through 405.938:

(1) The provisions of § 405.910 apply to an eligible party appointing a representative to assist in such appeal, as appropriate, except as follows:

(i) A provider of services who furnished items or services to a beneficiary whose claims are the subject of an appeal under the provisions of §§ 405.931 through 405.938 is prohibited from representing the beneficiary or eligible party in such appeal.

(ii) [Reserved.]

(2) An authorized representative (as defined in § 405.902) may act on behalf of an eligible party and has all of the same rights and responsibilities of an eligible party throughout the appeals process.

(3) The provisions of § 405.906(a)(1) apply to a deceased eligible party in the same manner in which such provisions apply to a deceased beneficiary.

(4) The provisions of § 405.906(c) do not apply.

(5) A beneficiary who is an eligible party is considered unrepresented if the beneficiary meets any of the following:

(i) Has not appointed a representative under § 405.910.

(ii) Has an authorized representative as defined in § 405.902.

(iii) Has appointed as its representative a member of the beneficiary's family, a legal guardian, or an individual who routinely acts on behalf of the beneficiary, such as a family member or friend who has a power of attorney.

(iv) Is deceased but met the conditions for an eligible party in paragraph (b)(1) of this section and the appeal is filed by an individual who meets the conditions set forth in § 405.906(a)(1).

(e) *Prohibition on assignment of appeal rights.* For the purposes of the appeals conducted under §§ 405.931 through 405.938, an eligible party may not assign appeal rights to a provider under the provisions of § 405.912.

(f) *Date of receipt of a notice or decision.* For the purposes of the appeals conducted under §§ 405.931 through 405.938, the date of receipt of a notice or decision sent by the eligibility contractor, processing contractor or other appeals adjudicator is presumed to be 5 calendar days following the date on the notice unless there is evidence to the contrary.

(g) *Three or more consecutive days.* For the purposes of the appeals conducted under §§ 405.931 through 405.938, when determining if a beneficiary is an eligible party and for the purposes of determining coverage of SNF services under section 1861 of the Act, inpatient hospital days are counted in accordance with § 409.30, that is, a patient must have a qualifying inpatient stay of at least 3 consecutive calendar days starting with the admission day but not counting the discharge day.

(h) *Outpatient receiving observation services.* For the purposes of appeals conducted under §§ 405.931 through 405.938 when determining if a beneficiary is an eligible party, a beneficiary is considered an outpatient receiving observation services when the hospital changes beneficiary's status from inpatient to outpatient while the beneficiary is in the hospital and the beneficiary subsequently receives observation services following a valid order for such services.

(i) *Conclusive effect of a Part A coverage determination.* For the purposes of appeals under §§ 405.931 through 405.938, the determination with respect to coverage under Part A is conclusive and binding with respect to the services furnished and must be applied to any existing appeals with respect to coverage and payment for hospital services under Part B and SNF services (as applicable).

§ 405.932 Right to appeal a denial of Part A coverage resulting from a change in patient status.

(a) *Filing an appeal request related to a change in patient status which resulted in the denial of Part A coverage.* (1) Only an eligible party, the

party's appointed representative, or an authorized representative of an eligible party may request an appeal at any level of the appeals process under §§ 405.931 through 405.938.

(2) To initiate an appeal under §§ 405.931 through 405.938, an eligible party, the party's appointed representative, or an authorized representative of an eligible party must meet the following requirements:

(i) Submit a request for an appeal in writing to the eligibility contractor.

(ii) The request must be received by the eligibility contractor no later than 365 calendar days after the implementation date of the final rule. The eligibility contractor denies the written request if it is not received by the applicable filing timeframe under paragraph (d)(3) of this section, unless the eligible party established good cause for late submission as specified in § 405.942(b)(2) and (3).

(3) If an eligible party (or the party's representative) misfiles a request for appeal with a contractor or government entity other than the eligibility contractor, then for the purpose of determining timeliness of the request for appeal, the date the misfiled request was received by the contractor or government agency is considered the date of receipt. The misfiled request and all documentation must be forwarded to the eligibility contractor within 30 calendar days of receipt, or as soon as practicable.

(b) *Content of the appeal request.* (1) The written request filed by an eligible party, the party's appointed representative, or an authorized representative of an eligible party may be made on a model CMS form. If the model form is not used, to be valid, the written request must include all of the following identifying information:

(i) Beneficiary name.

(ii) Beneficiary Medicare number (the number on the beneficiary's Medicare card).

(iii) Name of the hospital and dates of hospitalization.

(iv) Name of the SNF and the dates of stay (as applicable).

(2) If the appeal includes SNF services not covered by Medicare, the written request must also include an attestation to the out-of-pocket payment(s) made by the beneficiary for such SNF services and must include documentation of payments made to the SNF for such services.

(i) Payments for an eligible party's SNF services made by a third-party payer do not constitute out-of-pocket expenses or payment for an eligible party. If a third-party payer made payment for the eligible party's SNF services, then the services are excluded from consideration in the appeal.

(ii) Payments made for cost sharing (including, but not limited to, coinsurance and deductible) for SNF services covered by a third-party payer are not considered an out-of-pocket payment for the purposes of this provision.

(iii) Payments made by a family member (including payments made by an individual not biologically related to the beneficiary) for an eligible party's SNF services are considered an out-of-pocket payment for the eligible party.

(3) In the written request for an appeal, an eligible party (or their representative) may include an explanation of why the hospital admission satisfied the relevant criteria for Part A coverage and should have been covered under the Part A hospital insurance benefit instead of under the Part B supplementary medical insurance benefit.

(c) *Evidence and other information to be submitted with the appeal request.* (1) Eligible parties (or their representatives) are encouraged to submit all available information and documentation, including medical records related to the hospital stay and SNF services, as applicable, at issue in the appeal with the written request for an appeal.

(2) If the eligibility contractor determines there is information missing from the request that is needed to establish the beneficiary's eligibility as a party under § 405.931(b) or satisfy other conditions for eligibility for an appeal, the eligibility contractor works with the appropriate MAC and attempts to obtain the information from the provider or the eligible party (or the party's representative) or both, as applicable. The eligibility contractor allows up to 120 calendar days for submission of missing information.

(3) If the necessary information cannot be obtained from either the provider or the eligible party (or the party's representative), the eligibility contractor makes an eligibility determination based on the information available.

(d) *Determining eligibility for an appeal.* (1)(i) The eligibility contractor reviews the information submitted with the appeal request and any additional information it obtains to determine if the individual submitting the appeal request is an eligible party and that the services previously furnished are eligible for an appeal under § 405.931.

(ii) The eligibility contractor mails or otherwise transmits the notice of its determination to the eligible party (or the party's representative) within 60 calendar days of receipt of the appeal request.

(iii) The time between the eligibility contractor's request for missing information and receipt of such information (or in the case of information that is requested but is not received, the time allowed by the contractor to submit the information) does not count toward the timeframe for issuing a notice to the eligible party (or the party's representative).

(2) If the eligibility contractor determines that the individual is an eligible party and the services previously furnished are eligible for an appeal, the eligibility contractor—

(i) Issues a notice of acceptance to the eligible party (or the party's representative), explaining that the appeal has been accepted for processing; and

(ii) Refers the appeal to the processing contractor for adjudication under paragraph (f) of this section.

(3)(i) If the eligibility contractor determines that the request for appeal is untimely or incomplete, the individual does not satisfy the requirements for an eligible party, or the services previously furnished are not eligible for an appeal, the eligibility contractor issues a denial notice to the individual (or the party's representative) in writing.

(ii) The denial notice explains that the request is not eligible for an appeal, the reason(s) for the denial of the appeal request, the information needed to cure the denial, and the process for requesting a review of the eligibility denial under paragraph (e) of this section.

(4) Notices regarding eligibility for an appeal issued by the eligibility contractor are written in a manner to be understood by the eligible party or the party's representative.

(e) *Review of an eligibility contractor's denial of a request for an appeal.* (1)(i) An individual (or their representative) may request a review of the eligibility contractor's denial of a request for an appeal by filing a request in writing with the eligibility contractor.

(ii) The request for review should explain the reason(s) the denial of the request for an appeal was incorrect, and should include additional information, as applicable, to support the validity of the original appeal request.

(2) The request for review, with any additional information, must be received by the eligibility contractor no later than 60 calendar days from the date of receipt of the denial notice. If the request for review is received after this deadline, the individual (or the individual's representative) must establish good cause for untimely filing.

In determining whether good cause for untimely filing exists, the eligibility contractor applies the provisions in § 405.942(b)(2) and (3).

(3) The review by the eligibility contractor must be conducted by individuals not involved in the initial denial of the request for an appeal.

(4) The eligibility contractor may issue a decision that affirms or reverses the denial of the request for an appeal or may dismiss the request for review. The notice of the eligibility contractor's decision must meet both of the following requirements:

(i) Be written in a manner to be understood by the individual or the individual's representative.

(ii) Be mailed or otherwise transmitted in writing within 60 calendar days of the date of receipt of the request for review.

(5) If the decision is to affirm the denial, or dismiss the request, the eligibility contractor must explain the rationale for the decision.

(6) A denial notice under paragraph (d)(3) of this section issued due to receipt of an untimely appeal request must be reversed if the eligible party (or the party's representative) establishes good cause for late filing under § 405.942(b)(2) and (3).

(7) If the eligibility contractor reverses the initial denial of the request for appeal, the eligibility contractor forwards the request for appeal to the processing contractor under paragraph (f) of this section.

(8) The eligibility contractor's decision that affirms the initial denial of a request for an appeal is binding and not subject to further review.

(9) If the eligibility contractor determines that the request for review of the eligibility denial under paragraph (e)(2) of this section was not submitted timely, and the eligibility contractor did not find good cause for the untimely submission, then the eligibility contractor dismisses the request for review, and such dismissal is binding and not subject to further review.

(f) *Processing eligible requests for appeal.* (1) If the processing contractor determines there is necessary information missing from the appeal case file, the processing contractor attempts to obtain the information from the provider or the eligible party (or the party's representative), as applicable.

(i) The processing contractor allows the provider or eligible party (or the party's representative), or both, up to 60 calendar days to submit missing information.

(ii) If the provider or eligible party (or the party's representative) does not submit the missing information within the allotted time, the processing contractor makes a decision on the request for appeal based on the information available.

(iii) The time between the processing contractor's request for information and receipt of such information (or in the case of information that is requested but is not received, the time allowed by the contractor to submit the information) does not count toward the timeframe for issuing the processing contractor's decision.

(2) The processing contractor reviews the information submitted with the appeal request and any additional information it obtains to determine if the inpatient admission satisfied the relevant criteria for Part A coverage at the time services were furnished. If the appeal request also includes a request to review denied SNF services that are eligible for an appeal, the processing contractor also determines if such eligible SNF services satisfied relevant criteria for Part A coverage at the time the services were furnished.

(3) Subject to the provisions in paragraph (f)(1) of this section, the processing contractor mails or otherwise transmits its written decision on the request for appeal within 60 calendar days of receipt of the request.

(g) *Notice and content of the decision.* (1) If the processing contractor determines that the inpatient admission, and as applicable, SNF services, satisfied the relevant criteria for Part A coverage at the time the services were furnished, then the processing contractor issues notice of the favorable decision to the eligible party (or the party's representative). The processing contractor also notifies the hospital and SNF, as applicable, in the case of a favorable determination for Part A coverage.

(2)(i) If the processing contractor determines that the inpatient admission, or as applicable, SNF services, did not satisfy the relevant criteria for Part A coverage at the time the services were furnished, then the processing contractor issues notice of the unfavorable or partially favorable decision to the eligible party (or the party's representative).

(ii) The processing contractor issues a notice of a partially favorable decision to the SNF if the inpatient admission satisfied the relevant criteria for Part A coverage, but the SNF services did not satisfy the relevant criteria for Part A coverage.

(3) The notice issued to the eligible party (or the party's representative) must be written in a manner calculated to be understood by the eligible party (or the party's representative) and include all of the following:

(i) A clear statement of the decision made by the processing contractor.

(ii) The reason the hospital admission, and as applicable, the SNF services, satisfied or did not satisfy the relevant criteria for Part A coverage at the time the services were furnished.

(iii) A summary of the facts, including as appropriate, a summary of any clinical or scientific evidence used in making the determination.

(iv) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case.

(v) If a favorable decision, the effect of such decision, including, as applicable, a statement about the obligation of the SNF to refund any amounts collected for the covered SNF services, and that the SNF may then submit a new claim(s) for services covered under Part A in order to determine the amounts of benefits due.

(vi) If an unfavorable or partially favorable decision, a statement of any specific missing documentation that should be submitted with a request for reconsideration, if applicable.

(vii) The procedures for obtaining additional information concerning the decision, such as specific provisions of the policy, manual, regulations, or other rules used in making the decision.

(viii) If an unfavorable or partially favorable decision, information about the procedures for filing a request for reconsideration under § 405.934.

(ix) Any other requirements specified by CMS.

(4) As applicable, a notice of a favorable decision issued to the SNF (including a decision for a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of beneficiary's hospitalization), includes all of the following:

(i) A clear statement of the decision made by the processing contractor.

(ii) The reason the SNF services satisfied the relevant criteria for Part A coverage at the time the services were furnished.

(iii) A summary of the facts, including as appropriate, a summary of any clinical or scientific evidence used in making the determination.

(iv) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case.

(v) The effect of such decision, including a statement explaining that the SNF must refund any payments collected from the beneficiary for the covered SNF services, and that the SNF

may then submit a new claim(s) to determine the amount of benefits due for covered services.

(vi) Any other requirements specified by CMS.

(5) In the case of a favorable decision for a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, notice is issued to the hospital that includes all of the following:

(i) A clear statement of the decision made by the processing contractor.

(ii) The reason the hospital admission satisfied the relevant criteria for Part A coverage at the time the services were furnished.

(iii) A summary of the facts, including as appropriate, a summary of any clinical or scientific evidence used in making the determination.

(iv) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case.

(v) The effect of such decision, including a statement explaining that the hospital must refund any payments collected for the outpatient hospital services, and that the hospital may then submit a new Part A inpatient claim in order to determine the amount of benefits due for covered services.

(vi) Any other requirements specified by CMS.

(6) In the case of a partially favorable decision issued to a SNF, the notice includes the following:

(i) A clear statement of the decision made by the processing contractor.

(ii) The reason the hospital admission satisfied the relevant criteria for Part A coverage at the time the services were furnished, and the reason the SNF services did not satisfy the relevant criteria for Part A coverage.

(iii) A summary of the facts, including as appropriate, a summary of any clinical or scientific evidence used in making the determination.

(iv) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case.

(v) The effect of such decision, including a statement explaining that the decision is being sent for informational purposes only, and that only the eligible party may appeal the decision to a QIC under § 405.934.

(vi) Any other requirements specified by CMS.

(h) *Effect of a favorable appeal decision.* (1)(i) If the processing contractor issues a decision that the beneficiary's inpatient admission satisfied the relevant criteria for Part A coverage and the hospital's decision to change the inpatient admission to outpatient receiving observation services was therefore erroneous, the beneficiary's reclassification as an outpatient is disregarded for the purposes of determining Part A benefits, including Part A SNF coverage, if applicable.

(ii) For the purposes of effectuating a favorable decision by the processing contractor, unless a Part A claim is submitted by a hospital, any claims previously submitted for outpatient hospital services and payments made for such services (including any applicable deductible and coinsurance amounts) are not reopened or revised by the MAC, and payment, as applicable, for covered SNF services may be made by the MAC to the SNF without regard to the hospital claim.

(2) In order to determine Part A benefits to be paid and to make payment for covered services as a result of a favorable decision, as applicable:

(i) The SNF that furnished services to the beneficiary must refund payments previously collected from the beneficiary for the covered services and may then submit a Part A claim(s) for such services within 365 calendar days of receipt of the notice of a favorable decision.

(ii) In the case of a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, the hospital that furnished services must refund any payments collected for the outpatient hospital services. After the refund is issued, the hospital may then submit a Part A inpatient claim for such services within 365 calendar days of receipt of the notice of a favorable decision.

(iii) In the case of a beneficiary enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, the hospital that furnished services must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services. The deadline for submitting a Part A claim for such services is 365 calendar days after receipt of the notice of a favorable decision, and the hospital must refund any payments collected for the outpatient services before submitting the Part A inpatient claim.

(3) The hospital, and as applicable, the SNF, must comply with all applicable provisions regarding charges to the beneficiary for covered services, including but not limited to relevant provisions in part 489 Subparts B through D of this chapter.

(i) A favorable appeal decision is considered binding unless it is reopened and revised under the provisions of §§ 405.980 through 405.986.

(ii) The provisions regarding reopening of a redetermination in § 405.980(b) and (c) apply in the same manner to favorable decisions issued under this section.

(4) The notice of a favorable decision issued to a hospital and, as applicable, a SNF does not convey party status to such provider.

(i) *Effect of an unfavorable or partially favorable decision.* (1) An unfavorable or partially favorable appeal decision is considered binding unless—

(A) It is reopened and revised under the provisions of §§ 405.980 through 405.986; or

(B) An eligible party (or the party's representative) files a request for reconsideration under § 405.934.

(2) The provisions regarding reopening of a redetermination in § 405.980(b) and (c) apply in the same manner to unfavorable or partially favorable decisions issued under this section.

§ 405.934 Reconsideration.

(a) *Filing a request for reconsideration.* An eligible party, the party's appointed representative, or an authorized representative who is dissatisfied with the decision rendered by a processing contractor in § 405.932(g)(2) may request a reconsideration with a QIC within 180 calendar days of receipt of the processing contractor's notice. The request for reconsideration must include the elements specified in the processing contractor's notice.

(b) *Applicability of other provisions.* The provisions in §§ 405.960 through 405.978 that apply to reconsiderations of initial determinations apply to the extent they are appropriate/in the same manner to reconsiderations performed by a QIC under this section unless otherwise specified.

(c) *Notice and content of a reconsideration.* (1) If the QIC determines that the inpatient admission, and as applicable, eligible SNF services, satisfied the relevant criteria for Part A coverage at the time the services were furnished, then the QIC issues notice of the favorable reconsideration to the eligible party (or the party's representative). The QIC also notifies the hospital and SNF, as applicable, in the case of a favorable determination for Part A coverage.

(2)(i) If the QIC determines that the inpatient admission, or as applicable, SNF services, did not satisfy the relevant criteria for Part A coverage at

the time the services were furnished, then the QIC issues notice of the unfavorable or partially favorable reconsideration to the eligible party (or the party's representative).

(ii) The QIC issues a notice of a partially favorable reconsideration to the SNF if the inpatient admission satisfied the relevant criteria for Part A coverage, but the SNF services did not satisfy the relevant criteria for Part A coverage.

(3) The notice of reconsideration must be mailed or otherwise transmitted within 60 calendar days of the QIC's receipt of the request for reconsideration, subject to the exceptions specified in § 405.970.

(4) The notice of reconsideration issued to the eligible party (or the party's representative) must be written in a manner calculated to be understood by the eligible party (or the party's representative) and include all of the following:

(i) A clear statement of the decision made by the QIC.

(ii) The reason the hospital admission, and as applicable, the SNF services, satisfied or did not satisfy the relevant criteria for Part A coverage at the time the services were furnished.

(iii) A summary of the facts, including as appropriate, a summary of any clinical or scientific evidence used in making the determination.

(iv) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case.

(v) If a favorable decision, the effect of such decision, including a statement about the obligation of the SNF to refund any amounts collected for the covered SNF services, and that the SNF may then submit a new claim(s) for services covered under Part A in order to determine the amounts of benefits due.

(vi) If the decision in § 405.932(f) indicated that specific documentation should be submitted with the reconsideration request, and the documentation was not submitted with the request for reconsideration, the summary must indicate how the missing documentation affected the reconsideration.

(vii) The procedures for obtaining additional information concerning the decision, such as specific provisions of the policy, manual, regulations, or other rules used in making the decision.

(viii) If an unfavorable or partially favorable decision, information concerning an eligible parties' right to an ALJ hearing, including the applicable amount in controversy requirement and aggregation provisions and other procedures for filing a request for an ALJ hearing under § 405.936.

(ix) Any other requirements specified by CMS.

(5) As applicable, a notice of a favorable reconsideration issued to the SNF (including a decision for a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization), includes all of the following:

(i) A clear statement of the decision made by the QIC.

(ii) The reason the SNF services, satisfied the relevant criteria for Part A coverage at the time the services were furnished.

(iii) A summary of the facts, including as appropriate, a summary of any clinical or scientific evidence used in making the determination.

(iv) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case.

(v) The effect of such decision, including a statement explaining the SNF must refund any payments collected from the beneficiary for the covered SNF services, and that the SNF may then submit a new claim(s) to determine the amount of benefits due for the covered services.

(vi) Any other requirements specified by CMS.

(6) In the case of a favorable reconsideration for a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, notice is issued to the hospital that includes all the following:

(i) A clear statement of the decision made by the QIC.

(ii) The reason the hospital admission satisfied the relevant criteria for Part A coverage at the time the services were furnished.

(iii) A summary of the facts, including as appropriate, a summary of any clinical or scientific evidence used in making the determination.

(iv) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case.

(v) The effect of such decision, including a statement explaining that the hospital must refund any payments collected for the outpatient hospital services, and that the hospital may then submit a new Part A inpatient claim in order to determine the amount of benefits due for covered services.

(vi) Any other requirements specified by CMS.

(7) In the case of a partially favorable reconsideration issued to a SNF the notice includes the following:

(i) A clear statement of the decision made by the QIC.

(ii) The reason the hospital admission satisfied the relevant criteria for Part A coverage at the time the services were furnished, and the reason the SNF services did not satisfy the relevant criteria for Part A coverage.

(iii) A summary of the facts, including as appropriate, a summary of any clinical or scientific evidence used in making the determination.

(iv) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case.

(v) The effect of such decision, including a statement explaining that the decision is being sent for informational purposes only, and that only the eligible party may appeal the decision to an ALJ under § 405.936.

(vi) Any other requirements specified by CMS.

(d) *Effect of a favorable reconsideration.* (1)(i) If the QIC issues a reconsideration decision that the beneficiary's inpatient admission satisfied the relevant criteria for Part A coverage and the hospital's decision to change the inpatient admission to outpatient receiving observation services was therefore erroneous, the beneficiary's reclassification as an outpatient is disregarded for the purposes of determining Part A benefits, including both Part A hospital coverage and Part A SNF coverage, if applicable.

(ii) For the purposes of effectuating a favorable reconsideration, unless a Part A claim is submitted by a hospital, any claims previously submitted for outpatient hospital services and payments made for such services (including any applicable deductible and coinsurance amounts) are not reopened or revised by the MAC, and payment, as applicable, for covered SNF services may be made by the MAC to the SNF without regard to the hospital claim.

(2) In order to determine Part A benefits to be paid and to make payment for covered services as a result of a favorable decision, as applicable—

(i) The SNF that furnished services to the beneficiary must refund payments previously collected from the beneficiary for the covered services and may then submit a Part A claim(s) for such services within 365 calendar days of receipt of the notice of a favorable decision;

(ii) In the case of a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, the hospital that furnished services must refund any

payments collected for the outpatient hospital services. After the refund is issued, the hospital may then submit a Part A inpatient claim for such services within 365 calendar days of receipt of the notice of a favorable decision;

(iii) In the case of a beneficiary enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, the hospital that furnished services must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services. The deadline for submitting a Part A claim for such services is 365 calendar days after receipt of the notice of a favorable decision, and the hospital must refund any payments collected for the outpatient services before submitting the Part A inpatient claim.

(3) The hospital, and as applicable, the SNF, must comply with all applicable provisions regarding charges to the beneficiary for covered services, including but not limited to relevant provisions in part 489 subparts B through D of this chapter.

(4) A favorable reconsideration is considered binding unless it is reopened and revised under the provisions of §§ 405.980 through 405.986. The provisions regarding reopening of a reconsideration in § 405.980(d) and (e) apply in the same manner to favorable reconsiderations issued under this section.

(5) The notice of a favorable reconsideration sent to a hospital and, as applicable, a favorable or partially favorable reconsideration sent to a SNF does not convey party status.

(e) *Effect of an unfavorable or partially favorable reconsideration.* (1) An unfavorable or partially favorable reconsideration is considered binding unless—

(i) It is reopened and revised under the provisions of § 405.980(d) or (e); or

(ii) An eligible party (or the party's representative) files a request for a hearing by an ALJ under § 405.936.

(2) The provisions regarding reopening of a reconsideration in § 405.980(d) and (e) apply in the same manner to unfavorable and partially favorable decisions issued under this section.

§ 405.936 Hearings before an ALJ and decisions by an ALJ or Attorney Adjudicator.

(a) *Filing a request for hearing.* An eligible party, the party's appointed representative, or an authorized representative who is dissatisfied with the reconsideration rendered by a QIC in § 405.934(c)(2), or a dismissal of a request for reconsideration, may request a hearing before an ALJ within 60 calendar days of receipt of the reconsideration. The request for hearing must include the elements specified in the QIC's reconsideration.

(b) *Applicability of other provisions.* The provisions in §§ 405.1000 through 405.1064 that apply to ALJ hearings and decisions by an ALJ or an attorney adjudicator apply to the extent they are appropriate/in the same manner to ALJ hearings and decisions by an ALJ or an attorney adjudicator under this section unless otherwise specified.

(c) *Calculating the amount remaining in controversy for an ALJ hearing or judicial review.* (1)(i) A request for ALJ hearing for an appeal under the provisions of §§ 405.931 through 405.938 must meet the amount in controversy requirement in § 405.1006(b).

(ii) A request for judicial review in federal district court for an appeal under the provisions of §§ 405.931 through 405.938 must meet the amount in controversy requirement in § 405.1006(c), subject to the calculation methodology set forth in this paragraph.

(2) For appeals under the provisions of §§ 405.931 through 405.938, the amount remaining in controversy for an ALJ hearing or for judicial review in federal district court under § 405.1136 is determined by the sum of the billed charges on the Part B outpatient hospital claim and, as applicable, any billed charges for the SNF claim at issue, if such claims were submitted to Medicare. If no SNF claim was submitted for services furnished to the beneficiary, then the billed charges to the beneficiary as indicated on an itemized statement or evidence of payment made by the beneficiary for such services are used in calculating the amount remaining in controversy.

(3) In the case of an appeal under the provisions of §§ 405.931 through 405.938 filed by an eligible party who was not enrolled in Part B at the time of hospitalization, and no Part B outpatient hospital claim was billed to Medicare, the amount remaining in controversy is determined by the charges billed to the beneficiary by the hospital for the outpatient hospital stay and billed charges for SNF services, if applicable. An itemized statement from the provider such services, or evidence of the payment made by the beneficiary to the provider is acceptable for the purpose of calculating the amount remaining in controversy.

(4) Any payments made, including coinsurance and deductible, for the Part B outpatient hospital claim, and as applicable, the SNF claim must not reduce the calculation of the amount in controversy for the purposes of a hearing or judicial review under this paragraph.

(d) *Notice and content of an ALJ or attorney adjudicator decision.* (1) If the ALJ or attorney adjudicator determines that the inpatient admission, and as applicable, eligible SNF services, satisfied the relevant criteria for Part A coverage at the time the services were furnished, then the ALJ or attorney adjudicator issues notice of the favorable decision to the eligible party (or the party's representative).

(ii) The ALJ or attorney adjudicator also notifies the hospital and SNF, as applicable, in the case of a favorable determination for Part A coverage.

(2)(i) If the ALJ or attorney adjudicator determines that the inpatient admission, or as applicable, SNF services, did not satisfy the relevant criteria for Part A coverage at the time the services were furnished, then the ALJ or attorney adjudicator issues notice of the unfavorable or partially favorable decision to the eligible party (or the party's representative).

(ii) The ALJ or attorney adjudicator issues a notice of a partially favorable decision to the SNF if the inpatient admission satisfied the relevant criteria for Part A coverage, but the SNF services did not satisfy the relevant criteria for Part A coverage.

(3) The ALJ or attorney adjudicator decision issued to the eligible party (or the party's representative) must be written in a manner calculated to be understood by the eligible party (or the party's representative) and include all of the following:

(i) A clear statement of the decision made by the ALJ or attorney adjudicator.

(ii) The findings of fact.

(iii) The conclusions of law.

(iv) The reason for the determination that the hospital admission, and as applicable SNF services, satisfied or did not satisfy the relevant criteria for Part A coverage at the time the services were furnished, and, to the extent appropriate, a summary of any clinical or scientific evidence used in making the determination.

(v) The procedures for obtaining additional information concerning the decision, such as specific provisions of the policy, manual, regulations, or other rules used in making the decision.

(vi) If a favorable decision, the effect of such decision, including, as applicable, a statement about the obligation of the SNF to refund any amounts collected for the covered SNF services, and that the SNF may then submit a new claim(s) for services

covered under Part A in order to determine the amount of benefits due.

(vii) If an unfavorable decision or a partially favorable decision, information about the procedures for filing a request for review by the Appeals Council under § 405.938.

(4) As applicable, a notice of a favorable ALJ or attorney adjudicator decision (including a decision for a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization) issued to the SNF, includes the following:

(i) A clear statement of the decision made by the ALJ or attorney adjudicator.

(ii) The findings of fact.

(iii) The conclusions of law.

(iv) The reason for the determination that the SNF services, satisfied the relevant criteria for Part A coverage at the time the services were furnished, and to the extent appropriate, a summary of any clinical or scientific evidence used in making the determination.

(v) The effect of such decision, including a statement explaining that the SNF must refund any payments collected from the beneficiary for the covered SNF services, and that the SNF may then submit a new claim(s) to determine the amount of benefits due for the covered services.

(5) In the case of a favorable ALJ or attorney adjudicator decision for a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of beneficiary's hospitalization, notice is issued to the hospital that includes all of the following:

(i) A clear statement of the decision made by the ALJ or attorney adjudicator.

(ii) The findings of fact.

(iii) The conclusions of law.

(iv) The reason for the determination that the hospital admission satisfied the relevant criteria for Part A coverage at the time the services were furnished, and to the extent appropriate, a summary of any clinical or scientific evidence used in making the determination.

(v) The effect of such decision, including a statement explaining that the hospital must refund any payments collected for the outpatient hospital services, and that the hospital may then submit a new Part A inpatient claim in order to determine the amount of benefits due for covered services.

(6) In the case of a partially favorable decision issued to a SNF, the notice includes the following:

(i) A clear statement of the decision made by the ALJ or attorney adjudicator.

(ii) The findings of fact.

(iii) The conclusions of law.

(iv) The reason for the determination that the hospital admission satisfied the relevant criteria for Part A coverage at the time the services were furnished, and the reason the SNF services did not satisfy the relevant criteria for Part A coverage, and to the extent appropriate, a summary of any clinical or scientific evidence used in making the determination.

(v) The effect of such decision, including a statement explaining that the decision is being sent for informational purposes only, and that only the eligible party may appeal the decision to the Medicare Appeals Council under § 405.938.

(7) The timeframe within which notices must be issued under this paragraph are determined under the provisions in § 405.1016.

(e) *Effect of a favorable ALJ or attorney adjudicator decision.* (1)(i) If the ALJ or attorney adjudicator issues a decision that the beneficiary's inpatient admission satisfied the relevant criteria for Part A coverage and the hospital's decision to change the inpatient admission to outpatient receiving observation services was therefore erroneous, the beneficiary's reclassification as an outpatient is disregarded for the purposes of determining Part A benefits, including Part A SNF coverage, if applicable.

(ii) For the purposes of effectuating a favorable decision by an ALJ or attorney adjudicator, unless a Part A claim is submitted by a hospital, any claims previously submitted for outpatient hospital services and payments made for such services (including any applicable deductible and coinsurance amounts) are not reopened or revised by the MAC, and payment, as applicable, for covered SNF services may be made by the MAC to the SNF without regard to the hospital claim.

(2) In order to determine Part A benefits to be paid and to make payment for covered services as a result of a favorable decision, as applicable—

(i) The SNF that furnished services to the beneficiary must refund payments previously collected from the beneficiary for the covered services and may then submit a Part A claim(s) for such services within 365 calendar days of receipt of the notice of a favorable decision;

(ii) In the case of a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, the hospital that furnished services must refund any payments collected for the outpatient hospital services. After the refund is issued, the hospital may then submit a Part A inpatient claim for such services within 365 calendar days of receipt of the notice of a favorable decision;

(iii) In the case of a beneficiary enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, the hospital that furnished services must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services. The deadline for submitting a Part A claim for such services is 365 calendar days after receipt of the notice of a favorable decision, and the hospital must refund any payments collected for the outpatient services before submitting the Part A inpatient claim.

(3) The hospital, and as applicable, the SNF, must comply with all applicable provisions regarding charges to the beneficiary for covered services, including but not limited to relevant provisions in part 489 Subparts B through D of this chapter.

(4) A favorable ALJ or attorney adjudicator decision is considered binding unless it is reopened and revised under the provisions of §§ 405.980 through 405.986. The provisions regarding reopening of an ALJ or attorney adjudicator decision in § 405.980(d) and (e) apply in the same manner to favorable ALJ or attorney adjudicator decisions issued under this section.

(5) The notice of a favorable decision issued to a hospital and, as applicable, notice of a favorable or partially favorable decision sent to a SNF does not convey party status to such provider.

(f) *Effect of an unfavorable or partially favorable ALJ or attorney adjudicator decision.* (1) An unfavorable or partially favorable ALJ or attorney adjudicator decision is considered binding unless—

(i) It is reopened and revised under the provisions of § 405.980(d) or (e); or

(ii) An eligible party (or the party's representative) files a request for Medicare Appeals Council review under § 405.938.

(2) The provisions regarding reopening of an ALJ or attorney adjudicator decision in § 405.980(d) and (e) apply in the same manner to unfavorable and partially favorable decisions issued under this section.

§ 405.938 Review by the Medicare Appeals Council and judicial review.

(a) *Filing a request for Council review.* An eligible party, the party's appointed representative, or an authorized representative who is dissatisfied with

the unfavorable decision of an ALJ or an attorney adjudicator in § 405.936(d)(2) may request the Council review the decision within 60 calendar days of receipt of the decision. The request for review must contain the elements specified in the ALJ or attorney adjudicator's decision notice.

(b) *Applicability of other provisions.* The provisions in §§ 405.1100 through 405.1130 that apply to Council review apply to the extent they are appropriate/in the same manner to Council review under this section unless otherwise specified.

(c) *Notice of the Council's action.* (1) After it has reviewed all the evidence in the administrative record and any additional evidence received, subject to the limitations on consideration of additional evidence in § 405.1122, the Council makes a decision or remands the case to an ALJ or attorney adjudicator.

(2) The Council may adopt, modify, or reverse the ALJ's or attorney adjudicator's decision or recommended decision.

(3) Notice of the Council's decision or remand order is issued to the eligible party (or the party's representative).

(i) In the case of a modification or reversal of the ALJ's or attorney adjudicator's decision that is favorable to the eligible party, the Council's decision includes information regarding the effect of such decision, including, as applicable, a statement about the obligation of the SNF to refund any amounts collected from the beneficiary for the covered SNF services, and that the SNF may then submit a new claim(s) for services covered under Part A in order to determine the amount of benefits due.

(ii) If the appeal involves a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, a modification or reversal of the ALJ's or attorney adjudicator's decision that is favorable to the eligible party with respect to hospital services also includes a statement about the obligation of the hospital to refund any amounts collected for the outpatient hospital services, and that the hospital may then submit a new claim for covered inpatient hospital services in order to determine the amount of benefits due.

(iii)(A) If the Council adopts or modifies an ALJ or attorney adjudicator decision that is unfavorable or partially favorable to the eligible party, the decision includes information about the procedures for filing a request for judicial review under § 405.1136, including information regarding the amount in controversy requirement in § 405.936(c).

(B) A partially favorable decision issued by the Council refers to a determination that the inpatient admission satisfied the relevant criteria for Part A coverage but the SNF services did not satisfy the relevant criteria for Part A coverage.

(4) Notice of a Council decision, favorable or partially favorable to the eligible party, that modifies or reverses the decision or recommended decision by an ALJ or attorney adjudicator, or a remand order that is favorable to the eligible party, is issued to the SNF, as applicable, and to the hospital in the case of an appeal filed by, or on behalf of, a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of hospitalization.

(i)(A) Notice issued to the SNF includes information regarding the effect of such decision, including, as applicable, a statement explaining that the SNF must refund any payments collected from the beneficiary for the covered SNF services, and that the SNF may then submit a new claim(s) to determine the amount of benefits due for the covered services.

(B) A decision that is partially favorable to the eligible party is sent to the SNF and explains the reason the hospital admission satisfied the relevant criteria for Part A coverage at the time the services were furnished, the reason the SNF services did not satisfy the relevant criteria for Part A coverage and explains that the decision is being sent for informational purposes only.

(ii) Notice issued to a hospital (in the case of an appeal filed by, or on behalf of, a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of hospitalization) includes information regarding the effect of such decision, including a statement explaining that the hospital must refund any payments collected for the outpatient hospital services, and that the hospital may then submit a new Part A inpatient claim in order to determine the amount of benefits due for covered services.

(5) The timeframe within which notices must be sent under this paragraph are determined under the provisions in § 405.1100.

(d) *Effect of a favorable Council decision.* (1)(i) If the Council issues a decision that the beneficiary's inpatient admission satisfied the relevant criteria for Part A coverage and the hospital's decision to change the inpatient admission to outpatient receiving observation services was therefore erroneous, the beneficiary's reclassification as an outpatient is disregarded for the purposes of determining Part A benefits, including both Part A hospital coverage and Part A SNF coverage, if applicable.

(ii) For the purposes of effectuating a favorable decision by the Council, unless a Part A claim is submitted by a hospital, any claims previously submitted for outpatient hospital services and payments made for such services (including any applicable deductible and coinsurance amounts) are not reopened or revised by the MAC, and payment, as applicable, for covered SNF services may be made by the MAC to the SNF without regard to the hospital claim.

(2) In order to determine Part A benefits to be paid and to make payment for covered services as a result of a favorable decision, as applicable—

(i) The SNF, that furnished services to the beneficiary must refund payments previously collected from the beneficiary for the covered services and may then submit a Part A claim(s) for such services within 365 calendar days of receipt of the notice of a favorable decision;

(ii) In the case of a beneficiary not enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, the hospital that furnished services must refund any payments collected for the outpatient hospital services. After the refund is issued, the hospital may then submit a Part A inpatient claim for such services within 365 calendar days of receipt of the notice of a favorable decision;

(iii) In the case of a beneficiary enrolled in the Supplementary Medical Insurance program (Medicare Part B) at the time of the beneficiary's hospitalization, the hospital that furnished services must refund any payments collected for the outpatient hospital services only if the hospital chooses to submit a Part A inpatient claim for such services. The deadline for submitting a Part A claim for such services is 365 calendar days after receipt of the notice of a favorable decision, and the hospital must refund any payments collected for the outpatient services before submitting the Part A inpatient claim.

(3) The hospital, and as applicable, the SNF, must comply with all applicable provisions regarding charges to the beneficiary for covered services, including but not limited to relevant provisions in part 489 Subparts B through D of this chapter.

(4) A favorable Council decision is considered final and binding unless it is reopened and revised under the

provisions of §§ 405.980 through 405.986. The provisions regarding reopening of a Council decision in § 405.980(d) and (e) apply in the same manner to favorable Council decisions issued under this section.

(5) The notice of a favorable decision issued to a hospital and, as applicable, notice of a favorable or partially favorable decision issued to SNF does not convey party status to such provider.

(e) *Effect of an unfavorable or partially favorable Appeals Council decision.* (1) An unfavorable or partially favorable Appeals Council decision is considered final and binding unless it is reopened and revised under the provisions of § 405.980(d) or (e), or a Federal district court issues a decision modifying the Council's decision.

(2) The provisions regarding reopening of an Appeals Council decision in § 405.980(d) and (e) apply in the same manner to unfavorable and partially favorable decisions issued under this section.

(f) *Judicial review.* (1) An eligible party (or the party's representative) dissatisfied with a final and binding decision under paragraph (e) of this section who satisfies the amount in controversy requirement in § 405.936(c) may request judicial review in Federal district court under the procedures set forth in § 405.1136.

(2) An eligible party (or the party's representative) who satisfies the amount in controversy requirement in § 405.936(c) and the requirements to escalate a case from the Council in § 405.1132 may request judicial review in Federal district court under the procedures set forth in § 405.1136.

■ 3. The heading of subpart J is revised to read as follows:

Subpart J—Procedures and Beneficiary Rights for Expedited Determinations and Reconsiderations When Coverage Is Changed or Terminated

■ 4. Add §§ 405.1210, 405.1211, and 405.1212 to read as follows:

§ 405.1210 Notifying eligible beneficiaries of appeal rights when a beneficiary is reclassified from an inpatient to an outpatient receiving observation services.

(a) *Applicability and scope.* (1) For purposes of this section and §§ 405.1211 and 405.1212, the term ''hospital'' is defined as any facility providing care at the inpatient hospital level, whether that care is short term or long term, acute or non-acute, paid through a prospective payment system or other reimbursement basis, limited to specialty care or providing a broader spectrum of services. This definition includes critical access hospitals (CAHs).

(2) For purposes of this section and §§ 405.1211 and 405.1212, the change in status occurs when a beneficiary is reclassified from an inpatient to an outpatient receiving observation services (as defined in § 405.931(h)).

(3) For purposes of this section and §§ 405.1211 and 405.1212, a beneficiary is eligible to pursue an appeal regarding a change in status when the beneficiary meets all the following:

(i) Was formally admitted as a hospital inpatient in accordance with an order for inpatient admission by a physician or other qualified practitioner.

(ii) Was subsequently reclassified by the hospital as an outpatient receiving observation services after the admission.

(iii)(A) Was not enrolled in Part B coverage at the time of the beneficiary's hospitalization; or

(B) Stayed at the hospital for 3 or more consecutive days but was classified as an inpatient for fewer than 3 days.

(iv) The period ''3 or more consecutive days'' is counted using the rules for determining coverage of SNF services under section 1861 of the Act and § 409.30 of this chapter (that is, a beneficiary must have a qualifying inpatient stay of at least 3 consecutive calendar days starting with the admission day but not counting the discharge day).

(b) *Advance written notice of appeal rights.* For all eligible beneficiaries, hospitals must deliver valid, written notice of an eligible beneficiary's right to pursue an appeal regarding the decision to reclassify the beneficiary from an inpatient to an outpatient receiving observation services. The hospital must use a standardized notice specified by CMS in accordance with the following procedures:

(1) *Timing of notice.* The hospital must provide the notice not later than 4 hours before release from the hospital and as soon as possible after the earliest of either of the following:

(i) The hospital reclassifies the beneficiary from an inpatient to an outpatient receiving observation services and the beneficiary is not enrolled in Part B.

(ii) The hospital reclassifies the beneficiary from an inpatient to an outpatient receiving observation services and the beneficiary has stayed in the hospital for 3 or more consecutive days but was an inpatient for fewer than 3 days.

(2) *Content of the notice.* The notice must include the following information:

(i) The eligible beneficiary's change in status and the appeal rights under § 405.1211 if the beneficiary wishes to pursue an appeal regarding that change.

(ii) An explanation of the implications of the change in status, including the potential change in beneficiary hospital charges resulting from a favorable decision, and subsequent eligibility for Medicare coverage for SNF services.

(iii) Any other information required by CMS.

(3) *When delivery of the notice is valid.* Delivery of the written notice of appeal rights described in this section is valid if—

(A) The eligible beneficiary (or the eligible beneficiary's representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents, except as provided in paragraph (b)(4) of this section; and

(B) The notice is delivered in accordance with paragraph (b)(1) of this section and contains all the elements described in paragraph (b)(2) of this section.

(4) *If an eligible beneficiary refuses to sign the notice.* The hospital may annotate its notice to indicate the refusal, and the date of refusal is considered the date of receipt of the notice.

§ 405.1211 Expedited determination procedures when a beneficiary is reclassified from an inpatient to an outpatient receiving observation services.

(a) *Beneficiary's right to an expedited determination by the QIO.* An eligible beneficiary has a right to request an expedited determination by the QIO when—

(1) A hospital changes a beneficiary's status from an inpatient to an outpatient receiving observation services; and

(2) The beneficiary meets other eligibility criteria as specified in § 405.1210(a)(3).

(b) *Requesting an expedited determination.* (1) An eligible beneficiary who wishes to exercise the right to an expedited determination must submit a request to the QIO that has an agreement with the hospital as specified in § 476.78 of this chapter. The request must be made in writing or by telephone before release from the hospital.

(2) The eligible beneficiary, or his or her representative, upon request by the QIO, must be available to discuss the case.

(3) The eligible beneficiary may, but is not required to, submit written evidence to be considered by the QIO in making its decision.

(4) An eligible beneficiary who makes a timely request for an expedited QIO review in accordance with paragraph (b)(1) of this section is subject to the billing protection under paragraph (e) of this section, as applicable.

(5) An eligible beneficiary who fails to make a timely request for an expedited determination by a QIO, as described in paragraph (b)(1) of this section, may still request an untimely expedited QIO determination at any time. The QIO issues a decision in accordance with paragraph (c)(6)(ii) of this section, but the billing protection under paragraph (e) of this section does not apply.

(c) *Procedures the QIO must follow.* (1) When the QIO receives the request for an expedited determination under paragraph (b)(1) of this section, it must immediately notify the hospital that a request for an expedited determination has been made.

(2) The QIO determines whether the hospital delivered valid notice consistent with § 405.1210(b)(3).

(3) The QIO examines the medical and other records that pertain to the change in status.

(4) The QIO must solicit the views of the eligible beneficiary (or the eligible beneficiary's representative) who requested the expedited determination.

(5) The QIO must provide an opportunity for the hospital to explain why the reclassification of the beneficiary from an inpatient to an outpatient receiving observation services is appropriate.

(6) The following timeframes apply for the QIO's decision when an eligible beneficiary requests—

(i) A timely expedited determination in accordance with paragraph (b)(1) of this section, the QIO must make a determination within 1 calendar day of receiving all requested pertinent information specified in paragraph (d)(1)(i) of this section; or

(ii) An untimely request for a QIO expedited determination, the QIO must make a determination within 2 calendar days after the QIO receives all requested information specified in paragraph (d)(1)(i) of this section.

(7) If the QIO does not receive the information specified in paragraph (d)(1)(i) of this section, it may make its determination based on the evidence at hand, or it may defer a decision until it receives the requested information.

(8) When the QIO issues an expedited determination, the QIO must notify the eligible beneficiary, the hospital, and SNF (if applicable) of its decision by telephone, followed by a written notice that must include the following information:

(i) The basis for the determination.

(ii) A detailed rationale for the determination.

(iii) An explanation of the Medicare payment consequences of the determination.

(iv) Information about the eligible beneficiary's right to an expedited reconsideration of the QIO's determination as set forth in § 405.1212, including how to request a reconsideration and the time period for doing so.

(d) *Responsibilities of hospitals.* (1)(i) Upon notification by the QIO of the request for an expedited determination, the hospital must supply all information that the QIO needs to make its expedited determination, including a copy of the notice as required in § 405.1210(b) of this section.

(ii) The hospital must furnish this information as soon as possible, but no later than by noon of the calendar day after the QIO notifies the hospital of the request for an expedited determination.

(iii) At the discretion of the QIO, the hospital must make the information available by phone or in writing (with a written record of any information not transmitted initially in writing).

(2)(i) At an eligible beneficiary's (or representative's) request, the hospital must furnish the beneficiary with a copy of, or access to, any documentation that it sends to the QIO, including written records of any information provided by telephone.

(ii) The hospital may charge the beneficiary a reasonable amount to cover the costs of duplicating the documentation and, if applicable, delivering it to the beneficiary.

(iii) The hospital must accommodate such a request by no later than close of business of the first calendar day after the material is requested.

(e) *Billing during QIO expedited review.* When an eligible beneficiary requests an expedited determination in accordance with paragraphs (b)(1) through (b)(4) of this section, the hospital may not bill the beneficiary for any disputed services until the expedited determination process (and reconsideration process, if applicable) has been completed.

(f) *Effect of an expedited QIO determination.* The QIO determination is binding for payment purposes upon the eligible beneficiary, hospital, and MAC, except if the eligible beneficiary is dissatisfied with the determination, he or she may request a reconsideration according to the procedures described in § 405.1212.

§ 405.1212 Expedited reconsideration procedures regarding Part A coverage when a beneficiary is reclassified from an inpatient to an outpatient receiving observation services.

(a) *Beneficiary's right to an expedited reconsideration.* An eligible beneficiary who is dissatisfied with a QIO's expedited determination per § 405.1211(c)(6) may request an expedited reconsideration by the QIO identified in the written notice specified in § 405.1211(c)(8)(iv).

(b) *Requesting an expedited reconsideration.* (1) An eligible beneficiary who wishes to obtain an expedited reconsideration must submit a request for the reconsideration to the appropriate QIO, in writing or by telephone, by no later than noon of the calendar day following initial notification (whether by telephone or in writing) after receipt of the QIO's determination.

(2) The eligible beneficiary, or his or her representative, must be available to answer questions or supply information that the QIO may request to conduct its reconsideration.

(3) The eligible beneficiary may, but is not required to, submit evidence to be considered by the QIO in making the reconsideration.

(4) An eligible beneficiary who makes a timely request for an expedited reconsideration in accordance with paragraph (b)(1) of this section is subject to the billing protection under paragraph (e) of this section, as applicable.

(5) An eligible beneficiary who fails to make a timely request for an expedited reconsideration by a QIO, as described in paragraph (b)(1) of this section, may still request an expedited QIO reconsideration at any time. The QIO issues a reconsideration in accordance with paragraph (c)(3)(ii) of this section, but the billing protection under paragraph (e) of this section does not apply.

(c) *Procedures and responsibilities of the QIO.* (1) On the day the QIO receives the request for an expedited reconsideration under paragraph (b) of this section, the QIO must immediately notify the hospital of the request for an expedited reconsideration.

(2) The QIO must offer the eligible beneficiary and the hospital an opportunity to provide further information.

(3) When the eligible beneficiary makes—

(i) A timely request in accordance with paragraph (b)(1) of this section, the QIO must make a reconsideration determination within 2 calendar days of

receiving all requested pertinent information; or

(ii) An untimely request, the QIO must make a reconsideration determination within 3 calendar days of receiving all requested pertinent information.

(4) When the QIO issues a reconsideration determination, the QIO must notify the eligible beneficiary, the hospital, and SNF, if applicable, of its decision by telephone, followed by a written notice that must include the following information:

(i) The basis for the determination.

(ii) A detailed rationale for the determination.

(iii) An explanation of the Medicare payment consequences of the determination.

(iv) Information about the eligible beneficiary's right to appeal the QIO's reconsideration decision to OMHA for an ALJ hearing in accordance with subpart I of this part, including how to request an appeal and the time period for doing so.

(d) *Responsibilities of the hospital.* A hospital may, but is not required to, submit evidence to be considered by a QIO in making its reconsideration decision. If a hospital fails to comply with a QIO's request for additional information beyond that furnished to the QIO for purposes of the expedited determination, the QIO makes its reconsideration decision based on the information available.

(e) *Billing during QIO reconsideration.* When an eligible beneficiary requests an expedited reconsideration in accordance with the deadline specified in paragraph (b)(1) of this section, the hospital may not bill the beneficiary for any disputed services until the QIO makes its reconsideration decision.

(f) *Effect of an expedited QIO reconsideration.* The QIO expedited reconsideration is binding for payment purposes only, upon the eligible beneficiary, hospital, and MAC, except if a beneficiary elects to request a hearing by an ALJ in accordance with 42 CFR part 478 subpart B if he or she is dissatisfied with the expedited reconsideration decision.

PART 476—QUALITY IMPROVEMENT ORGANIZATION REVIEW

■ 5. The authority citation for part 476 continues to read as follows:

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

■ 6. Section 476.71 is amended by adding paragraph (a)(9) to read as follows:

§ 476.71 QIO review requirements.

(a) * * *

(9) Hospital reclassification of a beneficiary's inpatient admission status to that of an outpatient receiving observation services when a beneficiary meets the eligibility criteria at §§ 405.1210 through 405.1212 of this chapter. Appeals of determinations are available as specified in § 405.1212 of this chapter.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 7. The authority citation for part 489 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, 1395ff, and 1395hh.

■ 8. Section 489.27 is amended by revising the section heading and paragraph (b) to read as follows:

§ 489.27 Beneficiary notice of discharge or change in status rights.

* * * * *

(b) *Notification by hospitals and other providers.* Hospitals and other providers (as identified at § 489.2(b)) that participate in the Medicare program must furnish each Medicare beneficiary, or representative, applicable CMS notices in advance of discharge or termination of Medicare services, or of changes from inpatient to outpatient status, including the notices required under §§ 405.1200, 405.1202, 405.1206, 405.1210, and 422.624 of this chapter.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–23195 Filed 10–11–24; 4:15 pm]

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Part IV

Environmental Protection Agency

40 CFR Part 60

New Source Performance Standards Review for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2023–0358; FRL–10655–02–OAR]

RIN 2060–AV93

New Source Performance Standards Review for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing amendments to the new source performance standards (NSPS) for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) pursuant to the review required by the Clean Air Act (CAA). The EPA is finalizing revisions to the NSPS that are applicable to volatile organic liquid (VOL) storage vessels that commence construction, reconstruction, or modification after October 4, 2023, under a new NSPS subpart, as well as amendments to an existing subpart. In the new NSPS subpart Kc, the EPA is finalizing requirements to reduce the vapor pressure applicability thresholds and revise the volatile organic compound (VOC) standards to reflect the best system of emission reduction (BSER) for affected storage vessels. In addition, the EPA is finalizing degassing emission controls; clarification of startup, shutdown, and malfunction (SSM) requirements; additional monitoring requirements; and other technical improvements

DATES: This final rule is effective on October 15, 2024. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 15, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2023–0358. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only as portable document format (PDF) versions that can only be accessed on the EPA computers in the docket office reading room. Certain databases and physical items cannot be downloaded from the docket but may be requested by contacting the Public Reading Room at (202) 566–1744. The docket office has up to 10 business days to respond to these requests. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov* or on the EPA computers in the Public Reading Room at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Cantoni III, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5593; and email address: *cantoni.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this document the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AMEL alternative means of emissions limitation
API American Petroleum Institute
ASTM American Society for Testing and Materials
AVO audible, visual, and olfactory
BSER best system of emission reduction
CAA Clean Air Act
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
EFR external floating roof
EIA economic impact analysis
EJ environmental justice
EPA Environmental Protection Agency
FR Federal Register
gal gallons
HAP hazardous air pollutant(s)
IBR incorporate by reference
ICR information collection request
IFR internal floating roof
kg/hr kilograms per hour
kPa kilopascals
LEL lower explosive limit
m3 cubic meters
MON Miscellaneous Organic Chemical Manufacturing NESHAP
MTVP maximum true vapor pressure
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NSPS new source performance standards
NTAA National Tribal Air Association
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PDF portable document format
PRA Paperwork Reduction Act
PRD pressure relief device
ppmv parts per million by volume
psia pounds per square inch absolute
psig pounds per square inch gauge
RFA Regulatory Flexibility Act
RIN Regulatory Information Number
SCAQMD South Coast Air Quality Management District
SSM startup, shutdown, and malfunction
STERPP 2000 U.S. EPA Storage Tank Emission Reduction Partnership Program
UMRA Unfunded Mandates Reform Act
VCU vapor combustion unit
VOC volatile organic compound(s)
VOL volatile organic liquid

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Review
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A. What is the statutory authority for this action?
B. How does the EPA perform the NSPS review?
C. What is the source category regulated in this final action?
D. What outreach and engagement did the EPA conduct?
III. What changes did we propose for the VOL Storage Vessel NSPS?
IV. What actions are we finalizing and what is our rationale for such decisions?
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C. NSPS Subpart Kc Without Startup, Shutdown, and Malfunction Exemptions
D. Testing, Monitoring, and Inspection Requirements
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V. Summary of Cost, Environmental, and Economic Impacts
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VI. Statutory and Executive Order Reviews
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
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J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

The source category that is the subject of this final action is composed of VOL storage vessels (including petroleum liquid storage vessels) regulated under CAA section 111, NSPS. The 2022 North American Industry Classification System (NAICS) codes for the source category are 325, 324, and 422710. The NAICS codes serve as a guide for readers outlining the type of entities that this final action is likely to affect. The NSPS codified in 40 CFR part 60, subpart Kc, are directly applicable to affected facilities that begin construction, reconstruction, or modification after October 4, 2023. Final amendments to 40 CFR part 60, subpart Kb, are applicable to affected facilities that begin construction, reconstruction, or modification after July 23, 1984, and before October 4, 2023. Federal, State, local, and Tribal government entities that own and/or operate VOL storage vessels are affected by this action. If you have any questions regarding the applicability of this action to a particular entity, you should carefully examine the applicability criteria found in 40 CFR part 60, subparts Kb and Kc, and consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble, your State air pollution control agency with delegated authority for NSPS, or your EPA Regional Office.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action is available on the internet at *https://www.epa.gov/stationary-sources-air-pollution/volatile-organic-liquid-storage-vessels-including-petroleum.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule and key technical documents at this same website.

C. Judicial Review and Administrative Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the court) by December 16, 2024. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. Environmental Protection Agency, Room 3000, WJC West Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

The EPA's authority for this final rule is CAA section 111, which governs the establishment of standards of performance for stationary sources. Section 111(b)(1)(A) of the CAA requires the EPA Administrator to list categories of stationary sources that in the Administrator's judgment cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for new (and modified or reconstructed) sources in each source category pursuant to CAA section 111(b)(1)(B). These standards are referred to as new source performance standards, or NSPS. The EPA has the authority to define the scope of the source categories, determine the pollutants for which standards should be developed, set the emission level of the standards, and distinguish among classes, types, and sizes within categories in establishing the standards.

CAA section 111(b)(1)(B) requires the EPA to ''at least every 8 years review and, if appropriate, revise'' new source performance standards. However, the Administrator need not review any such standard if the ''Administrator determines that such review is not appropriate in light of readily available information on the efficacy'' of the standard. When conducting a review of an existing performance standard, the EPA has the discretion and authority to add emission limits for pollutants or emission sources not currently regulated for that source category.

In setting or revising a performance standard, CAA section 111(a)(1) provides that performance standards are to reflect ''the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' The term ''standard of performance'' in CAA section 111(a)(1) makes clear that the EPA is to determine both the best system of emission reduction for the regulated sources in the source category and the degree of emission limitation achievable through application of the BSER. The EPA must then, under CAA section 111(b)(1)(B), promulgate standards of performance for new sources that reflect that level of stringency. CAA section 111(b)(5) generally precludes the EPA from prescribing a particular technological system that must be used to comply with a standard of performance. Rather, sources can select any measure or combination of measures that will achieve the standard. CAA section 111(h)(1) authorizes the Administrator to promulgate ''a design, equipment, work practice, or operational standard, or combination thereof'' if in his or her judgment, ''it is not feasible to prescribe

or enforce a standard of performance.'' CAA section 111(h)(2) provides the circumstances under which prescribing or enforcing a standard of performance is ''not feasible,'' such as when the pollutant cannot be emitted through a conveyance designed to emit or capture the pollutant or when there is no practicable measurement methodology for the particular class of sources.

Pursuant to the definition of new source in CAA section 111(a)(2), standards of performance apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Under CAA section 111(a)(4), ''modification'' means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in emissions are not considered modifications. Under the provisions in 40 CFR 60.15, ''reconstruction'' means the replacement of components of an existing facility such that: (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards. Pursuant to CAA section 111(b)(1)(B), the standards of performance or revisions thereof shall become effective upon promulgation.

B. How does the EPA perform the NSPS review?

As noted in section II.A. of this preamble, CAA section 111 requires the EPA to, at least every 8 years, review and, if appropriate, revise the standards of performance applicable to new, modified, and reconstructed sources. If the EPA revises the standards of performance, the standards must reflect the degree of emission limitation achievable through the application of the BSER considering the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements. CAA section 111(a)(1).

In reviewing an NSPS to determine whether it is ''appropriate'' to revise the standards of performance, the EPA evaluates the statutory factors, which may include consideration of the following information:

- Expected growth for the source category, including how many new facilities, reconstructions, and modifications may trigger NSPS in the future.
- Pollution control measures, including advances in control technologies, process operations, design or efficiency improvements, or other systems of emission reduction, that are ''adequately demonstrated'' in the regulated industry.
- Available information from the implementation and enforcement of current requirements that indicates that emission limitations and percent reductions beyond those required by the current standards are achieved in practice.
- Costs (including capital and annual costs) associated with implementation of the available pollution control measures.
- The amount of emission reductions achievable through application of such pollution control measures.
- Any non-air quality health and environmental impact and energy requirements associated with those control measures.

In evaluating whether the cost of a particular system of emission reduction is reasonable, the EPA considers various costs associated with the particular air pollution control measure or a level of control, including capital costs and operating costs, and the emission reductions that the control measure or particular level of control can achieve. The Agency considers these costs in the context of the industry's overall capital expenditures and revenues. The Agency also considers cost effectiveness analysis as a useful metric and as a means of evaluating whether a given control achieves emission reduction at a reasonable cost. A cost effectiveness analysis allows comparisons of relative costs and outcomes (effects) of two or more options. In general, cost effectiveness is a measure of the outcomes produced by resources spent. In the context of air pollution control options, cost effectiveness typically refers to the annualized cost of implementing an air pollution control option divided by the amount of pollutant reductions realized annually.

After the EPA evaluates the statutory factors, the EPA compares the various systems of emission reductions and determines which system is ''best'' and therefore represents the BSER. The EPA then establishes a standard of performance that reflects the degree of emission limitation achievable through the implementation of the BSER. In performing this analysis, the EPA can determine whether subcategorization is appropriate based on classes, types, and sizes of sources, and may identify a different BSER and establish different performance standards for each subcategory. The result of the analysis and the BSER determination leads to standards of performance that apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Because the NSPS reflect the BSER under conditions of proper operation and maintenance, in doing its review, the EPA also evaluates and determines the proper testing, monitoring, recordkeeping, and reporting requirements needed to ensure compliance with the emission standards.

C. What is the source category regulated in this final action?

The EPA first promulgated NSPS for petroleum liquid storage vessels on March 8, 1974 (39 FR 9317). These standards of performance are codified in 40 CFR part 60, subpart K, and are applicable to sources that commence construction, modification, or reconstruction after June 11, 1973, and prior to May 19, 1978. These standards were amended several times before 1980, when the EPA proposed to establish revised NSPS for petroleum liquid storage vessels as NSPS subpart Ka (45 FR 23379; April 4, 1980). In 1982, the EPA published a list of priority sources for which additional NSPS should be established (47 FR 951; January 8, 1982), and VOL storage vessels at synthetic organic chemical manufacturers were included in the priority list.

Pursuant to the EPA's authority under CAA section 111, the Agency proposed (49 FR 29698; July 23, 1984) and promulgated (52 FR 11420; April 8, 1987) NSPS for VOL storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984, as NSPS subpart Kb.[1] NSPS subpart Kb regulates storage vessels with a capacity of 75 cubic meters (m^3) (~20,000 gallons) or more that store VOLs with a maximum true vapor pressure (MTVP) greater than or equal to 15.0 kilopascals (kPa) (~2.18 pounds per square inch absolute (psia)) and from storage vessels with a capacity of 151 m^3 (~40,000 gallons) or more that store organic liquids with an MTVP

[1] On October 15, 2003 (68 FR 59328), the EPA finalized amendments to NSPS subpart Kb to exempt certain storage vessels by capacity and vapor pressure, exempt process tanks, and add a process tank definition. At the same time, the EPA also amended the rule to exempt storage vessels that are subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Solvent Extraction of Vegetable Oil Production.

greater than or equal to 3.5 kPa (~0.51 psia). VOC emissions controls are required on storage vessels with a capacity of 75 m^3 (~20,000 gallons) or more that store VOLs with an MTVP greater than or equal to 27.6 kPa (~4.0 psia) and from storage vessels with a capacity of 151 m^3 (~40,000 gallons) or more that store organic liquids with an MTVP greater than or equal to 5.2 kPa (~0.75 psia). NSPS subpart Kb emission controls include the use of an external floating roof (EFR), an internal floating roof (IFR), or a closed vent system and a control device (see 40 CFR 60.110b(a) and 40 CFR 60.112b(a) and (b)).[2] [3] NSPS subpart Kb also specifies testing, monitoring, recordkeeping, reporting, and other requirements in 40 CFR 60.113b through 40 CFR 60.116b to ensure compliance with the standards. Storage vessels with an EFR consist of an open-top cylindrical steel shell equipped with a deck that floats on the surface (commonly referred to as a floating ''roof'') of the stored liquid. Storage vessels with an IFR are fixed roof vessels [4] that also have a deck internal to the vessel that floats on the liquid surface (commonly referred to as an internal floating ''roof'') within the fixed roof vessel.

The standards set in NSPS subpart Kb for storage vessels with an EFR or IFR are a combination of design, equipment, work practice, and operational standards set pursuant to CAA section 111(h). These standards require, among other things, that a rim seal be installed continuously around the circumference of the vessel (between the inner wall of the vessel and the floating roof) to prevent VOC emissions from escaping to the atmosphere through gaps between the floating roof and the inner wall of the storage vessel. For IFRs, NSPS subpart Kb allows a single liquid-mounted or mechanical shoe primary seal (to be used with or without a secondary seal), or a vapor-mounted primary seal in combination with a secondary seal. For EFRs, NSPS subpart Kb allows either a liquid-mounted or mechanical shoe primary seal, both of which must be used with a secondary seal; vapor-mounted primary seals are not allowed for EFRs. NSPS subpart Kb also requires numerous deck fittings [5] on the floating roof to be equipped with a gasketed cover or lid that is kept in the closed position at all times (*i.e.,* no visible gap), except when the device (deck fitting) is in actual use, to prevent VOC emissions from escaping through the deck fittings. In addition, NSPS subpart Kb requires owners and operators to conduct visual inspections to check for defects in the floating roof, rim seals, and deck fittings (*e.g.,* holes, tears, or other openings in the rim seal, or covers and lids on deck fittings that no longer close properly) that could expose the liquid surface to the atmosphere and potentially result in VOC emission losses through rim seals and deck fittings.[6]

NSPS subpart Kb includes two primary alternative means of compliance. Owners or operators may either comply with the consolidated air rule provisions for storage vessels in 40 CFR part 65, subpart C, or comply with the national emission standards for hazardous air pollutants (NESHAP) for storage vessels in 40 CFR part 63, subpart WW (NESHAP subpart WW). The substantive control requirements in these rules are the same as in NSPS subpart Kb although they may have slight differences in the details of the fitting and inspection requirements.

The EPA proposed the current review of the VOL storage vessels (including petroleum liquid storage vessels) NSPS subpart Kb on October 4, 2023. We received 29 comments from industry, environmental groups, State environmental agencies, and others during the comment period. After the conclusion of the comment period, we received one additional comment in February 2024. A summary of the more significant comments we received regarding the proposed rule and our responses are provided in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in *New Source Performance Standards for Volatile Organic Liquid Storage Vessels, Background Information for Final Amendments, Summary of Public Comments and Responses,* Docket ID No. EPA–HQ–OAR–2023–0358. In this action, the EPA is finalizing decisions and revisions pursuant to CAA section 111(b)(1)(B) review for VOL storage vessels after our considerations of all the comments received.

D. What outreach and engagement did the EPA conduct?

As part of this rulemaking, the EPA engaged and consulted with the public, including communities with environmental justice (EJ) concerns, through interactions such as providing a webinar, offering information on the website for this rule, and informing the public of the proposed action by sending notifications with summaries of the action and information on how to comment. These opportunities allowed the EPA to hear directly from the public, especially communities potentially impacted by this final action. The webinar slides can be found in the docket for this rule (Docket ID No. EPA–HQ–OAR–2023–0358).

Prior to proposal publication, the EPA conducted outreach by providing background on the source category and the existing requirements of NSPS subpart Kb on the September 19, 2023, EJ National Community Engagement call and on the August 31, 2023, National Tribal Air Association (NTAA) call. After publication, the EPA conducted a community outreach webinar on October 24, 2023, which was focused on discussing the details of the proposed rulemaking and how to provide comment on the proposed rule. Additionally, the EPA discussed the contents of the proposed rule on an October 26, 2023, NTAA call and encouraged interested parties to submit comments. The EPA received a request from one Tribe for consultation. On November 8, 2023, the EPA met with that Tribe for the purposes of discussing NSPS subpart Kc and other issues but was unable to conduct consultation on this specific rulemaking.

III. What changes did we propose for the VOL Storage Vessel NSPS?

On October 4, 2023, the EPA proposed the current review of the VOL Storage Vessel NSPS. In that action, we proposed the following actions under NSPS subpart Kc:

[2] All affected storage vessels storing organic liquids with a true vapor pressure of 76.6 kPa or more must use a closed vent system and a control device. See 40 CFR 60.112b(b).

[3] As part of NSPS subpart Kb, the EPA proposed (49 FR 29703; July 23, 1984) and finalized (52 FR 11421; April 8, 1987) that the best demonstrated technology for vessels storing VOL liquids with vapor pressures less than 76.6 kPa (≅11.1 psia) consists of an IFR with a liquid-mounted or mechanical shoe primary seal and controlled fittings or an EFR with a liquid-mounted or mechanical shoe primary seal and gasketed fittings. For vessels with greater vapor pressures, the EPA determined the best demonstrated technology to be a closed vent system and control device.

[4] A fixed roof storage vessel consists of a cylindrical steel shell with a permanently affixed roof, which may vary in design from cone or dome-shaped to flat.

[5] Numerous fittings pass through or are attached to floating decks to accommodate structure support components or to allow for operational functions. Typical deck fittings include, but are not limited to access hatches, gauge floats, gauge hatch/sample wells, rim vents, deck drains, deck legs, vacuum breakers, pontoon covers and guidepoles. IFR storage vessels may also have deck seams, fixed roof support columns, ladders, and/or stub drains.

[6] For details about storage vessel emissions, refer to the *Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources, AP–42, Fifth Edition, Chapter 7: Liquid Storage Tanks,* dated June 2020 which is available at: *https://www.epa.gov/air-emissions-factors-andquantification/ap-42-compilation-air-emissions-factors.*

- General applicability thresholds that include VOL storage vessels greater than or equal to 20,000 gallons (gal).
- Vapor pressure thresholds for controlled VOL storage vessels greater than or equal to 40,000 gal (151 m^3) with MTVPs greater than or equal to 0.5 psia (3.4 kPa).
- Vapor pressure thresholds for controlled VOL storage vessels greater than or equal to 20,000 gal (75.7 m^3) and less than 40,000 gal (151 m^3) with MTVPs greater than or equal to 1.5 psia (10.3 kPa).
- Improved standards of performance for vessels that have IFRs, EFRs, and closed vent systems routed to a control device, fuel gas system, or process designed to achieve an average 98 percent control efficiency.
- Updated standards of performance for IFR storage vessels that include improved seal system requirements, guidepole configurations reflective of the 2000 U.S. EPA Storage Tank Emission Reduction Partnership Program (STERPP), and annual lower explosive limit (LEL) monitoring.
- Updated standards of performance for EFR storage vessels that include requirements for welded deck seams, and improved guidepole requirements.
- Updated standards for closed vent systems that are routed to a control device, fuel gas system, or process and include requirements for preventing emissions venting to atmosphere, annual EPA Method 21 monitoring, and quarterly audible, visual, and olfactory (AVO) inspections.
- Degassing standards of performance for VOL storage vessels greater than or equal to 1 million gal (3,790 m^3) with MTVPs greater than or equal to 1.5 psia (10.3 kPa).
- Modification provisions dependent upon an increase of the MTVP from the VOLs previously stored.
- Improved testing, monitoring, and inspection requirements.
- Provisions establishing that emission limitations apply at all times, including during periods of SSM.
- Improved recordkeeping and reporting requirements, which include the implementation of electronic reporting.

Additionally, we proposed to add electronic reporting requirements to the existing subpart, NSPS subpart Kb.

IV. What actions are we finalizing and what is our rationale for such decisions?

The EPA is finalizing revisions to the NSPS for VOL storage vessels pursuant to CAA section 111(b)(1)(B) review. The EPA is promulgating the NSPS revisions in a new subpart, 40 CFR part 60, subpart Kc. The new NSPS subpart is applicable to affected sources constructed, modified, or reconstructed after October 4, 2023.

Under NSPS subpart Kc, we are finalizing standards that reflect the BSER for affected storage vessels. The rulemaking proposal included different criteria thresholds for general applicability versus for storage vessel control. Under the finalized general applicability provisions, the EPA has included a new exemption for storage vessels that only store VOL with an MTVP less than 0.25 psia (1.7 kPa) in response to comments we received asking to eliminate recordkeeping requirements for storage vessels with vapor pressures well below the thresholds for which controls are required. We are finalizing the capacity and vapor pressure thresholds for which controls are required as proposed. Specifically, we are finalizing control requirements for: (1) VOL storage vessels greater than or equal to 40,000 gal (151 m^3) with MTVPs greater than or equal to 0.5 psia (3.4 kPa); and (2) VOL storage vessels greater than or equal to 20,000 gal (75.7 m^3) and less than 40,000 gal (151 m^3) with MTVPs greater than or equal to 1.5 psia (10.3 kPa). We are also finalizing modification provisions similar to those proposed, but we are clarifying that a modification occurs when a ''. . . storage vessel is used to store VOL that has a greater maximum true vapor pressure than *all VOL historically stored or permitted.*''

In addition to updates involving applicability and modification, we are finalizing the proposed standards for storage vessels with IFRs, EFRs, and closed vent systems routed to a control device, fuel gas system, or process, with minor adjustments based on feedback. Regarding degassing controls, we are finalizing the provisions with minor revisions to require controls on nonflammable liquid degassing until reaching 5,000 parts per million by volume (ppmv) as methane vapor space concentration rather than the 10 percent LEL.

We are finalizing testing, monitoring, and inspection requirements as proposed, with some minor revisions that involve matters such as the timelines and frequency for completing inspections, LEL monitoring calibration procedures, inspection requirements, and the MTVP determinations. Similarly, we are finalizing the recordkeeping and reporting requirements with minor revisions from the proposal involving matters such as pressure releases, closed vent system monitoring, and reporting deadlines.

This action also finalizes standards of performance in NSPS subpart Kc that apply at all times including during periods of SSM and other changes such as electronic reporting, as proposed. This action also finalizes revisions in NSPS subpart Kb to require electronic reporting as proposed.

A. Revised NSPS for VOL Storage Vessels That Commenced Construction, Reconstruction, or Modification After July 23, 1984, and on or Before October 4, 2023

We proposed revisions to NSPS subpart Kb to add electronic reporting requirements. We are finalizing those revisions as proposed. Our response to major comments received on the proposed NSPS subpart Kb revisions are provided in this section. Additional public comments received and our responses to those comments are include in the *Summary of Public Comments and Responses* document included in Docket ID No. EPA–HQ–OAR–2023–0358.

Comment: One commenter stated that the EPA has no lawful or rational basis for not reviewing the flare standards from existing NSPS subpart Kb to consider whether to revise NSPS subpart Kb itself. The commenter stated that since the EPA has declined to revise the general provisions to include specific monitoring requirements to ensure compliance, the EPA must revise the NSPS subpart Kb provisions to do so, as expressly required by 40 CFR 60.18(d). The commenter stated that the EPA's failure to consider whether to revise the NSPS subpart Kb standards also violates a consent decree that the EPA entered into to resolve environmental groups' lawsuit regarding the EPA's failure to comply with its 8-year review obligations under CAA section 111(b)(1)(B) for the flare provisions from NSPS subpart Kb and other NSPS subparts, as well as its 8-year review obligations for certain NESHAP subparts.

Response: The EPA disagrees with this comment. We reviewed NSPS subpart Kb and proposed new standards of performance, including new design, operating, and monitoring requirements for flares, in the new NSPS subpart Kc under CAA section 111(b)(1)(B), which requires that the EPA ''. . . review and, if appropriate, revise such standards following the same procedures required by this subsection for promulgating such standards.''

CAA section 111(b)(1)(B) does not require retroactive revisions to the existing NSPS subpart (*i.e.,* NSPS subpart Kb). Rather, any revision to an NSPS must follow the same procedures

for promulgating such standards under CAA section 111(b)(1)(B). CAA section 111 establishes a bifurcated approach to regulating sources. Under CAA section 111(b)(1)(B), the EPA is required to promulgate standards of performance for new sources, which CAA section 111(a)(2) defines as ''any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.'' Existing sources are defined at CAA section 111(a)(6) to mean ''any stationary source other than a new source'' and are regulated via a State planning process pursuant to CAA section 111(d). Accordingly, the revisions, which are being finalized in a new NSPS subpart Kc, apply to sources that have commenced construction, reconstruction, or modification after October 4, 2023, the proposal date for this action. Sources presently subject to NSPS subpart Kb are not, by definition under this statutory provision, new sources that could be subjected to the revised standards finalized in NSPS subpart Kc. Rather, they are treated as existing sources relative to the revised standards finalized in NSPS subpart Kc. Revision of the flare provisions in NSPS subpart Kb consistent with the changes being finalized with respect to NSPS subpart Kc would be akin to directly applying a new standard of performance to *existing* sources, which would be inconsistent with the statutory structure that subjects regulation of new and existing sources to separate processes. Further, NSPS subpart Kc includes standards prescribed in accordance with CAA section 111(h)(1), for flares and other closed vent systems routed to a control device designed to achieve a 98 percent reduction in VOC emissions. Because CAA section 111(b)(1)(B) does not require revisions to the existing NSPS subpart (*i.e.,* NSPS subpart Kb), which continues to require 95 percent reduction in VOC emissions when using a flare, the EPA did not propose in this rulemaking to reopen NSPS subpart Kb to include the new operating and monitoring requirements for flares that are needed to assure 98 percent VOC reduction when using a flare.

Moreover, because regulated sources subject to NSPS subpart Kb were not given notice of any such potential change, altering the flare requirements in NSPS subpart Kb in the final rule would unfairly put sources that have been using flares to comply with NSPS subpart Kb in violation of such requirements upon the effective date of this final rule. Thus, the EPA is not amending NSPS subpart Kb to reflect the new operating and monitoring flare requirements that are included in the new NSPS subpart Kc. The EPA notes, however, that as existing sources trigger modification, they will become subject to NSPS subpart Kc and the new flare requirements in the rule.

We disagree with the commenter's assertion that our review findings violate the consent decree. In that consent decree, the EPA agreed to review and, if necessary, revise NSPS subpart Kb. In this case, the EPA proposed these revisions as a new subpart to prevent application of ''new source'' standards to sources that are ''existing'' at the time of proposal. Thus, our proposal of NSPS subpart Kc reflects our review of NSPS subpart Kb and the revisions to that standard appropriate for new sources.

Comment: One commenter stated that the EPA unlawfully and arbitrarily failed to revise existing NSPS subpart Kb to specify that the SSM exemptions from the [40 CFR part 60] general provisions do not apply. The commenter stated that the EPA has acted outside its statutory authority in promulgating the unlawful SSM exemptions from the general provisions, and therefore the Agency must revise NSPS subpart Kb to make clear that the general provisions' exemptions do not apply. The commenter noted that although CAA section 111(b)(1)(B) allows the EPA to avoid revising standards when ''review is not appropriate in light of readily available information on the efficacy of such standard,'' the EPA could not lawfully or rationally invoke that exception, since the application of the general provisions' exemptions to NSPS subpart Kb is plainly unlawful.

Response: As noted in the previous comment response, we reviewed the current subpart Kb standards, determined a series of appropriate revisions, and concluded that these revisions should be completed as a separate subpart. We disagree with the commenter that additional revision to NSPS subpart Kb is necessary to remove SSM exemptions in the 40 CFR part 60 general provisions. First, we note that the performance testing requirements in 40 CFR 60.113b(c) clearly indicate that the provisions in 40 CFR 60.8 do not apply. As such, objectionable language regarding performance test results obtained during SSM events is not applicable under NSPS subpart Kb. Second, the SSM exemption in 40 CFR 60.11(c) is also not applicable to NSPS subpart Kb because NSPS subpart Kb does not contain opacity limits. Because the sections in the 40 CFR part 60 general provisions that contain potentially unlawful SSM exemptions are not applicable under NSPS subpart Kb, we found no need to further revise NSPS subpart Kb at this time.

B. Revised NSPS for VOL Storage Vessels That Commenced Construction, Reconstruction, or Modification After October 4, 2023

This section describes the key technical standards that were proposed, the major comments received on the proposed requirements, our responses to those comments, and our rationale for the final requirements. Additional public comments received on the technical standards and our responses to those comments are included in the *Summary of Public Comments and Responses* document included in Docket ID No. EPA–HQ–OAR–2023–0358.

The EPA is finalizing standards of performance that reflect the BSER as well as alternative compliance standards for controlled storage vessels. The final standards are consistent with the determinations explained in the rulemaking proposal (88 FR 68540–47; October 4, 2023) and the analysis detailed in the memorandum *Control Options for Storage Vessels* in Docket ID No. EPA–HQ–OAR–2023–0358. While the EPA has made minor adjustments to these standards based on public comment, the BSER determination remains unchanged. The adjustments incorporated based on public comment are detailed in sections IV.B.4. and 5. of this document.

In summary, the finalized BSER analyses for NSPS subpart Kc are dependent on the MTVP of a stored VOL and follow the precedent established in NSPS subparts Kb, Ka, and K. In the NSPS subpart K proposal, the EPA detailed its justification for the use of equipment specification (or work practice) standards. As part of the original rulemaking proposal, the EPA explained that equipment specifications are the most practical method of regulating storage vessel emissions. Direct emission measurements for storage vessels are often impractical, and storage vessel emissions are often modeled and dependent on many distinguishing factors and variables. The EPA believes that equipment specification standards are less burdensome for the storage vessel operation and enforcement (38 FR 15406; May 4, 1973). For VOL storage vessels with an MTVP less than 11.1 psia, the EPA is finalizing the following BSER as proposed (88 FR 68542;

October 4, 2023): a fixed roof in conjunction with an internal floating roof equipped with a liquid-mounted or mechanical shoe primary seal and a continuous rim mounted secondary seal, either a flexible fabric sleeve or gasketed sliding cover on pipe columns (if any), specific STERPP compliant guidepole configurations, and gasketed covers.

The EPA is also finalizing two alternative compliance options for VOL storage vessels with MTVPs less than 11.1 psia as proposed:

(1) An external floating roof equipped with a liquid-mounted or mechanical shoe primary seal and a continuous rim-mounted secondary seal, with welded deck seams and both seals meeting certain gap requirements, specific guidepole configurations, and gasketed covers; or

(2) A closed vent system routed to a 98 percent effective control device, fuel gas system, or process.

For VOL storage vessels with MTVPs greater than or equal to 11.1 psia, the EPA is finalizing, as proposed, the BSER as a closed vent system routed to a 98 percent effective control device, fuel gas system, or process.

1. Vapor Pressure Applicability Thresholds

NSPS subpart Kb established control requirements, at 40 CFR 60.112b(a), for storage vessels based on vessel capacity and VOL vapor pressures. In our review of NSPS subpart Kb, we assessed the vapor applicability thresholds for affected facilities and for controls on affected storage vessels to determine whether these thresholds needed to be revised for purposes of NSPS subpart Kc. In NSPS subpart Kb there are two different sets of vapor pressure applicability thresholds: one for determining affected facilities and one for determining controls.

We proposed to not include specific vapor pressure applicability thresholds in defining an affected facility under NSPS subpart Kc. As such, the proposed affected facility under NSPS subpart Kc is any storage vessel with a capacity of 20,000 gallons or more used to store a VOL without exclusion for storage vessels under a set vapor pressure. Based on comments received, we are adding an exemption at 40 CFR 60.110c(b)(8) for storage vessels that only store VOL with an MTVP of less than 0.25 psia. This revision from proposal helps to limit burden for storage vessels that only store VOL with very low vapor pressures, but it does not otherwise impact the control standards proposed for NSPS subpart Kc.

Based on the BSER analysis, we proposed to revise the vapor applicability thresholds that require emission controls under NSPS subpart Kc. Specifically, we proposed to revise the MTVP threshold for smaller storage vessels (those with capacity of at least 20,000 gallons but less than 40,000 gallons) to 1.5 psia and for larger storage vessels (those with capacity of 40,000 gallons or more) to 0.5 psia. We determined that applying controls for VOL at or above these thresholds yielded cost-effective emission reductions. We are finalizing these thresholds as proposed.

2. Other Applicability Provisions

NSPS subpart Kb includes several provisions that exempt specific groups of VOL storage vessels from applicability under the standard. We proposed to carry over several of these exemptions, such as exemptions for: storage vessels that operate at coke oven by-product plants; bulk gasoline plants; gasoline service stations; pressure vessels; vessels attached to mobile vehicles; certain vessels at oil and gas production sites prior to custody transfer; and vessels that store beverage alcohol. We proposed to remove exemptions under NSPS subpart Kc for vessels subject to the NESHAP for solvent extraction for vegetable oil production outlined in 40 CFR part 63, subpart GGGG, because the standards proposed in NSPS subpart Kc are more stringent than the existing NESHAP subpart GGGG standards. We are finalizing these applicability provisions as proposed.

We are adding overlap provisions, based on comments received, to allow storage vessels subject to NSPS subparts K, Ka, or Kb, or NESHAP subpart WW to comply with the provisions in NSPS subpart Kc because the final provisions in NSPS subpart Kc are at least as stringent as those in NSPS subparts Kb, Ka, and K, and NESHAP subpart WW. These overlap provisions, which were not proposed, allow facilities the operational flexibility of simply complying with NSPS subpart Kc if they operate storage vessels covered under the specified existing storage vessel rules.

Comment: One commenter stated that the EPA should add an alternative compliance option that complying with NSPS subpart Kc demonstrates compliance with the floating roof requirements in NESHAP subpart WW. Another commenter suggested that the EPA should address overlaps between NSPS subpart Kc and other rules consistent with the overlap provisions in NSPS subpart Kb.

Response: There are not overlap provisions in NSPS subpart Kb beyond the alternative means of compliance in 40 CFR 60.110b(e). The requirements in the rules listed in 40 CFR 60.110b(e) are not equivalent to the requirements in NSPS subpart Kc, so we removed these alternative means of compliance from NSPS subpart Kc. We agree with commenters that including provisions in NSPS subpart Kc to allow compliance with the provision in NSPS subpart Kc to be considered compliance with the provisions in NSPS subpart Kb or NESHAP subpart WW is appropriate because the final requirements in NSPS subpart Kc are at least as stringent as those in NSPS subpart Kb and NESHAP subpart WW. As such, we have added provisions under 40 CFR 60.110c(h) and 40 CFR 60.110c(i) that allow owners and operators with storage vessels subject to the standards of NSPS subparts K, Ka, and Kb, and NESHAP subpart WW to choose to comply with the provisions of NSPS subpart Kc to demonstrate compliance. This will allow facilities that may be subject to a NESHAP that references NSPS subpart Kb or NESHAP subpart WW but also subject to NSPS subpart Kc to consolidate their recordkeeping and reporting requirements and comply only with NSPS subpart Kc.

3. Modification Provisions

For purposes of CAA section 111, modifications are defined as ''. . . any physical change in, or change in the method of operation of,'' an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted. NSPS subpart A further provides provisions explaining how a modification is identified, as well as defining certain exemptions to those general rules. In particular, 40 CFR 60.14(e)(4) states that the ''[u]se of an alternative fuel or raw material'' is not considered a modification if the existing facility was designed to accommodate that alternative use. The EPA proposed, for purposes of NSPS subpart Kc, that a change in the liquid stored in the storage vessel to a VOL with a higher MTVP does not constitute a ''use of an alternative fuel or raw material'' and would be considered a modification under NSPS subpart Kc. Specifically, the EPA proposed that a modification occurs when a ''storage vessel is used to store VOL that has a greater maximum true vapor pressure than the VOL previously stored.''

We are finalizing modification provisions similar to those proposed, but we are clarifying that a modification occurs when a ''. . . storage vessel is used to store VOL that has a greater maximum true vapor pressure than *all VOL historically stored or permitted.*'' Commenters were concerned that our proposed language, which referred to VOL ''*previously* stored,'' was ambiguous and potentially limited the modification assessment to the most recently stored VOL. We revised the text to ''. . . historically stored or permitted . . . ,'' in order to clarify our intent that a modification occurs when a new VOL is stored that has a higher MTVP than any of the previously stored or permitted VOL (and not just the most recently stored VOL). Finally, we are also clearly stating, consistent with our discussion in section III.G. of the proposal preamble, that the alternative fuel or raw material exemption in 40 CFR 60.14(e)(4) does not apply to storage vessels under NSPS subpart Kc.

Comment: Several commenters stated that the language ''the VOL previously stored'' in 40 CFR 60.110c(e) is unclear as to whether any VOL the storage vessel has previously stored is included, or just the VOL stored immediately prior to the change. The proposed 40 CFR 60.110c(e) language does not clarify which liquids are different, or not different, from ''the VOL previously stored.'' Without clarity on these points, the rule language is subject to a significant range of interpretations, from any stored organic liquid being the same VOL, to any de minimis change in liquid properties being a different VOL. Another commenter stated that the phrase ''the VOL previously stored'' should be removed from 40 CFR 60.110c(e).

Several commenters requested that storing a VOL with a higher MTVP than the liquid previously stored only be considered a modification if storing such a liquid would require modification of a facility's operating permit. One commenter further stated that using a facility's operating permit to determine modification would place an unreasonable burden of proof on facility owners or operators. Another commenter stated that storage vessels are permitted to handle multiple materials, typically using a worst-case scenario, and changing the liquid stored in the storage vessel to one above the permitted vapor pressure threshold would not necessarily increase emissions since emissions are based on other parameters and conditions, such as changing the hourly pumping rate, annual throughput, or storage temperature.

Two commenters noted that storage vessels routinely switch between storing materials with lower and higher vapor pressures at certain facilities, such as batch chemical plants, refineries, and gasoline terminals (for example, annual transitions between summer and winter gasoline). According to the commenters, such routine and other operational transitions between products do not rise to the level of a ''modification'' triggering performance standards for new sources under the CAA.

Response: We agree with the commenters that the proposed language (''the VOL previously stored'') could be misinterpreted to refer only to the VOL stored immediately prior to the change, and that was not our intent. For example, if a storage vessel has been used to store both summer and winter grades of gasoline, we did not intend that the next switch from summer to winter gasoline would trigger a modification of the storage vessel. We also agree that owners and operators should not trigger modification for introducing VOLs that do not exceed the MTVP of all VOLs that may also exist in a permit. We are clarifying the regulatory language to match our intent at proposal and reduce burden by replacing the phrase ''the VOL previously stored'' with the phrase ''all VOL historically stored or permitted.'' In discussions with industry representatives and the EPA permit specialists, we found that specific VOLs are not always listed in permits. Therefore, we are not including revisions suggested by some commenters to limit modification to only those actions that would require modification of a facility's operating permit.

We disagree with the commenters who suggested that changing the volatility of the liquids stored does not increase emissions from the storage vessel. We note that the emission rate for modification is expressed in kilograms per hour (kg/hr) and that it is not evaluated on an annual basis. Even if the facility intends to lower the fill rate to limit increases in annual emissions, the storage vessel will still have higher emissions (in kg/hr) during periods when the storage vessel is not being filled.

Comment: Several commenters disagreed with the EPA's proposal that a change in the liquid stored in the storage vessel to a VOL with a higher MTVP does not constitute a ''use of an alternative fuel or raw material'' and thus would instead be considered a change in the method of operation of a source. According to the commenters, the stored materials are fuels or raw materials for some customer or downstream user, and there is no requirement for a material to be used at the facility where it is being stored for it to be considered a raw material or a fuel. According to one commenter, the EPA had determined that changing a liquid, regardless of volatility, is not an operational change, and another commenter stated that storage vessel service changes are the kind of event that the EPA intended to address in 40 CFR 60.14(e)(4). Other commenters recommended that the EPA retain its long-held interpretation that a change of liquids in an existing VOL storage vessel does not constitute a ''modification'' triggering applicability of NSPS subpart Kc. Commenters also noted that the proposed interpretation would arbitrarily apply NSPS subpart Kc to some storage vessels, and not to other identical vessels, based on their historic use rather than their design capabilities.

One commenter stated that changing a liquid in a storage vessel is not a modification if the material could have been previously accommodated without a physical change or a capital expenditure. Some commenters requested that the EPA revise proposed 40 CFR 60.110c(e) to clearly state that changing the material stored is not a modification if the storage vessel could accommodate the new material without a physical change or significant capital expenditure. Commenters requested that the EPA review historical documents related to NSPS subpart Kb and reconfirm these long-held policies regarding modification of storage vessels.

One commenter stated that the EPA's reference to *FCC* v. *Fox Television Stations, Inc.* for the proposition that it need only articulate a ''good reason'' for its ''change in policy'' is misplaced. According to the commenter, the EPA is not proposing to amend any of its existing regulations setting forth its policy for NSPS triggering ''modifications.'' Rather, the proposal reflects a reversal of the EPA's longstanding interpretation of the CAA and its regulations in 40 CFR 60.2 and 60.14. Unlike a change in policy, the commenter contends, ''an agency's interpretation of a statute or regulation that conflicts with a prior interpretation is entitled to considerably less deference than a consistently held agency view.'' *Advanced Energy United, Inc.* v. *FERC* (82 F.4th 1095, 1114 (D.C. Cir. 2023) (quoting *Thomas Jefferson University* v. *Shalala,* 512 U.S. 504 (1994)). Accordingly, it is the EPA's long-held interpretation of ''modifications''—for nearly 40 years—that is entitled to deference. The commenter asserts that

this is particularly true where, as here, the EPA has not provided a justification for the conflicting interpretation or articulated the scope of changes in volatility of stored liquids that would actually trigger a ''modification.''

Response: The EPA disagrees with these comments. First, the EPA's reliance on *FCC* v. *Fox,* 556 U.S. 502 (2009), the controlling case on changes in agency policy, is appropriate here. The quote that commenters cite above, asserting that an agency's statutory interpretation which conflicts with a prior interpretation is ''entitled to considerably less deference than a consistently held view,'' is from *Thomas Jefferson University* v. *Shalala,* 512 U.S. 504 (1994), a 1994 Supreme Court case whose precedent on changes in agency policy was displaced by *FCC* v. *Fox,* in 2009, 556 U.S. 502. Under *FCC* v. *Fox,* ''it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.'' *Id.* at 515.

According to the commenters, anything stored in a storage vessel should be considered an alternative fuel or raw material and therefore any change in the liquid stored should be exempt from being considered a modification. We find in this final rule that this interpretation of the alternative fuel or raw material exemption as applied to storage vessels is inappropriate and often excludes changes in the stored VOL that increase emissions and that therefore should trigger additional control requirements. The EPA explained its rationale for including additional modification provisions in section III.G. of the proposal preamble (88 FR 68543; October 4, 2023). The EPA explained that for purposes of NSPS subpart Kc, a change in the liquid stored in the storage vessel to an organic liquid with a greater MTVP does not constitute a ''use of an alternative fuel or raw material'' and would be considered a change in the method of operation of the storage vessel. The primary function of this affected facility is the storage of materials. The VOLs stored in the storage vessel are neither raw material nor fuel inputs to a process at the affected facility itself. Furthermore, even had the EPA not revisited its interpretation regarding the application of 40 CFR 60.14(e)(4), we maintain that changing the VOL stored to one with a higher MTVP is a modification (a change in the method of operation that results in an increase in the emissions rate). The NSPS subpart Kc modification provisions result in meaningful emission reductions. For these reasons, the final rulemaking appropriately supersedes the general provisions. As such, the EPA is finalizing modification provisions such that a change in the liquid stored, which results in increased VOC emissions, would be a modification under NSPS subpart Kc and is clarifying in 40 CFR 60.110c(e) that, for the purposes of this source category, the exemption at 40 CFR 60.14(e)(4) does not apply.

The precedent of MTVP dependent standards of performance for VOL storage vessels was established as part of NSPS subpart K and has informed the establishment of standards for subsequent rulemakings under NSPS subparts Ka and Kb. Under these standards, a VOL's MTVP (along with a vessel's capacity) has served as a primary mechanism for determining suitable standards for control. The amended modification provisions will provide meaningful emission reductions from storage vessels that would otherwise go unregulated despite satisfying the statutory criteria for a modification under CAA section 111(a)(4), as explained in this section and at III.G. of the proposal preamble (88 FR 68543; October 4, 2023). The modification provision, as amended, effectively curtails a previously existing loophole which had allowed owners and operators to circumvent the standards in NSPS subpart Kb. For example, prior to this rulemaking, an uncontrolled fixed roof vessel could be constructed and be exempt from NSPS subpart Kb standards because it was storing a low vapor pressure VOL. The vessel could then change operation to introduce a new material with a higher vapor pressure that would otherwise be subject to the NSPS had it been stored in the tank at the time of construction, but the owner or operator could continue to operate without meeting the floating roof or closed vent system and control device standards even if the vessel was constructed after the Kb applicability date. Similarly, if an owner or operator built floating roof tanks for VOLs with less than 11.1 psia and later replaced the liquid stored with a liquid with a vapor pressure greater than 11.1 psia, they could thereby circumvent the closed vent system and control device requirements under 40 CFR 60.112b which are directly dependent on the MTVP of the stored VOL and which would otherwise apply. As such, the prior NSPS provided significant leeway for owners and operators to circumvent the regulations intended to control storage vessel emissions. To address this concern, the EPA is finalizing modification provisions such that the MTVP can be used as an indicator to determine that a change in the liquid stored, which results in increased VOC emissions, would be a modification under NSPS subpart Kc.

The EPA's decision to consider a change in the liquid historically stored or permitted to one with a higher vapor pressure to be a modification is consistent with both the statutory and regulatory definitions of those terms. CAA section 111(a) defines modification to mean, ''any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' Similarly, the General Provisions to 40 CFR part 60 define modification at 40 CFR 60.2 to mean, ''any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.'' And 40 CFR 60.14 provides a more detailed framework for evaluating modifications, which similarly states at paragraph (a) that: ''Except as provided under paragraphs (e) and (f) of this section, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act.'' Thus, the CAA and general provisions for 40 CFR part 60 all rely on the same basic two-step process: (1) a physical change in, *or* change in the method of operation of, a stationary source; and (2) a resulting increase in emissions. Notably, it is not necessary for there to be a physical change at the source in the first step if there is a change in the method of operation. One or the other will suffice. We address each of these criteria in turn.

First, as proposed, the EPA has determined that a change in the liquid stored in a storage vessel constitutes a change in the method of operation of a storage vessel. The primary function of this affected facility is the storage of materials, and so the only logical ''change in the method of operation'' that a storage vessel would undergo is a change in the material stored. In other words, whenever a storage vessel changes the VOL that is stored, that is a change in that facility's method of operation. The EPA's interpretation

regarding what constitutes a change in the ''method of operation'' for storage vessels has not changed with this rulemaking. In explaining the applicability of modification under the CAA, in the NSPS subpart Kb preamble, the EPA affirmed, ''Few, if any, changes in the physical configuration of the storage vessels that would increase emissions are anticipated. An operational change that would increase emissions is a changing of the stored liquid from a VOC non-emitting liquid to a VOC emitting liquid'' (49 FR 29707; July 23, 1984). Thus, the EPA has long considered the changing of the stored liquid to meet the statutory requirements for an operational change. Second, the changing of the stored liquid can lead to an increase of emissions whenever the MTVP of the new liquid is greater than the previously stored liquid. Thus, both statutory criteria for identifying a modification are met.

The EPA agrees that we have historically applied the regulatory exemption under 60.14(e) for ''use of an alternative fuel or raw material'' to storage vessels. In making our decision regarding modifications, we reviewed several documents [7] and questioned both industry and enforcement personnel to better understand what changes are currently considered modifications. In the NSPS subpart Kb preamble, the EPA explained, ''Section 60.14(e) of the General Provisions to Part 60 lists several changes that are not considered modifications. Among these is the use of raw material, if prior to the date of proposal of the standard, the existing facility was designed to accommodate that alternative use'' (49 FR 29707; July 23, 1984). However, the EPA did not provide any further explanation at that time as to why the Agency believed this exemption applied to this affected facility, and the Agency has reconsidered the application of that exemption for purposes of NSPS subpart Kc. As explained in section III.G. of the proposal preamble, when the affected source is a storage vessel and not a process unit, we no longer consider a change in the liquid stored in the storage vessel (to an organic liquid with a higher MTVP) to qualify as a ''use of an alternative fuel or raw material.'' As discussed above, the primary function of an affected facility in this source category is the storage of materials, and the VOL stored in the vessel are neither raw material nor alternative fuel inputs to a process at the facility itself. While the storage vessel may store liquids that are used as an alternative fuel or raw material used for inputs to a process for *another* facility, it is not reasonable to extend application of the exemption to mere storage of the alternative fuel or raw material. Accordingly, we no longer believe that the exemption should be applied to these factual circumstances by the terms of the regulation.

The EPA notes that, the fact that 40 CFR 60.14(e) is framed as *exempting* certain activities from the definition of modification indicates that, absent these exemptions, the EPA would consider the exempted activity to meet the statutory definition of modification in CAA section 111(a)(4). In other words, the EPA created a specific provision exempting the ''use of an alternative fuel or raw material'' from the regulatory definition of modification because this activity would, as the EPA proposed, typically be considered an operational change,[8] a consideration reinforced by the EPA's discussion on modification in the NSPS subpart Kb preamble. In this rulemaking, the EPA confirms that it does not consider a change in the liquid stored to one with a higher MTVP to qualify under this exemption. Moreover, irrespective of this determination, the EPA is also finalizing in this rulemaking that the exemption in 40 CFR 60.14(e)(4) regarding alternative fuel or raw material does not apply to storage vessels.

While we have determined for purposes of NSPS subpart Kc that a change in the liquid stored to a liquid with a higher vapor pressure does not constitute the ''use of an alternative fuel or raw material,'' we note that even if this exemption would otherwise apply by its terms, this rulemaking supersedes the exemption pursuant to 40 CFR 60.14(f), because, as explained earlier, we have concluded that it is the better policy and consistent with the statutory definition of modification based on the facts of how this affected facility operates. The EPA has always maintained that there are some sources for which the basic exemptions from the standard definition of a modification may not be appropriate, and 40 CFR 60.14(f) was included in the general provisions to afford the EPA the ability to supersede the general modification regulations, the exemption provisions in 40 CFR 60.14(e), for those sources for which these provisions should not reasonably be applied. The EPA has previously applied specialized interpretations of modification for other source categories. For example, in NSPS subpart Ja, we included special provisions for the modification of flares at petroleum refineries because the basic considerations under 40 CFR 60.14(e), were generally developed considering process unit emission sources. The intermittent operation of a flare makes it difficult to use the criteria of 40 CFR 60.14(e) to determine when a flare is modified (73 FR 35843; June 24, 2008). In our review of NSPS subpart Kb, we identified similar short-comings regarding the ''process unit-oriented'' modification exemptions as previously applied to storage vessels. The specialized modification provision for storage vessels is consistent with the CAA statutory requirements, the general definition of modification outlined in 40 CFR 60.2 and 60.14, and previous determinations that source-specific modification provisions are justified for certain source categories. Accordingly, in this rulemaking, the EPA confirms that it does not consider a change in the liquid stored to one with a higher MTVP to qualify under the exemption in 40 CFR 60.14(e)(4), and, as a matter of clarity, irrespective of this determination, this rulemaking is superseding the exemption.

With respect to the comment that the proposed definition of modification would arbitrarily apply differently for identical vessels based on their historic use rather than their design capabilities, we disagree. As stated above, the modification provisions are directly dependent on the MTVP of the stored VOL. The precedent of MTVP dependent standards of performance for VOL storage vessels was established as part of NSPS subpart K and has informed the establishment of standards for subsequent rulemakings under NSPS subparts Ka and Kb. We are finalizing that storing a VOL with a greater MTVP than historically stored or permitted is a modification. We determined the BSER and set standards of performance considering existing emission controls of modified storage vessels.

The EPA also disagrees with the comment advocating a requirement for capital expenditure to determine whether there is a modification and that a capital expenditure clause should be added to the language proposed at 40 CFR 110c(e). First, we note that the

[7] See, *e.g.,* U.S. EPA Applicability Determination Index, Control Number: 0400015, (referencing 40 CFR 60.14(e)(4)–(5)) and NSPS subpart Kb Background Information Document (Docket ID No. EPA–HQ–OAR–2023–0358–0012).

[8] This is bolstered when considering the other exemptions in 40 CFR 60.14(e): a ''replacement'' referred to in (e)(1) and the addition of a system or device referred to in (e)(5) *is* a physical change to a facility, and an increase in production rate or an increase in hours of operation referred to in (e)(2) or (3) *is* a change in the facility's operation. However, the EPA had a rational basis for exempting these particular physical or operational changes, as a general matter, from the broader definition of modification under the regulations.

statute at CAA section 111(a)(4) contains no such requirement and the general provisions at 40 CFR 60.14(e)(2) only consider whether a capital expenditure is needed when considering an exemption from the definition of modification tied to increase in production at the facility. Critically, neither the statute nor the general provisions provide that the determination of whether a modification has occurred must be based on a capital expenditure. Thus, the commenters seek to impose an additional requirement that is not plainly necessary under the statute nor anticipated, either by Congress or by the EPA, without an explanation as to why that would be justified for this source category. In many cases, a capital expenditure is not needed to change the liquid stored in a fixed roof tank. Under the commenter's proposed capital expenditure paradigm, an operator of a fixed roof tank used to store a low volatility fluid could change to a higher vapor pressure fluid and argue that no modification occurred even though the storage vessel has changed its method of operation. This would permit the resulting emissions increases without the requisite control that the statute would otherwise anticipate under such circumstances. It is more consistent with the statutory standard to consider the change in the liquid stored or permitted as a change in the method of operation and then assess whether an increase in the vapor pressure of the liquid stored triggers the need for controls (which would require a capital expenditure). We found the controls required under proposed NSPS subpart Kc are cost effective and meet the BSER criteria, and we see no reason to allow uncontrolled modified storage vessels or less stringent controls simply because the tank was initially permitted for or stored a less volatile liquid.

4. Control Standards for IFRs and EFRs

The EPA proposed standards of performance that reflect the BSER for IFRs as well as alternative compliance standards for controlled storage vessel EFRs. The EPA proposed a work practice standard that would require new IFR storage vessels be constructed with either a liquid-mounted or a mechanical shoe primary seal, a rim-mounted secondary seal, and fittings on the floating roof that meet certain control requirements (*e.g.,* gasketed covers, specific guidepole control configurations) mostly consistent with the requirements of fitting controls in NSPS subpart Kb. The EPA also proposed that new EFR storage vessels be constructed with either a liquid-mounted or a mechanical shoe primary seal, a rim-mounted secondary seal, welded deck seams, and fittings on the floating roof that meet certain control requirements (*e.g.,* gasketed covers, specific guidepole control configurations). Except for the guidepole controls, the fitting controls are mostly consistent with the requirements of fitting controls in NSPS subpart Kb.

We are finalizing the control requirements for IFRs and EFRs as proposed with minor editorial revisions (such as replacing ''roof leg supports'' with ''roof supports,'' replacing ''bolted'' with ''bolted or otherwise mechanically secured,'' and using consistent language regarding requirements for vacuum breaker/automatic bleeder vents). For EFRs, we are also adding provisions for emergency roof drains to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening. As noted by commenters, this provision is included in NSPS subpart Kb and the IFR drain requirements were inadvertently copied for EFRs in the proposed rule for NSPS subpart Kc.

Comment: One commenter stated the proposed NSPS subpart Kc language refers to the floating roof being supported by legs when the floating roof is landed, but a common design for IFRs involves suspending the IFR from the fixed roof of the tank via cables. The commenter stated that proposed language at 40 CFR 60.112c(b)(1) and (4) should be revised to accommodate the cable-suspended design alternative. Similarly, a commenter recommended the EPA revise the definition of the term ''Vacuum breaker/Automatic bleeder vent'' to avoid restricting vacuum breakers to the leg-actuated type. Another commenter noted that since leg operated vacuum breakers must contact the floor prior to the roof support legs, the EPA should consider setting a maximum opening distance or clarify that the roof is considered landed when the vacuum breaker leg lands. One commenter noted that 40 CFR 60.112c(b)(1) reads ''. . . and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled'' whereas 40 CFR 60.112c(c)(1) reads: ''. . . and when the storage vessel is completely emptied and subsequently refilled.'' The commenter suggested that the requirements for EFRs in 40 CFR 60.112c(c)(1) be revised to be consistent with 40 CFR 60.112c(b)(1).

Response: We agree with the commenters that the language regarding roof legs and vacuum breaker/automatic bleeder vents should be generalized to allow roof supports other than roof legs and vacuum actuations other than leg actuated devices and that consistent language should be used for EFRs. While we understand cable suspended roofs are specific to IFRs, we generalized the language for EFRs in the event different supports are developed for EFRs and to make the language consistent between 40 CFR 60.112c(b) and (c). We also revised the use of the term ''vacuum breaker'' by replacing it with ''vacuum breaker/automatic bleeder vent'' because that is the defined term for these devices on a floating roof and to distinguish these from vacuum breaking devices on a fixed roof. We are also adding a sentence to the roof landing monitoring requirements at 40 CFR 60.113c(a)(5) and (b)(8) to clarify that the roof is considered landed when the floating roof first rests on supports or when the vacuum breaker/automatic bleeder vent begins to open, whichever is first. This clarifies that the landing alarm must be set at the height the leg-actuated vacuum breaker/automatic bleeder vent begins to open the vent, which will be prior to the floating roof resting on the roof supports.

Comment: One commenter stated that the proposed NSPS subpart Kc does not address the emergency roof drains that are utilized with certain EFRs. The commenter noted that NSPS subpart Kc specifies that ''stub drains'' are not required to be covered at all, which could be understood as exempting EFR emergency roof drains from control. The commenter recommended that the EPA clarify, consistent with NSPS subpart Kb at 40 CFR 60.112(b)(2)(ii), that each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

Response: We agree with the commenter that we inadvertently used the language allowing uncontrolled stub drains for IFRs in the proposed EFR requirements. We had intended to maintain consistency with the EFR drain requirements in NSPS subpart Kb. We agree with the commenter that the reference to stub drains for EFRs is not appropriate as stub drains are not used for EFRs. In the final rule, we are including the requirements to use a slotted membrane fabric cover that covers at least 90 percent of the area of the opening at 40 CFR 60.112c(c)(2)(viii) consistent with the requirements for EFR drains in NSPS subpart Kb, as suggested by the commenter.

5. Control Standards for Closed Vent Systems Routed to a Control Device, Fuel Gas System, or Process

For storage vessels with closed vent systems routed to a control device, fuel gas system, or process, the EPA proposed certain design requirements for the storage vessel to prevent pressure releases from the storage vessel and proposed that control devices must meet 98 percent or greater emission reduction efficiency. The EPA proposed that non-flare thermal combustion devices must conduct performance tests initially and at least once every 60 months, in which they establish a temperature operating limit to which they must comply at all times. For flares, the EPA proposed that flares must meet the operating and monitoring requirements consistent with the requirements in the Refinery NESHAP (40 CFR 63.670 and 63.671). We are finalizing requirements for closed vent systems routed to a control device, fuel gas system, or process with some revisions from proposal for reasons noted in the following comments and responses.

First, we are revising the vacuum pressure at which vacuum breaking devices must close from −0.1 pounds per square inch gauge (psig) to −0.1 inches of water (−0.0036 psig) to better reflect common storage vessel design requirements. We are also clarifying the language since a higher vacuum setting would be a lower absolute pressure and the proposed language was potentially ambiguous. The revised provision clarifies that any vacuum breaking device on the storage vessel must close while the storage vessel is still under vacuum of at least −0.1 inches of water (−0.0036 psig or −0.025 kPa gauge). We proposed that storage vessels that are vented to a closed vent system must be designed to operate at elevated pressures (1 psig above MTVP plus any back pressure from the control device) without venting to the atmosphere. We are retaining this as an option but are adding an option to design and operate the recovery system to prevent venting from the storage vessel. In either case, we are retaining requirements consistent with those proposed that monitoring systems must be installed to detect pressure releases from each pressure relief device (PRD) or vacuum breaking device on a storage vessel and each PRD on the closed vent system. For owner and operators electing to design the storage vessel and closed vent system to operate at elevated pressures, we are including provisions that allow the control device to be taken out of service for maintenance provided that the storage vessels are operated with no emissions to the atmosphere.

We are retaining requirements for control devices to meet 98 percent control efficiencies as proposed. We allow enclosed combustion devices to demonstrate on-going compliance with the 98 percent control efficiency using temperature operating limit, as proposed. However, we are also finalizing an alternative for enclosed combustion devices, if elected, to comply with the flare operating limits, consistent with recent provisions provided for gasoline distribution facilities (40 CFR part 60, subpart XXa and 40 CFR part 63, subparts R and BBBBBB). Lastly, we are amending the requirements for open-ended lines to align with provisions more closely under the Miscellaneous Organic Chemical Manufacturing NESHAP (MON).

Comment: Two commenters suggested that the pressure constraints on design operating pressure and vacuum breaking devices are not technically feasible and could result in significant damage or failures of the storage vessels, stating that a gauge pressure higher than the designed pressure of the storage vessel or a vacuum greater than the design requirements could result in catastrophic failure of the storage vessel. The commenters noted that the proposed requirements conflict with American Petroleum Institute (API) Codes 650 and 2000. The commenters recommended the EPA delete the specific pressure requirements proposed and replace with general language that atmospheric vents should be designed to remain closed during normal operation.

Response: In the proposal, we intended to require the use of low-pressure storage vessels rather than atmospheric storage vessels so that the storage vessels would be built to withstand higher pressures. However, we recognize that this may be a more significant retrofit for modified storage vessels with gas collection systems designed to operate at lower pressures such that the pressure in the storage vessels can remain near atmospheric pressure. However, if the vapor recovery compressor or fan fails or is shut down for any reason, then the storage vessel would vent rather than being able to withstand the buildup of pressure as the headspace in the storage vessel reaches saturation without venting to the atmosphere like a low-pressure storage vessel would. We are maintaining the positive pressure requirements as one compliance option, but we are also finalizing an option for facilities to design and operate a vapor recovery system in a manner to prevent atmospheric releases from the storage vessel. As proposed, any pressure release from the storage vessel is a deviation of the storage vessel and closed vent system requirements. We are finalizing monitoring system requirements for the pressure relief devices and vacuum breaking devices to identify these deviations.

With respect to the vacuum requirements, we reviewed the API 650 standards applicable to low-pressure storage vessels and found in section 5.10.5.2 that these storage vessels ". . . may be safely subjected to a partial vacuum in the gas or vapor space not exceeding 1 ounce per square inch with the operating liquid level in the tank at any stage from full to empty." One ounce per square inch is equivalent to 0.0625 psi or 2 inches of water, so we agree that the vacuum requirement proposed is beyond standard design requirements for low-pressure storage vessels. We also confirmed that the API 650 standard indicates that the maximum vacuum for atmospheric storage vessels (without needing additional design considerations) is −0.25 kPa (or −1 inch of water or −0.036 psig). In our proposal, we wanted to ensure that the vacuum vent is closed while there is still a slight vacuum in the storage vessel, to prevent venting to the atmosphere from the vacuum breaking device as the pressure in the storage vessel increases. In reviewing the storage vessel specifications, we determined that the value we proposed was higher than needed to achieve this objective. The vacuum breaking devices must open before the maximum vacuum pressure is reached, so typical opening pressures are 0.5 inches of water pressure. Therefore, we are finalizing that the vacuum breaking device must close while the storage vessel is still under vacuum of at least −0.1 inches of water (−0.0036 psig or −0.025 kPa gauge) and are finalizing that a pressure release (deviation) occurs when the vessel reaches atmospheric pressure and the vacuum breaking device remains open. We are providing separate paragraphs for the monitoring requirements for PRDs between storage vessels and closed vent systems and adding monitoring requirements for the vacuum breaking devices on the storage vessels. Otherwise, the separate pressure release monitoring requirements we are finalizing in 40 CFR 60.112c(d)(1)(iii) and (d)(2)(iii) are the same as proposed for "each pressure relief device on a storage vessel or in a closed vent system," in 40 CFR 60.112c(d)(2)(iii).

Comment: One commenter recommended that the EPA add a 240-hour planned routine maintenance provision for storage vessels equipped with a closed vent system routed to a control device to NSPS subparts Kb and Kc similar to the language in the part 63 NESHAP regulations such as the MON and Organic Liquids Distribution (non-gasoline) NESHAP. According to the commenter, if the EPA decides to retain the language in 40 CFR 60.110c(g) removing the SSM provisions, it is reasonable for the EPA to include a separate 240-hour planned routine maintenance provision for control devices in NSPS subpart Kc similar to the language in the MON (40 CFR 63.2470(d)) and the associated recordkeeping and reporting requirement similar to the language in 40 CFR 63.998(d)(2) and 63.999(c)(4).

Response: We disagree that we should provide 240 hours for uncontrolled emissions when using an add-on control device. Similar provisions are not needed or appropriate for IFRs, which were determined to be the BSER for storage vessels storing VOLs with an MTVP less than 11.1 psia. We maintain that a 98 percent control requirement at all times is necessary for add-on control devices to achieve emission reductions equivalent to those for IFRs. Even for storage vessels storing VOLs with an MTVP of 11.1 psia or higher, we maintain that a 98 percent control requirement is the BSER, and that level of control cannot be achieved if we allow 240 hours of uncontrolled emissions. Nonetheless, if the storage vessel is designed to be able to operate at pressures above the MTVP consistent with the storage vessel design pressure requirements proposed (and being finalized as one compliance option), then the control device can be isolated from the storage vessel, and the closed vent system and the storage vessel can remain in service without venting to the atmosphere provided that the storage vessel is not filled to the extent that the pressure limits of the pressure relief valves on the storage vessel and closed vent system are exceeded and there is a pressure release. If there is no pressure release from the storage vessel during the planned maintenance activity, we agree that planned maintenance can be allowed. Therefore, we are including provisions at 40 CFR 60.112c(d)(7) to allow owners or operators to conduct planned maintenance on control devices while storage vessel affected facilities are still storing VOL under specific circumstances. Specifically, the storage vessel(s) storing VOL must be designed to operate above the MTVP of the stored VOL according to the requirements in 40 CFR 60.112c(d)(1)(i) and must comply with the pressure release monitoring, recordkeeping, and reporting requirements. Eliminating pressure releases during the maintenance periods may require operators to limit VOL addition to the storage vessel (such as only adding VOL when there is also corresponding withdrawal of VOL from the storage vessel), but the operator is expected to operate the storage vessel without a pressure release or atmospheric venting during the maintenance period.

Comment: One commenter stated that the EPA should define ''vapor combustion unit'' separately from ''incinerator'' and apply appropriate monitoring provisions to vapor combustion units (VCUs) to avoid subjecting VCUs to inappropriate requirements. The commenter stated that the EPA should allow VCUs to elect to meet the proposed flare provisions, as was provided in the Gasoline Distribution rules.

Response: In general, we agree with the commenter. We note that we had proposed specific requirements for ''enclosed combustion devices'' so we elected to define that term. We recognize that some enclosed combustion devices may operate more like a flare than like an incinerator (no direct combustion chamber and no means to control the amount of air entering the device). In similar situations in other rules (gasoline distribution rules at 40 CFR part 60, subpart XXa, and 40 CFR part 63, subparts R and BBBBBB, and the oil and gas rule at 40 CFR part 60, subparts OOOOb and OOOOc), we have allowed the enclosed combustion devices to comply with the flare operating limits rather than with the temperature operating limit. As such, we agree with the commenter's suggestion to allow enclosed combustion devices to comply with the flare operating limits. We have added a definition of both ''enclosed combustion device'' and ''flare'' to help distinguish between these devices (enclosed combustion devices emit pollutants through a conveyance suitable to conduct a performance test, and flares have open or shrouded flames and do not emit pollutants through a conveyance suitable to conduct a performance test). We note that the implementation of this provision led to revision of several paragraphs related to control device operating limits and monitoring, recordkeeping, and reporting requirements to allow ''enclosed combustion devices electing to comply with § 60.112c(d)(5)'' to be treated differently than other non-flare combustion devices. We are retaining the requirement for enclosed combustion devices to conduct a performance test to demonstrate that the enclosed combustion device is achieving a 98 percent VOC emission reduction regardless of whether the enclosed combustion device is complying with the flare operating limits in 40 CFR 60.112c(d)(5) or the temperature operating limits in 40 CFR 60.113c(c)(1)(ii)(E).

Comment: One commenter stated that the EPA should clarify in the final NSPS subpart Kc rule, in the closed vent system and bypass line provisions, that open-ended valves or lines that use a cap, blind flange, plug, or second valve are not considered to be bypass lines. According to the commenter, the EPA should add the text that is in 40 CFR 63.2450(e)(6)(v)(B) of the MON rule to 40 CFR 60.112c(d)(2)(ii) to clearly exempt these open-ended valves or lines from the bypass requirements.

Response: We agree with the recommendations to align NSPS subpart Kc more closely with the provisions in the MON regarding open-ended valves or lines that use a cap, blind flange, plug, or second valve, and have revised to 40 CFR 60.112c(d)(2)(ii) accordingly.

6. Control Standards for Degassing

Based on the analysis presented at proposal, the EPA proposed emptying and degassing standards in accordance with the BSER applicable to: (1) storage vessels equipped with a closed vent system routed to a control device, fuel gas system, or process; and (2) IFR and EFR storage vessels that have a capacity of greater than or equal to 1 million gallons storing a VOL with an MTVP greater than or equal to 1.5 psia. These vessels must meet certain requirements while the vapors in the storage vessel are at or above 10 percent of the LEL. The proposed standards of performance for degassing emissions reflect a 98 percent VOC reduction efficiency.

Regarding degassing controls, we are finalizing these provisions with minor revisions to what was proposed. We are finalizing standards for storage vessels subject to controlling degassing emissions as proposed. We are finalizing a requirement that controls must be used until the vapor space concentration is less than 10 percent of the LEL, as proposed, but we are also finalizing provisions for nonflammable liquids to comply with a 5,000 ppmv as methane concentration level based on comments received, because 5,000 ppmv is equal to 10 percent LEL if the vapors were methane. We are finalizing that the degassing emissions that must be controlled must be vented to control

device that achieves a 98 weight percent VOC reduction or greater as proposed. We are finalizing additional provisions to check LEL instrument calibration and instrumental offset response each day the instrument is used and prior to discontinuing controlled degassing consistent with LEL measurement requirements for IFR monitoring to ensure the accuracy of the instrument readings. We are also finalizing provisions that allow the introduction of chemicals or diluents for the purpose of reducing vapor concentration before or during active degassing, after considering comments received.

Comment: Two commenters stated that the EPA should incorporate a concentration limit for the storage vessel degassing emissions in 40 CFR 60.112c(e) since nonflammable chemicals do not exhibit an LEL. The commenter requested that the EPA include a concentration limit of less than 5,000 ppmv as methane as an alternative to the LEL requirement, consistent with the National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry proposal.

Response: We expect that most VOLs with an MTVP above 1.5 psia will have some flammability, but we agree that a concentration limit of 5,000 ppmv as methane for nonflammable liquids is appropriate because 5,000 ppmv is the 10 percent LEL of methane and it generally provides a concentration value that is similar to or lower than the 10 percent LEL level for heavier organics. For example, 10 percent LEL of butane is as stringent as or more stringent than 1,900 ppmv as butane or about 7,600 ppmv as methane.

Comment: One commenter noted that some companies flood the bottom of the tank with a low vapor pressure material to facilitate removal of residual sludges and/or to reduce the concentration of vapors in the vapor space of the tank prior to or during active degassing. According to the commenter, while the proposed rule language does not prohibit bottom flushing, this practice should be expressly accommodated in the rule language.

Response: We agree that flooding the bottom of the tank with a low vapor pressure material is a reasonable control measure for degassing. As such, we are revising 40 CFR 60.112c(e)(1) to expressly allow the addition of chemical or a diluent for the purpose of reducing vapor concentration before or during active degassing.

7. Alternative Means of Emission Limitation

We are finalizing the alternative means of emissions limitation (AMEL) provisions as proposed except for the addition of two clarifications. First, at 40 CFR 60.114c(a), we are replacing ''any'' with ''the applicable'' when referencing requirements in 40 CFR 60.112c, to clarify that the equivalency must be made for the same type of control system (IFR, EFR, or closed vent system routed to a control device, fuel gas system, or process). This clarification prevents operators that are using an IFR from reducing the fitting control requirements finalized for an IFR because, for that size of storage vessel and stored VOL, the required IFR controls achieve greater than a 98 percent reduction or greater reduction than an EFR meeting the final EFR requirements. Second, we are clarifying that the written application to the Administrator in 40 CFR 60.114c(c) may include either actual emissions test results or an engineering evaluation that the Administrator determines to be accurate, but it does not necessarily have to include both.

Comment: One commenter noted the proposed NSPS subpart Kc provides for requesting an AMEL at 40 CFR 60.114c and this section specifies that a request for approval of an alternative must include an actual emissions test; however, there are numerous alternative control measures that have already been tested and for which the EPA has published emission factors in AP–42. The commenter stated that the EPA should not arbitrarily require repeated testing for those control measures that have already been tested and for which the results have already been accepted by the EPA. The commenter stated that the language in 40 CFR 60.114c should be replaced with the language in NESHAP subpart WW at 40 CFR 63.1064.

Response: We have revised 40 CFR 60.114c(c) such that an AMEL written application must include either an actual emissions test (that covers the appropriate range of meteorological conditions) or an engineering evaluation, which may include use of emission factors as published in the EPA Report No. AP–42, *Compilation of Air Pollutant Emission Factors.* We reviewed the AMEL provision in NESHAP subpart WW. The NESHAP subpart WW provisions include a listing of test methods but do not limit the testing to those methods. As such, we are determining that the language that is included in the final rule is equivalent to the provisions in NESHAP subpart WW. We also note that the provisions in 40 CFR 63.1064(c) allow the use of different combinations of rim and deck fitting controls ''. . . if the alternate emits no more than the combination specified in the § 63.1063.'' We interpret this provision to allow comparisons of fitting controls for IFRs to those required specifically for IFRs. While we consider that the three control options we provided are equivalent, we acknowledge that, depending on the size of tank, volatility of the VOL, and prevailing meteorological conditions, one of the control configurations (IFR, EFR, or closed vent system routed to a control device, fuel gas system, or process) will perform better and one configuration will perform worse than the other options allowed. We did not intend to allow changes to the specified control provisions to only require the lowest control efficiency for a given combination of tank size, VOL stored, and meteorological conditions. Therefore, we are also clarifying, consistent with our interpretation of the NESHAP subpart WW provisions, that the AMEL must compare with the ''applicable'' requirement. That is, for storage vessels with IFRs, you may request an AMEL for a different set of fittings, but you must show equivalency with the IFR requirements specified in 40 CFR 60.112c(b). For storage vessels with EFRs, the AMEL must show equivalency with the EFR requirements specified in 40 CFR 60.112c(c). For storage vessels with a closed vent system routed to a control device, fuel gas system, or process, the AMEL must show equivalency with the control requirements specified in 40 CFR 60.112c(d). With these revisions, we determine that the final AMEL provisions in NSPS subpart Kc are consistent with the AMEL provisions in NESHAP subpart WW.

Since control measures that were determined to be equivalent to NSPS subpart Kb may not be equivalent to controls required under NSPS subpart Kc, a new AMEL application must be submitted following 40 CFR 60.114c(c) in order to demonstrate that an AMEL is equivalent to the requirements in NSPS subpart Kc.

C. NSPS Subpart Kc Without Startup, Shutdown, and Malfunction Exemptions

Consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the EPA has established standards in this rule that apply at all times. We are finalizing in NSPS subpart Kc specific requirements at 40 CFR 60.110c(g) that override the general provisions for SSM requirements. In finalizing the standards in this rule, the EPA has considered

startup and shutdown periods and, for the reasons explained in this section of the preamble, has not finalized alternate standards for those periods. The EPA has determined that the reasoning in the court's decision in *Sierra Club* applies equally to CAA section 111 because the definition of ''emission standard'' in CAA section 302(k), and the embedded requirement for continuous standards, also applies to the NSPS.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment (40 CFR 60.2). The EPA interprets CAA section 111 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 111 standards. Nothing in CAA section 111 or in caselaw requires that the EPA consider malfunctions when determining what standards of performance reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. While the EPA accounts for variability in setting emissions standards, nothing in CAA section 111 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner,'' and no statutory language compels the EPA to consider such events in setting CAA section 111 standards of performance. The EPA's approach to malfunctions in the analogous circumstances (setting ''achievable'' standards under CAA section 112) has been upheld as reasonable by the D.C. Circuit in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

D. Testing, Monitoring, and Inspection Requirements

Because the NSPS reflect the BSER under conditions of proper operation and maintenance, we also, in performing our review, evaluate and determine the proper testing, monitoring, inspection, recordkeeping, and reporting requirements needed to ensure compliance with the emission standards. This section of the preamble includes our discussion of the proposed revisions to testing, monitoring, and inspection requirements, a summary of the significant comments received, our responses to the comments, and our final determinations regarding testing, monitoring, and inspection requirements. Changes to recordkeeping and reporting requirements are included in the section for recordkeeping and electronic reporting.

Generally, we proposed testing, monitoring, and inspection requirements consistent with those in NSPS subpart Kb and other Federal standards that would provide the best clarity for the specific requirements along with the following enhancements. The EPA proposed annual LEL monitoring as an enhancement to the monitoring and inspection requirements for storage vessels with IFRs. The EPA also proposed equipping floating roof storage vessels with a visual or audible alarm system to monitor when the floating roof approaches specified landing heights. For closed vent systems, the EPA proposed quarterly AVO inspections, annual EPA Method 21 instrument monitoring, and monitoring of bypasses. The EPA also proposed that storage vessels using closed vent systems routed to control devices, fuel gas systems, or processes must equip pressure relief devices with appropriate monitoring to identify releases. For storage vessels with closed vent systems routed to a control device, the EPA proposed that performance tests must be conducted at least once every 60 months rather than rely on a single initial performance test. Finally, the EPA proposed enhanced monitoring requirements for flares consistent with the Refinery NESHAP (40 CFR 63.671).

We are finalizing testing, monitoring, and inspection requirements as proposed except for the revisions outlined here.

- We revised the specification of the timing of these requirements to be ''calendar months'' rather than just ''months,'' to clarify the timing and allow limited flexibility when scheduling the required testing or inspections.
- For IFRs, we are amending the requirements to conduct internal inspections of the floating roof at least once every 120 calendar months. We are retaining this inspection requirement each time the vessel is emptied and degassed, but we are not requiring storage vessels to be taken out of service specifically to conduct this inspection.
- We are making minor revisions to the LEL monitoring calibration procedures. We proposed language used from the gasoline distribution rule (40 CFR part 63, subpart R), which would require the correction factor to be based on ''gasoline vapor.'' Because NSPS subpart Kc is applicable to a much broader range of chemicals, we are revising references to ''gasoline vapors'' to ''vapors of the stored VOL.'' We are retaining the use of butane as the surrogate if correction factors are not available for the vapors of the VOL stored.
- We are adding specific requirements that fittings on EFR must be visually inspected during annual seal gap measurement inspections to ensure that covers are closed and gasketed with no visible gaps and that there are no tears in sleeves, wipers, or similar controls used for a given fitting during annual seal gap measurement inspections. Visual fitting inspections were proposed at 40 CFR 60.113c(b)(7) for inspections conducted when the storage vessel is emptied and degassed but did not specify fitting conditions that would result in an inspection failure, and we are adding these details to clarify the fitting inspection requirements based on comments received.
- For closed vent systems, we are including an additional reference at 40 CFR 60.113c(c)(2) for the quarterly AVO monitoring as required under both the proposed and final requirements at 40 CFR 60.112c(d)(2)(i). We are also revising the provision of 40 CFR 60.113c(c)(3) to clarify that emissions detected using visible, audible, and olfactory methods are leaks triggering corrective action.
- Regarding MTVP test methods, we are clarifying that owners and operators must determine the MTVP of the VOL prior to refilling the storage vessel with a new VOL. The proposed language only referenced ''initial filling'' and may allow facilities to change VOL without reassessing the MTVP. However, we considered that, when a new VOL is stored, that would be an initial filling of that VOL. The rephrasing of that provision helps to clarify this requirement. Additionally, we are adding a requirement to use a vapor-to-liquid ratio of 4:1 when using American Society for Testing and Materials (ASTM) D6378–22. We proposed this requirement when using ASTM D6377–20 but consider that the same provision should apply to both of the MTVP test methods. The EPA's intention to use a vapor-to-liquid ratio of 4:1 when using ASTM D6378–22 was detailed in the proposal preamble but was erroneously omitted from the proposed rule text.
- Additionally, as noted in section IV.B.5. of this preamble, we are allowing enclosed combustion devices to comply with the monitoring provisions for flares as an alternative to the temperature monitoring requirement.

Comment: One commenter stated that the EPA's proposed monitoring and inspection requirements for floating roof tanks are inadequate and must be strengthened to make it more likely that the tanks can reduce 98 percent of VOCs. According to the commenter, at a minimum, the EPA must require monitoring and inspection in keeping with the current requirements from South Coast Air Quality Management District (SCAQMD) Rule 1178. In addition, the commenter stated that the EPA must make it explicit that, for IFR visual inspections, the entire perimeter of the floating roof seal must be visually evaluated, even if that requires opening multiple manways. The commenter stated that the EPA must also require quarterly forward-looking infrared measurements from tank decks.

Response: In general, we considered that we had incorporated much from the SCAQMD Rule 1178 monitoring provisions in our proposal. We included LEL monitoring provisions for IFR storage vessels and PRD monitoring provisions for storage vessels with closed vent systems routed to a control device, fuel gas system, or process that are reasonably consistent with the monitoring requirements in SCAQMD Rule 1178. However, upon further review of SCAQMD Rule 1178 and our proposed inspection requirements, we noted that the inspection requirements we proposed for EFR storage vessels only covered inspections of the primary and secondary seals. Visual fitting inspections were proposed for IFR inspections and mentioned in the proposed inspections at 40 CFR 60.113c(b)(7) when the storage vessel is emptied and degassed. However, no requirement for fitting inspections were proposed during annual gap measurements, and the inspections proposed at 40 CFR 60.113c(b)(7) did not specify fitting conditions that would result in an inspection failure. After our review of SCAQMD Rule 1178 monitoring and inspection requirements based on this comment, we are adding specific requirements that fittings on EFR must be visually inspected during annual seal gap measurement inspections to ensure that covers are closed and gasketed with no visible gaps and that there are no tears in sleeves, wipers, or similar controls used for a given fitting. We are also adding the conditions under which an inspection failure occurs for the inspections conducted when the EFR storage vessel is emptied and degassed.

We considered optical gas imaging requirements in previous reviews of storage vessels, which we reviewed again for NSPS subpart Kc, and concluded that these requirements were not cost-effective. Regarding manways, we agree with the commenter's assertion that while performing IFR visual inspections, the entire perimeter of the floating roof seal must be visually evaluated, even if that requires opening multiple manways. We have elected not to add specific rule language, because we believe that having visual access to the entire primary seal, is already a necessary component of annual IFR inspections both in the rule language of NSPS subpart Kc and in the existing rule language of NSPS subpart Kb. As such, except for the specifications for fitting inspections for EFR storage vessels, we are not adding additional monitoring requirements to NSPS subpart Kc.

Comment: Numerous commenters requested that the EPA allow in-service inspections of IFRs either by providing additional language in 40 CFR 60.113c(a)(2) allowing for top-side inspections when there is visual access to all deck components or by incorporating an alternate means of compliance option to comply with NESHAP subpart WW [40 CFR 63.1063(d)(1) and (2)]. The commenters noted that in-service inspections were allowed in NSPS subpart Kb to avoid the costs and emissions associated with emptying and degassing vessels for inspection. If in-service inspections are provided, the commenters noted, rule revisions may also be needed in the notification requirements at 40 CFR 60.116c(b)(1) and the reporting requirements at 40 CFR 60.116c(c)(2)(ii).

Response: We had proposed language consistent with NSPS subpart Kb at 40 CFR 60.113b(a)(4) to require more detailed ''out of service'' inspections at least once every 10 years. The EPA agrees with the commenter's request to allow for in-service inspections to be performed entirely from the top side of the floating roof. The EPA is incorporating language into 40 CFR 60.113c(a)(2)(ii) to allow for in-service inspections to be performed entirely from the top side of the floating roof, as long as there is visual access to all deck fittings and rim seal systems specified in 40 CFR 60.112c(b). We are also adding repair timelines in 40 CFR 60.112c(b), similar to those already established for the annual visual inspection. We are also specifying that a 30-day notification must be provided for inspections in 40 CFR 60.116c(b)(1). Also, we are deleting the phrase ''emptied and degassed and'' from 40 CFR 60.116c(c)(2)(iii) to account for the reporting of these in-service inspections.

Comment: One commenter stated that the calibration requirements for the LEL meter in 40 CFR 60.113c(a)(3)(ii) and (iv) that are specified for demonstrating compliance with the 25 percent LEL limit for IFR storage vessels are burdensome and should be simplified to be consistent with the calibration requirements for the LEL meter within the storage vessel degassing requirements in 40 CFR 60.112c(e). The commenter stated that following the procedures for ''calibration and maintenance according to manufacturer's specifications'' should be adequate for both sections of the rule. The commenter recommended that the EPA simplify the language in 40 CFR 60.113c(a)(3)(ii) and (iv) consistent with the LEL calibration requirements in the storage vessel degassing section. Another commenter noted that the language at 40 CFR 60.113c(a)(3)(iv) references gasoline vapors and should be generalized to accommodate other stored VOLs.

Response: We disagree that the LEL calibration requirements in 40 CFR 60.113c(a)(3)(ii) and (iv) are burdensome. These paragraphs allow the use of manufacturers' calibration methods, and they primarily specify when calibration checks must be made and specify the LEL span response. Upon review of the two LEL monitoring requirements, we are adding more specific calibration requirements for the LEL monitoring instrument used to monitor degassing. Specifically, we are requiring calibration and zero offset checks each day and at the end of the degassing event prior to completion to confirm that the final readings are accurate before controlled degassing can be discontinued.

With respect to the comment regarding the reference to gasoline vapors in the calibration requirements at 40 CFR 60.113c(a)(3)(iv), we agree that the proposed language needed to be generalized. We used calibration language from the gasoline distribution rule (40 CFR part 63, subpart R), which requires the correction factor to be based on ''gasoline vapor.'' Because NSPS subpart Kc is applicable to a much broader range of chemicals, we are revising references to ''gasoline vapors'' to ''vapors of the stored VOL.'' We are, however, retaining the use of butane as the surrogate if correction factors are not available for the vapors of the VOL stored, because a surrogate is needed when no published correction factor is available for the VOL, and butane is considered a reasonable surrogate for any VOL that does not have a published correction factor.

Comment: Two commenters stated that EPA Method 21 testing is laborious, costly, and time-consuming for

facilities. One commenter believes that the sensory monitoring provisions as proposed would place undue burdens on operators and would result in redundancy in monitoring and compliance measures. Both commenters stated that when coupled with the quarterly sensory testing, the requirement for annual EPA Method 21 testing is unnecessary. One commenter submitted a 1997 rule interpretation memorandum written by the Texas Natural Resource Conservation Commission, which explained that the EPA Method 21 test under NSPS subpart Kb is not considered a performance test under 40 CFR 60.8 since the EPA Method 21 is considered a screening measurement rather than a performance test, subject to the recordkeeping requirements in the General Provisions of 40 CFR 60.7(f) and not required to be reported by either NSPS subpart A or Kb. The commenter requested that the EPA discuss whether the EPA agrees or disagrees with this guidance and whether the interpretation also applies to NSPS subpart Kc.

Response: We disagree that quarterly AVO monitoring is burdensome. If a leak is found via AVO monitoring, it triggers corrective action. Additionally, we disagree that annual EPA Method 21 monitoring is unnecessary, because EPA Method 21 will detect small emissions sources that are above 500 ppm but that would remain undetected by AVO monitoring. The closed vent system is to be operated ''with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in part 60, subpart VV, § 60.485(b).'' In the case of NSPS subpart Kb, 40 CFR 60.113b(c) states: ''The owner or operator of each source that is equipped with a closed vent system and control device as required in § 60.112b (a)(3) or (b)(2) (other than a flare) is exempt from § 60.8 of the General Provisions and shall meet the following requirements.'' As such, the language in NSPS subpart Kb indicates that 40 CFR 60.8 does not apply.

For NSPS subpart Kc, we used language that the closed vent system must operate ''. . . with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background . . .'' (see 40 CFR 60.112c(d)(2)), but there is no clear exemption from 40 CFR 60.8 in 40 CFR 60.113c(c)(2). Nonetheless, we agree that the requirements in 40 CFR 60.8 do not apply to EPA Method 21 instrument monitoring under NSPS subpart Kb. Unlike in NSPS subpart Kb, we proposed and are finalizing reporting requirements in NSPS subpart Kc for EPA Method 21 instrument monitoring events. In reviewing the proposed NSPS subpart Kc provisions related to EPA Method 21 and AVO monitoring, we recognized that we focused on the instrument monitoring requirements when using EPA Method 21 and inadvertently neglected to mention the AVO inspection requirements. Therefore, we are adding reference to the monthly AVO monitoring requirement in 40 CFR 60.113c(c)(2) consistent with the requirement under the proposed and final requirements at 40 CFR 60.112c(d)(2)(i), and we are revising the provision of 40 CFR 60.113c(c)(3) to clarify that emissions detected using AVO methods are ''leaks'' triggering corrective action. This latter revision also clarifies that leaks identified from AVO monitoring do not trigger the need to conduct EPA Method 21 monitoring of an AVO-identified leak. In our review, we also identified a lack of reporting requirements related to AVO-identified leaks. Therefore, we have also revised what we proposed for recordkeeping requirements at 40 CFR 60.115c(d)(3)(v) and reporting requirements at 40 CFR 60.116c(f)(8)(ii) to indicate the type of monitoring conducted and to report information regarding all leaks identified, not just those identified during EPA Method 21 instrument monitoring.

Comment: Several commenters requested revisions to the vapor pressure testing requirements for mixtures of indeterminate or variable composition to define the term ''variable'' and to not require the initial and repeat physical testing for liquids whose upper and lower bounds of vapor pressure are known or are readily calculated using standard reference texts and good engineering judgment.

Response: We agree with the commenters that the concept of ''variable compositions'' of stored liquid mixtures for which the proposed rule would require initial and repeat physical testing to determine MTVP could be applied more broadly than intended. Thus, in 40 CFR 60.113c(d)(1) of the final rule, we are clarifying that for mixtures of variable composition, if the range of concentrations for each constituent is known such that the MTVP can be determined from data and procedures in standard reference texts, then physical testing is not required. Similarly, under the final rule, physical testing is not required for crude oils and refined petroleum products for which Reid vapor pressure is known and MTVP can be determined from nomographs and other procedures described in reference texts such as AP–42. Additionally, in 40 CFR 60.113c(d)(2) we have clarified that the provisions apply to affected storage vessels storing a mixture of indeterminate composition or a mixture of unknown variable composition.

E. Recordkeeping and Electronic Reporting

The EPA is finalizing a requirement that owners and operators of new, modified, or reconstructed VOL storage vessels subject to NSPS subpart Kc maintain records of the results of required testing, monitoring, and inspections. The EPA is finalizing a requirement that owners and operators of VOL storage vessels subject to the current and new NSPS at 40 CFR part 60, subparts Kb and Kc, submit electronic copies of required performance test reports and the semiannual excess emissions and continuous monitoring system performance and summary reports, through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI).

We are finalizing the recordkeeping and reporting requirements similar to those proposed except that some of the revisions made to the standards, testing, and monitoring provisions required revision of the recordkeeping and reporting requirements for the final rule. The revisions to the proposed recordkeeping and reporting requirements and our rationale for making the revisions are summarized in this section.

- As noted in section IV.D. of this preamble, we are revising the recordkeeping and reporting requirements in 40 CFR 60.115c(d)(3)(v) and 60.116c(c)(8)(ii) to include the type of monitoring conducted and to report information regarding all leaks identified, including leaks identified using AVO methods.
- As noted in section IV.B.5. of this preamble, we separated PRD monitoring requirements to separately address devices on storage vessels and devices on the closed vent system and included provisions to monitor vacuum breaking devices on storage vessels. In reviewing recordkeeping and reporting requirements related to these provisions, we noted that we had proposed reporting requirements for PRDs, but we failed to include recordkeeping requirements for PRDs. Therefore, we are adding recordkeeping requirements at 40 CFR 60.115c(d)(3)(vii) for PRDs or vacuum breaking devices on a storage vessel or closed vent system that include: the device type; the monitoring device or system used for the device; data from

the device or system indicating whether a pressure release occurred; and the date, time, and duration of each pressure release, if applicable. We are also adding reporting requirements at 40 CFR 60.116c(c)(12) for each pressure release that occurred as a result of a vacuum breaking device that failed to close prior to the storage vessel reaching atmospheric pressure. The added reporting requirements include: identification of the vacuum breaking device; start date, start time, and duration (in minutes) of the pressure release; and an estimate of the mass quantity in pounds of VOL released. These requirements mimic the pressure release reporting requirements proposed (and being finalized) for PRDs, and these similar reporting requirements are needed to document compliance with or deviations from the requirements for vacuum breaking devices used for storage vessels using a closed vent system routed to a control device.

- As noted in section IV.B.5. of this preamble, we are including alternative provisions that allow enclosed combustion devices to comply with the flare operating and monitoring requirements. We include minor revisions to the proposed recordkeeping and reporting requirements commensurate with the provided alternative, to specify which recordkeeping and reporting requirements apply to control systems ''other than flares or enclosed combustion devices electing to comply with § 60.112c(d)(5)'' and which recordkeeping and reporting requirements apply to ''flares or enclosed combustion devices electing to comply with § 60.112c(d)(5).'' We are also adding a reporting requirement for the initial notification at 40 CFR 60.116c(a)(6) that includes a requirement to specify the type of control device used and the compliance option selected, which, if an enclosed combustion device is used, include whether the device is complying with a temperature operating limit or is instead electing to comply with the flare requirements in 40 CFR 60.112c(d)(5). This initial notification requirement will be useful for EPA permitting and enforcement personnel to clearly understand the compliance option being elected for the enclosed combustion device.
- For EFRs, as discussed in section IV.D. of this preamble, we added requirements to visually inspect the roof fittings (such as access hatches, gauge floats, gauge hatch/sample wells, rim vents, deck drains, deck legs, vacuum breakers, pontoon covers, and guidepoles) when gap measurements are conducted. We are adding to the list at 40 CFR 60.116c(c)(5)(vi)(A) to include reference to deviations of the fitting controls outlined in 40 CFR 60.113c(b)(4)(iii)(A) through (D) to allow reporting of fitting deviations identified during the gap measurement inspections.
- As discussed in the comment and response included in this section of the preamble, we are revising what we proposed for the timing of semiannual compliance reports to either cover fixed time periods (from January 1 to June 30 or July 1 to December 31) or align with established reporting dates based on 40 CFR parts 70 or 71 permit requirements. The proposed schedule for semiannual reports appeared to require separate semiannual reports for different affected storage vessels at a facility depending on when the storage vessel became affected under NSPS subpart Kc. Because facilities may have several affected storage vessels under NSPS subpart Kc, having fixed reporting periods simplifies the reporting requirements for these facilities.

Comment: Numerous commenters requested that the EPA revise NSPS subpart Kc so that reporting requirements are consistent with other reporting obligations and establish the same semiannual reporting deadline for all VOL storage vessels. The commenters noted that, as proposed, it appeared that each affected VOL storage vessel could have a separate reporting schedule depending on when the sources became affected sources under NSPS subpart Kc. The commenters recommended that the EPA require the annual reports to cover activities in set time periods (January 1 through June 30 or July 1 through December 31, as applicable). One commenter also recommended that the EPA include an alternative that would allow each affected facility subject to permitting regulations pursuant to 40 CFR parts 70 or 71 to align the semiannual reports with established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A).

Response: First, we never intended to have different semiannual compliance report schedules for different storage vessels at a given facility. We note that the reporting form template was designed to allow reporting of all storage vessels at the facility in one semiannual report. However, we agree that, because the affected facility is each VOL storage vessel, the proposed requirements at 40 CFR 60.116c(d) could be interpreted to impose different reporting schedules for different storage vessels if they become affected facilities in different months. Several commenters suggested that the semiannual reports cover fixed timeframes, specifically January through June and July through December. This appears reasonable. One commenter also suggested including reference to semiannual reports under 40 CFR parts 70 or 71 in the event that the current semiannual reporting period is different from January through June and July through December. This also appears reasonable. Therefore, we are providing a fixed timeframe for the semiannual reports (January through June and July through December) and providing an alternative timeframe to harmonize with other semiannual reports as scheduled under 40 CFR parts 70 or 71, if different from the fixed timeframe being finalized. We clarify that the first semiannual compliance report is triggered by the date on which the first storage vessel at the facility becomes an affected facility subject to NSPS subpart Kc and would cover, for example, April 15 through June 30 if the source becomes an affected facility on April 15. As new storage vessels become affected facilities under NSPS subpart Kc, the information for those storage vessels will be added to the semiannual report. These semiannual reporting requirements simplify the reporting requirements compared to the timing proposed and allow alignment of the semiannual reports provided for NSPS subpart Kc with other reporting requirements that may apply for the facility.

F. Other Final Amendments

1. Editorial Corrections

We received a number of comments regarding editorial, typographical, and cross-reference corrections that we agree with and are finalizing. Additionally, we received comments recommending clarification of requirement language to reduce misinterpretation. After reviewing these comments, we are revising some language in the final rule. We are revising references of ''a control'' to ''a control device.'' Beyond these changes, the EPA made several revisions throughout NSPS subpart Kc to improve clarity.

One commenter recommended that the EPA clarify in 40 CFR 60.113c(d)(1) that the requirement to determine MTVP is not a one-time requirement, as implied by the word ''initial,'' but also applies to non-anticipated tank service changes. We agree that if the VOL stored in the storage vessel changes, the MTVP should be reassessed. We are revising 40 CFR 60.113c(d)(1) to require that this determination be made prior to the

initial filling of the storage vessel or to the refilling of the storage vessel with a new VOL.

One commenter recommended that in 40 CFR 60.115c(d)(5)(i) and 40 CFR 60.116c(c)(10)(i)(A) the EPA should add ''or flare flame'' to any occurrence of ''pilot flame'' consistent with the provisions in 40 CFR 60.112c(d)(5)(iv) and 40 CFR 60.113c(c)(1)(iv)(B). We are revising 40 CFR 60.115c(d)(5)(i) and 40 CFR 60.116c(c)(10)(i)(A) accordingly.

2. Definitions

We received several comments recommending the inclusion of definitions that were not included in the proposal. Additionally, we received comments recommending definition revisions. This section of the preamble summarizes major comments received concerning definitions and provides our responses to those comments.

Comment: Several commenters recommended that the EPA define the term ''pressure relief device'' in NSPS subpart Kc and provided a suggested definition:

> *Pressure relief device* means a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Response: We agree with the commenters and are including a definition of ''pressure relief device'' in NSPS subpart Kc similar to the commenters' suggestion. For storage vessels, we consider ''conservation vents'' to be PRDs. These conservation vents typically have actuation pressure less than 2.5 psig. As such, the last sentence in our final definition reflects a change from the last sentence in our proposed definition to only exclude vacuum breaking devices from the definition of ''pressure relief devices.'' We are also clarifying that, if a device has both a pressure relief function and a vacuum breaking function, such as a conservation vent, the portion of the conservation vent that acts to relieve pressure is considered a PRD and the portion of the conservation vent that acts to relieve vacuum is a vacuum breaking device and not a PRD. We are also adding a definition of ''vacuum breaking device,'' which is specific to the fixed roof portion of the storage vessel and a vacuum breaker which is a component of a floating roof.

Comment: One commenter recommended that the EPA define the term ''pressure release.''

Response: We are adding a definition of ''pressure release'' to 40 CFR 60.111c. We are including in the definition of ''pressure release'' emissions of materials resulting from a vacuum breaking device failing to close prior to the system reaching atmospheric pressure.

Comment: One commenter recommended that the EPA define the terms ''vapor balancing system,'' ''fuel gas,'' ''fuel gas system,'' and ''routed to a process or route to a process.''

Response: We determined that vapor balancing is not appropriate or equivalent to the BSER identified for VOL storage vessels. As such, we are not including a definition of ''vapor balancing system'' in NSPS subpart Kc. We disagree with the commenter's request to define ''fuel gas'' because the ''fuel gas system'' definition is sufficient. We are finalizing definitions for ''fuel gas system'' and ''routed to a process or route to a process'' in NSPS subpart Kc.

Comment: One commenter recommended that the EPA define ''degassing'' with language consistent with the Texas Commission on Environmental Quality's (TCEQ) definition.

Response: The EPA agrees with the commenter to define ''degassing''; however, the TCEQ definition is insufficient as there may be other reasons to empty and degas a storage vessel other than cleaning. While we agree that cleaning may be a step in the process, we expect degassing to occur for other reasons. We are finalizing a definition for ''degassing'' in NSPS subpart Kc to clarify this point.

G. Effective Date and Compliance Dates

Pursuant to CAA section 111(b)(1)(B), the effective date of the final rule requirements in subpart Kc will be the promulgation date. Affected sources that commence construction, reconstruction, or modification after October 4, 2023, must comply with all requirements of subpart Kc no later than the effective date of the final rule or upon startup, whichever is later. The EPA is finalizing amendments to NSPS subpart Kb to include electronic submission requirements. Affected NSPS subpart Kb sources that commence construction, reconstruction, or modification after July 23, 1984, and before October 4, 2023, must comply with the updated requirements to submit reports electronically no later than the effective date of the final rule.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the air quality impacts?

The final provisions in NSPS subpart Kc reduce emissions of VOCs, some of which may also be hazardous air pollutants (HAPs). The EPA estimates that the final standards will reduce VOC emissions by 1,085 tons per year, which includes the impacts from new, modified, and reconstructed storage vessels. More information regarding the air quality impacts and emission reductions are included in the memorandum *Control Options for Storage Vessels* (Docket ID No. EPA–HQ–OAR–2023–0358–0002).

B. What are the cost impacts?

This final action will cost (in 2022 dollars) approximately $21.1 million in total capital cost and result in a total annualized cost of $5.38 million per year (including product recovery) based on our analysis of the final actions in NSPS subpart Kc. More information about the estimated cost of the final actions can be found in the memorandum *Control Options for Storage Vessels* (Docket ID No. EPA–HQ–OAR–2023–0358–0002).

C. What are the economic impacts?

For economic impact analyses (EIA) of rules that directly affect a single industry or a few industries, the EPA often prepares a partial equilibrium analysis. In this type of economic analysis, the focus of the effort is on estimating impacts on a single affected industry or several affected industries, and all impacts of this rule on industries outside of those affected are assumed to be zero or so inconsequential as to not be considered in the analysis. If the compliance costs, which are key inputs to an EIA, are quite insignificant, then the impact analysis could consist of a calculation of annual (or annualized) costs as a percentage of sales for affected companies. This latter type of analysis is called a screening analysis and is applied when a partial equilibrium or more complex EIA approach is deemed not necessary given the expected size of the impacts.

The net present value of the estimated cost impacts of NSPS subpart Kc is $19.4 million, discounted at a 3 percent rate over a 5-year analytic timeframe from 2024 to 2028 in 2022 dollars. Using a 7 percent discount rate, the net present value of the estimated cost impacts is $17.3 million. The equivalent annualized value in 2022 dollars is a

cost of approximately $4.1 million using a discount rate of either 3 or 7 percent.

Storage vessels in NSPS subpart Kb are most closely associated with the petroleum and coal products industry (NAICS 324000), the chemical products industry (NAICS 325000), and the petroleum bulk stations and terminals industry (NAICS 424710). While we do not know the precise distribution of new and modified storage vessels across the affected sectors, we know that there are affected storage vessels in the sectors mentioned earlier in this preamble. These sectors contribute gross value added, ranging from $200 to $501 billion per sector, to the national economy. In comparison, the requirements in NSPS subpart Kc have estimated total costs of $21 million. The total cost is the total incurred collectively amongst numerous sectors, and each of the sectors examined has sales of at least $200 billion. Thus, the compliance costs of this action are insignificant relative to the scale for the sectors affected, and it is appropriate to evaluate the economic impacts by conducting a screening analysis comparing the costs to entity-level sales.

Given the results of the analysis, these economic impacts are relatively low for affected industries and entities impacted by this final rule, and there will not be substantial impacts on the markets for affected products. The costs of the final rule are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms. We also expect minimal impacts on employment.

D. What are the benefits?

The final provisions in NSPS subpart Kc would reduce emissions of VOCs, some of which may also be HAPs. Because VOCs react in the atmosphere to produce ozone, these standards would help to reduce atmospheric ozone concentrations and reduce health effects associated with high levels of ozone. Furthermore, the final requirements to submit reports and test results electronically would improve monitoring, compliance, and implementation of the rule.

E. What analysis of environmental justice did we conduct?

For purposes of analyzing regulatory impacts, under Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* the EPA relies upon its June 2016 ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' which provides recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time, resource constraints, and analytical challenges will vary by media and circumstance. The Technical Guidance states that a regulatory action may involve potential EJ concerns if it could: (1) create new disproportionate impacts on communities with EJ concerns; (2) exacerbate existing disproportionate impacts on communities with EJ concerns; or (3) present opportunities to address existing disproportionate impacts on communities with EJ concerns through this action under development.

The EPA's EJ technical guidance states that ''[t]he analysis of potential EJ concerns for regulatory actions should address three questions: (A) Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern in the baseline? (B) Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern for the regulatory option(s) under consideration? (C) For the regulatory option(s) under consideration, are potential EJ concerns created or mitigated compared to the baseline?'' [9]

Because this action finalizes standards of performance for new, modified, and reconstructed sources that commence construction after October 4, 2023, the locations of the construction of new VOL storage vessels are not known. In addition, it is not known which of the existing facilities will be modified or reconstructed in the future. Therefore, we are unable to quantitatively estimate the potential environmental justice impact of NSPS subpart Kc. Over the next 5 years, the EPA estimates that 1,440 new tanks and 30 modified tanks would be subject to NSPS subpart Kc. We estimate that there are more than 10,000 existing VOL storage vessels, but we do not have a list of specific storage vessels and their locations. Therefore, we cannot perform a proximity demographic analysis of populations near existing units as a proxy for units that may be modified or reconstructed and become subject to NSPS subpart Kc. Finally, because we based the analysis of the impacts and emission reductions on model plants, we cannot ascertain specifically how the potential benefits of this rule would be distributed across the population. Thus, we are limited in our ability to estimate the potential EJ impacts of this rule.

The EPA expects that NSPS subpart Kc will ensure compliance via revised vapor pressure applicability thresholds, stricter seal requirements on IFR tanks, equivalent control requirements for EFRs, and strengthened closed vent system standards for vessels routed to a control device, fuel gas system, or process. This action finalizes standards of performance that apply at all times (including periods of SSM) and achieve an average 98 percent control efficiency. The rule will also increase data transparency through electronic reporting. Therefore, effects of emissions on populations in proximity to any future affected sources, including in communities potentially overburdened by pollution, which are often communities with EJ concerns, will be minimized due to the compliance with the standards of performance being finalized in this action.

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2791.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until the Office of Management and Budget (OMB) approves them.

The EPA is finalizing requirements for storage vessels, including periodic inspections based on the type of storage vessel. This information will be collected to assure compliance with NSPS subpart Kc.

[9] *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,* U.S. EPA, June 2016. Quote is from Section 3—Key Analytic Considerations, page 11. *https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis.*

Respondents/affected entities: Owners or operators of VOL storage vessels.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Kc).

Estimated number of respondents: 588.

Frequency of response: Initially and semiannually.

Total estimated burden: 16,394 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,009,357 (per year), includes $528,240 in annualized capital and no operation or maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small businesses and small governmental jurisdictions that own or operate VOL storage vessels. The Agency has determined that small entities may experience an impact of likely below 1 percent relative to sales for any affected small entity, and an even larger margin before it would approach a 1 percent impact for a substantial number of small entities. Details of this analysis are presented in the memorandum *Economic Impact Analysis for the New Source Performance Standards (NSPS) for the Volatile Organic Liquid Storage Vessels (Tanks)* included in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does have Tribal implications as specified in Executive Order 13175. NSPS subpart Kb includes provisions for storage vessels that already have impacts on Tribal governments that have storage vessels with at least 20,000 gallons of capacity and that meet the vapor pressure thresholds for general rule applicability or control applicability. NSPS subpart Kc includes updates to the VOC standards and monitoring requirements for storage vessels that meet the revised vapor pressure thresholds for control. Additionally, basic requirements for determining a VOL's MTVP, recordkeeping, and good air pollution control practices are being finalized for all storage vessels greater than 20,000 gallons that only store VOLs with an MTVP greater than or equal to 0.25 psia. These changes will only impact storage vessels that are constructed, modified, or reconstructed after the proposal date.

Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes,* the EPA offered government-to-government consultation with Tribes by sending a letter dated October 3, 2023, inviting all federally recognized Tribes to request a consultation. The EPA received one request for consultation. On November 8, 2023, the EPA met with the Tribe for the purposes of discussing NSPS subpart Kc and other issues but were unable to conduct consultation on this specific rulemaking.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The final rule will reduce emissions of VOCs, some of which may also be HAPs. These standards will help to reduce atmospheric ozone concentrations and reduce health effects associated with high levels of ozone and are projected to improve overall health, including that of children.

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

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

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action for NSPS subparts Kb and Kc involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, the Agency identified no such standards. Searches were conducted for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3A, 3B, 3C, 4, 6, 10, 15, 16, 16A, 18, 21, 22, and 25A of 40 CFR part 60, appendix A. The EPA has decided to use EPA Methods 21, 22, and 25A. Additional information for the voluntary consensus standard search and determinations can be found in the memorandum titled, *Voluntary Consensus Standard Results for Review of Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels).* All potential standards were reviewed to determine the practicality of the voluntary consensus standards for this rule. Although there were no applicable voluntary consensus standards identified, we are finalizing the proposal to amend 40 CFR 60.17 to incorporate by reference two ASTM methods as discussed in section III.M. of the proposal preamble (88 FR 68550; October 4, 2023). These include the following:

- ASTM D6377–20, *Standard Test Method for Determination of Vapor Pressure of Crude Oil: $VPCR_x$ (Expansion Method).* The method is an automated device method for measuring vapor pressures for crude oils samples between 29 kPa and 180 kPa at 37.8 °C. The method is suitable for testing with a 4:1 vapor-liquid ratio.
- ASTM D6378–22, *Standard Test Method for Determination of Vapor Pressure (VPX) of Petroleum Products, Hydrocarbons, and Hydrocarbon-Oxygenate Mixtures (Triple Expansion Method).* The method is an automated device method for measuring vapor pressures between 7 kPa and 150 kPa at 37.8 °C for tested samples with boiling points at 0 °C. The method is suitable for volatile organic liquids,

hydrocarbons and liquid petroleum products sampled at a 4:1 vapor-liquid ratio.

The ASTM standards are available from ASTM, International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *https://www.astm.org.*

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

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with EJ concerns. Over the next 5 years, the EPA estimates that 1,440 new tanks and 30 modified tanks will be subject to NSPS subpart Kc. However, the locations of any new VOL storage vessels that would be subject to NSPS subpart Kc are not known. Furthermore, there is insufficient data available regarding the locations of existing VOL storage vessels. The EPA estimates that there are more than 10,000 existing storage vessels subject to NSPS subpart Kb, but we do not have a list of specific storage vessels and their locations. Therefore, we cannot perform a proximity demographic analysis of populations near existing storage vessels as a proxy for storage vessels that may be modified or reconstructed and become subject to NSPS subpart Kc. Finally, because we based the analysis of the impacts and emission reductions on model plants, we cannot ascertain specifically how the potential benefits of this rule would be distributed across the population. Thus, we are limited in our ability to estimate the potential EJ impacts of this rule.

The information supporting this Executive Order review is contained in section V.E. of this document. All pertinent supporting documents such as the technical memorandum, *Control Options for Storage Vessels* (Docket ID No. EPA–HQ–OAR–2023–0358–0002), which discusses the costs and environmental impacts of the regulatory options considered, is in the docket.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency is amending part 60 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

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

Subpart A—General Provisions

■ 2. Amend § 60.17 by:
■ a. Redesignating paragraphs (h)(198) through (233) as (h)(200) through (235); and
■ b. Adding paragraphs (h)(198) and (199).

The additions read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(198) ASTM D6377–20, Standard Test Method for Determination of Vapor Pressure of Crude Oil: $VPCR_x$ (Expansion Method), (Approved June 1, 2020); IBR approved for § 60.113c.

(199) ASTM–D6378–22, Standard Test Method for Determination of Vapor Pressure (VPX) of Petroleum Products, Hydrocarbons, and Hydrocarbon-Oxygenate Mixtures (Triple Expansion Method), (Approved July 1, 2022); IBR approved for § 60.113c.

* * * * *

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984, and On or Before October 4, 2023

■ 3. Revise the heading of subpart Kb to read as set out above.
■ 4. Amend § 60.110b by revising paragraph (a) to read as follows:

§ 60.110b Applicability and designation of affected facility.

(a) Except as provided in paragraph (b) of this section, the affected facility to which this subpart applies is each storage vessel with a capacity greater than or equal to 75 cubic meters (m^3) that is used to store volatile organic liquids (VOL) for which construction, reconstruction, or modification is commenced after July 23, 1984, and on or before October 4, 2023.

* * * * *

■ 5. Amend § 60.115b by:
■ a. Revising paragraphs (a), (b), and (d); and
■ b. Adding paragraphs (e), (f), and (g).

The revisions and additions read as follows:

§ 60.115b Reporting and recordkeeping requirements.

* * * * *

(a) After installing control equipment in accordance with § 60.112b(a)(1) (fixed roof and internal floating roof), the owner or operator shall meet the following requirements.

(1) Furnish the Administrator with a report that describes the control equipment and certifies that the control equipment meets the specifications of § 60.112b(a)(1) and § 60.113b(a)(1). Prior to October 15, 2024, this report shall be an attachment to the notification required by § 60.7(a)(3). Beginning October 15, 2024, the owner or operator must submit all subsequent reports in PDF format following the procedures specified in paragraph (e) of this section.

(2) Keep a record of each inspection performed as required by § 60.113b(a)(1), (a)(2), (a)(3), and (a)(4). Each record shall identify the storage vessel on which the inspection was performed and shall contain the date the vessel was inspected and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

(3) If any of the conditions described in § 60.113b(a)(2) are detected during the annual visual inspection required by § 60.113b(a)(2), a report shall be furnished to the Administrator within 30 days of the inspection. Each report shall identify the storage vessel, the nature of the defects, and the date the storage vessel was emptied or the nature of and date the repair was made. Beginning October 15, 2024, all subsequent reports must be submitted in PDF format following the procedures in paragraph (e) of this section.

(4) After each inspection required by § 60.113b(a)(3) that finds holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects listed in § 60.113b(a)(3)(ii), a report shall be furnished to the Administrator within 30 days of the inspection. The report shall identify the storage vessel and the

reason it did not meet the specifications of § 60.112b(a)(1) or § 60.113b(a)(3) and list each repair made. Beginning October 15, 2024, all subsequent reports must be submitted in PDF format following the procedures in paragraph (e) of this section.

(b) After installing control equipment in accordance with § 60.112b(a)(2) (external floating roof), the owner or operator shall meet the following requirements.

(1) Furnish the Administrator with a report that describes the control equipment and certifies that the control equipment meets the specifications of § 60.112b(a)(2) and § 60.113b(b)(2), (b)(3), and (b)(4). Prior to October 15, 2024, this report shall be an attachment to the notification required by § 60.7(a)(3). Beginning October 15, 2024, the owner or operator must submit all subsequent reports in PDF format following the procedures specified in paragraph (e) of this section.

(2) Within 60 days of performing the seal gap measurements required by § 60.113b(b)(1), furnish the Administrator with a report that contains the following information. Beginning October 15, 2024, all subsequent reports must be submitted in PDF format following the procedures in paragraph (e) of this section.

(i) The date of measurement;

(ii) The raw data obtained in the measurement; and

(iii) The calculations described in § 60.113b(b)(2) and (b)(3).

(3) Keep a record of each gap measurement performed as required by § 60.113b(b). Each record shall identify the storage vessel in which the measurement was performed and shall contain:

(i) The date of measurement;

(ii) The raw data obtained in the measurement; and

(iii) The calculations described in § 60.113b(b)(2) and (b)(3).

(4) After each seal gap measurement that detects gaps exceeding the limitations specified by § 60.113b(b)(4), submit a report to the Administrator within 30 days of the inspection. The report will identify the vessel and contain the information specified in paragraph (b)(2) of this section and the date the vessel was emptied or the repairs made and date of repair. Beginning October 15, 2024, all subsequent reports must be submitted in PDF format following the procedures in paragraph (e) of this section.

* * * * *

(d) After installing a closed vent system and flare to comply with § 60.112b, the owner or operator shall meet the following requirements.

(1) A report containing the measurements required by § 60.18(f)(1) through (6) shall be furnished to the Administrator as required by § 60.8 of the General Provisions. This report shall be submitted within 6 months of the initial start-up date. Beginning October 15, 2024, all subsequent reports must be submitted in PDF format following the procedures in paragraph (e) of this section.

(2) Records shall be kept of all periods of operation during which the flare pilot flame is absent.

(3) Semiannual reports of all periods recorded under § 60.115b(d)(2) in which the pilot flame was absent shall be furnished to the Administrator. Beginning October 15, 2024, all subsequent reports must be submitted in PDF format following the procedures specified in paragraph (e) of this section.

(e) An owner or operator required to submit notifications or reports following the procedures specified in this paragraph (e) must submit notifications or reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The EPA will make all the information submitted through CEDRI available to the public without further notice to the owner or operator. Do not use CEDRI to submit information the owner or operator claims as CBI. Although the EPA does not expect persons to assert a claim of CBI, if an owner or operator wishes to assert a CBI claim for some of the information in the report or notification, the owner or operator must submit a complete file in the format specified in this subpart, including information claimed to be CBI, to the EPA following the procedures in paragraphs (e)(1) and (2) of this section. Clearly mark the part or all of the information claimed to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. The owner or operator must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph (e).

(1) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings, and be flagged to the attention of the NSPS Kb Lead. Owners and operators who do not have their own file sharing service and who require assistance with submitting large electronic files that exceed the file size limit for email attachments should email *oaqpscbi@epa.gov* to request a file transfer link.

(2) If an owner or operator cannot transmit the file electronically, the owner or operator may send CBI information through the postal service to the following address: U.S. EPA, Attn: OAQPS Document Control Officer and NSPS Kb Lead, Mail Drop: C404–02, 109 T.W. Alexander, P.O. Box 12055, RTP, NC 27711. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(f) Owners and operators required to electronically submit notifications or reports through CEDRI in the EPA's CDX may assert a claim of EPA system outage for failure to timely comply with the electronic submittal requirement. To assert a claim of EPA system outage, owners and operators must meet the requirements outlined in paragraphs (f)(1) through (7) of this section.

(1) The owner or operator must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) The owner or operator must submit notification to the Administrator in writing as soon as possible following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) The owner or operator must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which the owner or operator proposes to report, or if the owner or operator has already met the reporting requirement at the time of the notification, the date the report was submitted.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(g) Owners and operators required to electronically submit notifications or reports through CEDRI in the EPA's CDX may assert a claim of force majeure for failure to timely comply with the electronic submittal requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (g)(1) through (5) of this section.

(1) An owner or operator may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) The owner or operator must submit notification to the Administrator in writing as soon as possible following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) The owner or operator must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which the owner or operator proposes to report, or if the owner or operator has already met the reporting requirement at the time of the notification, the date the report was submitted.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 6. Amend § 60.116b by revising paragraph (d) to read as follows:

§ 60.116b Monitoring of operations.

* * * * *

(d) Except as provided in paragraph (g) of this section, the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure that is normally less than 5.2 kPa or with a design capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure that is normally less than 27.6 kPa shall notify the Administrator within 30 days when the maximum true vapor pressure of the liquid exceeds the respective maximum true vapor pressure values for each volume range. Beginning October 15, 2024, all subsequent notifications must be submitted in PDF format following the procedures specified in § 60.115b(e).

* * * * *

■ 7. Amend § 60.117b by revising paragraph (b) to read as follows:

§ 60.117b Delegation of authority.

* * * * *

(b) Authorities which will not be delegated to States: §§ 60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii), and approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 8. Add subpart Kc consisting of §§ 60.110c through 60.117c to part 60 to read as follows:

Subpart Kc—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After October 4, 2023

Sec.

60.110c Applicability and designation of affected facility.
60.111c Definitions.
60.112c Standard for volatile organic compounds (VOC).
60.113c Testing, monitoring, and inspection procedures.
60.114c Alternative means of emission limitation.
60.115c Recordkeeping requirements.
60.116c Reporting requirements.
60.117c Delegation of authority.

§ 60.110c Applicability and designation of affected facility.

(a) Except as provided in paragraph (b) of this section, the affected facility to which this subpart applies is each storage vessel with a capacity greater than or equal to 20,000 gallons (gal) (75.7 cubic meters (m^3)) that is used to store volatile organic liquids (VOL) for which construction, reconstruction, or modification is commenced after October 4, 2023.

(b) This subpart does not apply to the following:

(1) Vessels at coke oven by-product plants;

(2) Pressure vessels designed to operate in excess of 29.7 pounds per square inch absolute (psia) (204.9 kilopascals (kPa) absolute) and without emissions to the atmosphere;

(3) Vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships;

(4) Vessels with a design capacity less than or equal to 420,000 gal (1,589.874 m^3) used for petroleum or condensate stored, processed, or treated prior to custody transfer;

(5) Vessels located at bulk gasoline plants as defined in 40 CFR 63.11100;

(6) Vessels located at gasoline service stations;

(7) Vessels used to store beverage alcohol; or

(8) Vessels that only store VOL with a maximum true vapor pressure less than 0.25 psia (1.7 kPa absolute).

(c) Storage vessels that are affected facilities according to paragraph (a) of this section for which construction or reconstruction commenced after October 4, 2023 are subject to the standards in § 60.112c and the corresponding requirements in §§ 60.113c through 60.116c as new sources any time they meet the specifications in either paragraph (c)(1) or (2) of this section, regardless of whether they initially contained VOL with a maximum true vapor pressure below the applicable threshold in paragraph (c)(1) or (2) of this section.

(1) Storage vessels with a capacity greater than or equal to 40,000 gal (151 m^3) containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 0.5 psia (3.4 kPa).

(2) Storage vessels with a capacity greater than or equal to 20,000 gal (75.7

m^3) but less than 40,000 gal (151 m^3) containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 1.5 psia (10.3 kPa).

(d) Storage vessels that are affected facilities according to paragraph (a) of this section for which construction or reconstruction commenced on or before October 4, 2023, (''existing storage vessels'') and are modified after October 4, 2023, are subject to the standards in § 60.112c and the corresponding requirements in §§ 60.113c through 60.116c as modified sources any time they meet the specifications in either paragraph (d)(1) or (2) of this section.

(1) For an existing storage vessel with a capacity greater than or equal to 40,000 gal (151 m^3), containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 0.5 psia (3.4 kPa).

(2) For an existing storage vessel with a capacity greater than or equal to 20,000 gal (75.7 m^3) but less than 40,000 gal (151 m^3), containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 1.5 psia (10.3 kPa).

(e) For the purposes of this subpart,

(1) The phrase ''change in the method of operation of, an existing facility which increases the amount of any air pollutant'' in the definition of modification in § 60.2 or ''operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies'' in § 60.14(a) means a change in operation occurs if the storage vessel is used to store a VOL that has a greater maximum true vapor pressure than all VOL historically stored or permitted; and

(2) The exemption in § 60.14(e)(4) regarding alternative fuel or raw material does not apply to storage vessels.

(f) Storage vessels that are affected facilities according to paragraph (a) of this section and do not meet the criteria in either paragraph (c)(1), (c)(2), (d)(1), or (d)(2) of this section are subject to the requirements in § 60.113c(d), if applicable, and § 60.115c(b).

(g) All standards including emission limitations shall apply at all times, including periods of startup, shutdown and malfunction. As provided in § 60.11(f), this paragraph (g) supersedes the exemptions for periods of startup, shutdown, and malfunction in subpart A of this part.

(h) Owners or operators may choose to comply with the provisions of this subpart to demonstrate compliance with subparts K, Ka, and Kb of this part. Compliance with the provisions of this subpart, including all control requirements, recordkeeping, and reporting requirements, will constitute compliance with the applicable storage vessel provisions in subparts K, Ka, and Kb.

(i) Owners or operators may choose to comply with this subpart to demonstrate compliance with 40 CFR part 63, subpart WW for storage vessels equipped with an internal or external floating roof that is subject to this subpart and 40 CFR part 63, subpart WW. Compliance with this subpart, including all floating roof requirements, recordkeeping, and reporting requirements, will constitute compliance with the applicable storage vessel provisions in 40 CFR part 63, subpart WW.

§ 60.111c Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section as follows:

Access hatch means an opening in the roof with a vertical well and a cover attached to it. Access hatch provides passage for workers and materials through the roof for construction or maintenance.

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device. Closed vent system does not include the vapor collection system that is part of any tank truck or railcar.

Custody transfer means the transfer of produced petroleum and/or condensate, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation.

Degassing means the process of removing VOL vapors from a storage vessel during, or in preparation of, cleaning or when taking the storage vessel out of service for inspection, repair, or other reason.

Enclosed combustion device means a thermal combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize air pollutants and that emits the oxidized pollutants through a conveyance suitable to conduct a performance test. An *enclosed combustion device* may have recovery heat to preheat combustion air, but its primary purpose is for emission control and not to produce useful heat. *Enclosed combustion devices* include, but are not limited to, thermal oxidizers and incinerators. For the purpose of this subpart, process heaters and boilers are not *enclosed combustion devices.*

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a storage vessel without a fixed roof.

Fill means the introduction of VOL into a storage vessel but not necessarily to complete capacity.

Flare means a thermal combustion device using an open or shrouded flame (without full enclosure) such that the pollutants are not emitted through a conveyance suitable to conduct a performance test.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices, or in- process combustion equipment such as furnaces and gas turbines, either singly or in combination.

Gasoline service station means any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage vessels.

Gauge float means a device that is used to indicate the level of liquid within the storage vessel. The float rests on the liquid surface and is housed inside a well that is closed by a removable cover.

Gauge hatch/sample port/sample well means an opening in the roof that provides access for gauging or sampling. A gauge hatch is usually equipped with a closing cover or a funnel and slit-fabric seal to cover the opening.

Internal floating roof means a floating roof located in a storage vessel with a fixed roof. For the purposes of this subpart, an external floating roof located in a storage vessel to which a fixed roof has been added is considered to be an internal floating roof.

Liquid-mounted primary seal means a liquid or foam-filled seal mounted in continuous contact with the liquid between the wall of the storage vessel and the floating roof around the entire circumference of the storage vessel.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the volatile organic compounds (as defined in 40 CFR 51.100) in the stored VOL at the temperature equal to the highest calendar-month average of the VOL storage temperature for VOLs stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for VOLs stored at the ambient

temperature, as determined using the procedures specified in § 60.113c(d).

Mechanical shoe primary seal means a metal sheet (the shoe) held vertically against the wall of the storage vessel by springs or weighted levels and is connected by braces to the floating roof. A flexible coated fabric (the envelope) spans the annular space between the metal sheet and the floating roof.

Petroleum means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Petroleum liquids means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device or resulting from vacuum breaking device failing to close prior to the system reaching atmospheric pressure. This release can be one release or a series of releases over a short time period.

Pressure relief device means a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. Devices with low opening pressures must be monitored as bypass lines. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices. Devices that are actuated only by a vacuum are not pressure relief devices. If a device has both a pressure relief function and a vacuum breaking function, such as a conservation vent, the portion of the conservation vent that acts to relieve pressure is considered a pressure relief device and the portion of the conservation vent that acts to relieve vacuum is a vacuum breaking device and not a pressure relief device.

Process tank means a tank that is used within a process (including a solvent or raw material recovery process) to collect material discharged from a feedstock storage vessel or equipment within the process before the material is transferred to other equipment within the process, to a product or by-product storage vessel, or to a vessel used to store recovered solvent or raw material. In many process tanks, unit operations such as reactions and blending are conducted. Other process tanks, such as surge control vessels and bottoms receivers, however, may not involve unit operations.

Reid vapor pressure means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquified petroleum gases.

Rim-mounted secondary seal means a secondary seal mounted on the rim of the floating roof of a storage vessel and forms continuous seal from the rim of the floating roof to the wall of the storage vessel.

Rim seal system means a primary seal or a primary and secondary seal, which is mounted above the primary seal, and is attached to the deck perimeter and contacts the storage vessel wall.

Rim vent means a device consisting of a weighted pallet that rests on a valve seat. Rim vents are used to release any excess pressure or vacuum present in the vapor pocket between the seal and the rim area of a floating roof storage vessel.

Routed to a process or route to a process means the emissions are conveyed by hardpiping or a closed vent system to any enclosed portion of a process unit where the emissions are predominately recycled and/or consumed in the same manner as a material that fulfills the same function in the process; and/or transformed by chemical reaction into materials that are not volatile organic liquids; and/or incorporated into a product; and/or recovered.

Storage vessel means each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors;

(2) Subsurface caverns or porous rock reservoirs; or

(3) Process tanks.

Vacuum breaker/automatic bleeder vent means a device used to equalize the pressure of the vapor space across the deck of a floating roof as the floating roof is either being landed on or floated off its roof supports. A vacuum breaker/automatic bleeder vent consists of a well with a cover. The cover is designed to open as the floating roof is landed. Opening of the cover may be accomplished by mechanisms such as leg actuation or pressure actuation.

Vacuum breaking device means a device on a fixed roof of a storage vessel used to prevent mechanical failure of the storage vessel due to vacuum created as liquids are withdrawn from the storage vessel. If a device has both a pressure relief function and a vacuum breaking function, such as a conservation vent, the portion of the conservation vent that acts to relieve vacuum is considered a vacuum breaking device and the portion of the conservation vent that acts to relieve excess pressure is a pressure relief device and not a vacuum breaking device.

Volatile organic liquid (VOL) means any organic liquid which can emit volatile organic compounds (as defined in 40 CFR 51.100) into the atmosphere.

Waste means any liquid resulting from industrial, commercial, mining, or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded or recycled.

§ 60.112c Standard for volatile organic compounds (VOC).

(a) *General storage vessel control requirements.* You must equip and operate each storage vessel affected facility meeting the thresholds in § 60.110c(c)(1), (c)(2), (d)(1), or (d)(2) as specified in paragraphs (a)(1) through (4) of this section, as applicable.

(1) For each storage vessel affected facility containing a VOL that, as stored, has a maximum true vapor pressure less than 11.1 psia (76.6 kPa), you may elect to install and operate either an internal floating roof meeting the requirements in paragraph (b) of this section, an external floating roof meeting the requirements in paragraph (c) of this section, or a closed vent system routed to a control device, fuel gas system, or process as specified in paragraph (d) of this section.

(2) For each storage vessel affected facility containing a VOL that, as stored, has a maximum true vapor pressure of 11.1 psia (76.6 kPa) or more, you must install and operate a closed vent system routed to a control device, fuel gas system, or process as specified in paragraph (d) of this section.

(3) For each storage vessel affected facility complying with the closed vent system routed to a control device, fuel gas system, or process provisions specified in paragraph (d) of this section regardless of size and for each storage vessel with a design capacity greater than or equal to 1,000,000 gal (3,790 m^3) containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 1.5 psia (10.3 kPa), you must also comply with the requirements in paragraph (e) of this section.

(4) You must meet the applicable testing, monitoring, and inspection requirements specified in § 60.113c, recordkeeping requirements specified in § 60.115c, and reporting requirements specified in § 60.116c.

(b) *Requirements for an internal floating roof.* You must equip and operate each internal floating roof as specified in paragraphs (b)(1) through (16) of this section, as applicable.

(1) The internal floating roof must rest or float on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof. The internal floating roof must be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the roof supports, the process of filling, emptying, or refilling must be continuous and must be accomplished as rapidly as possible.

(2) Except as provided in paragraph (b)(14) of this section, each internal floating roof must be equipped with the following closure devices between the wall of the storage vessel and the edge of the internal floating roof:

(i) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(ii) The primary seal must be either a mechanical shoe seal or a liquid-mounted seal. If a mechanical shoe seal is used, it must be installed so that one end of the shoe extends into the stored VOL and the other end extends a minimum vertical distance of 6 inches (15 centimeters) above the stored organic liquid surface.

(iii) The secondary seal must be rim-mounted.

(3) Each opening in a noncontact internal floating roof except for vacuum breaker/automatic bleeder vents and the rim vents is to provide a projection below the liquid surface.

(4) Vacuum breaker/automatic bleeder vents must be equipped with a gasket and are to be closed at all times, with no visible gaps, when the roof is floating. Vacuum breaker/automatic bleeder vents must be set to open only when the roof is being floated off or is being landed on the roof supports.

(5) Rim vents must be equipped with a gasket and must be closed at all times with no visible gaps when the roof is floating. Rim vents must be set to open only when the internal floating roof is not floating or when the pressure beneath the rim seal system exceeds the manufacturer's recommended setting.

(6) Each penetration of the internal floating roof for the purpose of sampling must be a gauge hatch/sample well. Except as specified in paragraph (b)(14) of this section, the gauge hatch/sample well must have a gasketed cover, which must be closed at all times, with no visible gaps, except when the hatch or well must be opened for access.

(7) Each access hatch and gauge float well must be equipped with a cover that is gasketed and that is bolted or otherwise mechanically secured. The cover must be closed and must be bolted or otherwise mechanically secured at all times, with no visible gaps, except when the hatch or well must be opened for access.

(8) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof must have a flexible fabric sleeve seal or a gasketed sliding cover.

(9) Each penetration of the internal floating roof that allows for passage of an unslotted leg ladder or unslotted ladder/guidepole combination must have a gasketed sliding cover. The cover must be closed at all times, with no visible gaps, except when the well must be opened for access.

(10) Each slotted guidepole must be equipped with one of the controls specified in paragraphs (b)(10)(i) through (v) of this section. The covers must be designed to be closed at all times, with no visible gaps, except when the cover must be opened for access.

(i) Gasketed sliding well cover, with pole sleeve. The sleeve must extend into the stored liquid.

(ii) Gasketed sliding well cover, with pole sleeve and pole wiper. The sleeve must extend into the stored liquid.

(iii) Gasketed sliding well cover, with pole float and pole wiper. The wiper or seal of the pole float must be at or above the height of the pole wiper.

(iv) Gasketed sliding well cover, with pole float, pole sleeve, and pole wiper. The sleeve must extend into the stored liquid. The wiper or seal of the pole float must be at or above the height of the pole wiper.

(v) A flexible device that completely encloses the slotted guidepole and eliminates the hydrocarbon vapor emissions pathway from inside the storage vessel through the guidepole slots to the outside air; a gasketed guidepole cover at the top of the guidepole; and a gasketed sliding well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (*e.g.,* pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

(11) Ladder-slotted guidepole combination wells must be equipped with a gasketed sliding well cover and a ladder sleeve. The sliding well cover must be designed to be closed at all times with no visible gaps, except when gauging or sampling.

(12) Unslotted guidepoles must be equipped with one of the controls specified in paragraph (b)(12)(i) or (ii) of this section. The controls must be designed to be closed at all times with no visible gaps.

(i) A gasketed guidepole cover at the top of the guidepole; a gasketed sliding well cover; and a pole sleeve. The guidepole cover must be closed at all times, except when required to be opened for access. The gasketed sliding well cover must seal any openings between the well cover and the guidepole, any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

(ii) A gasketed guidepole cover at the top of the guidepole; a gasketed sliding well cover; and a pole wiper. The guidepole cover must be closed at all times, except when required to be opened for access. The gasketed sliding well cover must seal any openings between the well cover and the guidepole (*e.g.,* pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

(13) Except for leg sleeves and stub drains, each opening in the internal floating roof not specified in paragraphs (b)(4) through (12) of this section, must be equipped with a cover or lid which is to be maintained in a closed position at all times (*i.e.,* no visible gap) except when the device must be opened for access. The cover or lid must be equipped with a gasket.

(14) For each modified storage vessel as specified in § 60.110c(d) with an existing internal floating roof, you may elect to comply with the rim seal system requirements in § 60.112b(a)(1)(ii) or § 60.110b(e) instead of the requirements in paragraph (b)(2) of this section, and you may elect to comply with the gauge hatch/sample well requirements in § 60.112b(a)(1)(vii) or § 60.110b(e) instead of the requirements in paragraph (b)(6) of this section.

(15) A system equivalent to those described in paragraphs (b)(1) though (14) of this section, as applicable, as provided in § 60.114c.

(16) Equip, maintain, and operate each internal floating roof control system to maintain the vapor concentration above the floating roof at or below 25 percent of the lower explosive limit (LEL) on a 5-minute

rolling average basis without the use of purge gas. This standard may require additional controls, such as improved seam seals, beyond those specified in paragraphs (b)(1) through (15) of this section. Compliance with this paragraph (b)(16) must be determined using the methods in § 60.113c(a)(3). Exceeding the LEL is considered an inspection failure under § 60.113c(a)(2)(i) and must be remedied as such. Any repairs made must be confirmed effective through re-monitoring of the LEL and meeting the limits in this paragraph (b)(16) within the timeframes specified in § 60.113c(a)(2)(i).

(c) *Requirements for an external floating roof.* You must equip and operate each external floating roof as specified in paragraphs (c)(1) through (4) of this section.

(1) The roof must be floating on the liquid at all times (*i.e.,* off the roof supports) except during initial fill until the roof is lifted off roof supports and when the storage vessel is completely emptied or subsequently emptied and refilled. The process of filling, emptying, or refilling when the roof is resting on the roof supports must be continuous and must be accomplished as rapidly as possible.

(2) Each external floating roof must be equipped with a primary and secondary rim seal system as specified in paragraph (b)(2) of this section, except that if a mechanical shoe primary seal is used, it must be installed so that one end of the shoe extends into the stored VOL and the other end extends a minimum vertical distance of 24 inches (61 centimeters) above the stored organic liquid surface. The external floating roof also must have welded deck seams, and it must have deck fitting controls as specified in paragraphs (c)(2)(i) through (ix) of this section, as applicable. References to an internal floating roof in paragraph (b)(2) of this section means an external floating roof for the purposes of this paragraph (c)(2).

(i) Each opening in an external floating roof except for vacuum breaker/automatic bleeder vents and the rim vents is to provide a projection below the liquid surface.

(ii) Vacuum breaker/automatic bleeder vents must be equipped with a gasket and are to be closed at all times, with no visible gaps, when the roof is floating. Vacuum breaker/automatic bleeder vents must be set to open only when the roof is being floated off or is being landed on the roof supports.

(iii) Rim vents must be equipped with a gasket and must be closed at all times with no visible gaps when the roof is floating. Rim vents must be set to open only when the external floating roof is not floating or when the pressure beneath the rim seal system exceeds the manufacturer's recommended setting.

(iv) Each penetration of the external floating roof for the purpose of sampling must be a gauge hatch/sample well. The gauge hatch/sample well must have a gasketed cover, which must be closed at all times, with no visible gaps, except when the hatch or well must be opened for access.

(v) Each access hatch and gauge float well must be equipped with a cover that is gasketed and that is bolted or otherwise mechanically secured. The cover must be closed and must be bolted or otherwise mechanically secured at all times, with no visible gaps, except when the hatch or well must be opened for access.

(vi) Except as specified in paragraph (c)(3) of this section, if the external floating roof does not have a liquid-mounted primary seal, all guidepoles must be unslotted and must be equipped as specified in paragraph (b)(12) of this section.

(vii) Except as specified in paragraph (c)(3) of this section, if the external floating roof has a liquid-mounted primary seal, equip each guidepole as specified in paragraphs (c)(2)(vii)(A) and (B) of this section.

(A) Each slotted guidepole must be equipped as specified in paragraphs (b)(10)(ii) or (iv) of this section.

(B) Each unslotted guidepole must be equipped as specified in paragraph (b)(12) of this section.

(viii) Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(ix) Except for leg sleeves, each opening in the external floating roof not subject to controls specified in paragraphs (c)(2)(i) through (viii) of this section must be equipped with a cover or lid which is to be maintained in a closed position at all times (*i.e.,* no visible gap), except when the device must be opened for access. The cover or lid must be equipped with a gasket.

(3) For each modified storage vessel as specified in § 60.110c(d) with an existing external floating roof, you may elect to comply with any of the guidepole controls specified in paragraphs (b)(10) and (12) of this section regardless of the type of primary seal used.

(4) A system equivalent to those described in paragraphs (c)(1) through (3) of this section as provided in § 60.114c.

(d) *Requirements for closed vent system routed to a control device, fuel gas system, or process.* You must design, install, and operate each affected storage vessel with a closed vent system that routes to a control device, fuel gas system, or process as specified in paragraphs (d)(1) through (7) of this section.

(1) The storage vessel must be designed and operated to be routed through a closed vent system to a control device, fuel gas system, or process at all times the storage vessel contains VOL without venting to the atmosphere through either meeting the storage vessel design requirements specified in paragraph (d)(1)(i) of this section or the vapor recovery system design requirements specified in paragraph (d)(1)(ii) of this section. Compliance with this requirement must be demonstrated according to paragraph (d)(1)(iii) of this section. Any vacuum breaking device on the storage vessel must close while the storage vessel is still under vacuum of at least −0.1 inches of water (−0.0036 psig or −0.025 kPa gauge).

(i) The storage vessel must be designed to operate at a gauge pressure of no less than 1 psi greater than the maximum true vapor pressure of the stored liquid and any back pressure anticipated when the storage vessel is filled at its maximum rate without venting to the atmosphere.

(ii) The vapor recovery system must be designed and operated to maintain the pressure in each storage vessel routed to a control device below the venting pressure of that storage vessel.

(iii) You must equip each pressure relief device and vacuum breaking device on a storage vessel with a device(s) or use a monitoring system that is capable of meeting the requirements in paragraphs (d)(1)(iii)(A) through (C) of this section. If all emissions from a pressure relief device are routed through a closed vent system to a control device, process, or fuel gas system, then you are not required to comply with the requirements of this paragraph (d)(1)(iii).

(A) Identifying the pressure release.

(B) Recording the time and duration of each pressure release.

(C) Notifying operators immediately that a pressure release is occurring. The device or monitoring system must be either specific to the pressure relief device or vacuum breaking device itself or must be associated with each storage vessel to indicate a pressure release to the atmosphere. Examples of these types of devices and systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, or pressure monitor.

(2) Except for closed vent systems operated and maintained under negative pressure, each closed vent system must meet the requirements specified in paragraphs (d)(2)(i) through (iii) of this section.

(i) The closed vent system must be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an instrument reading of less than 500 parts per million by volume (ppmv) above background, as determined using Method 21 of appendix A–7 to this part as specified in § 60.113c(c)(2) and (3), and as determined by observations for visible, audible, and olfactory indications of leaks. Visible, audible, and olfactory inspections must be performed quarterly and Method 21 of appendix A–7 instrument monitoring must be conducted at least annually.

(ii) Except for pressure relief devices and except for open-ended valves or lines that use a cap, blind flange, plug, or second valve and follow the requirements specified in § 60.482–6(a)(2), (b), and (c) or follow requirements codified in another regulation that are the same as § 60.482–6(a)(2), (b), and (c), you must comply with the provisions of either paragraph (d)(2)(ii)(A) or (B) of this section for each closed vent system that contains bypass lines that could divert a vent stream to the atmosphere.

(A) Properly install, maintain, and operate a flow indicator that is capable of taking readings every 15 minutes. Install the flow indicator at the entrance to any bypass line.

(B) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration.

(iii) You must equip each pressure relief device on a closed vent system with a device(s) or use a monitoring system that is capable of meeting the requirements in paragraphs (d)(2)(iii)(A) through (C) of this section. If all releases and potential leaks from a pressure relief device are routed through a closed vent system to a control device, process, or fuel gas system, then you are not required to comply with the requirements of this paragraph (d)(2)(iii).

(A) Identifying the pressure release.

(B) Recording the time and duration of each pressure release.

(C) Notifying operators immediately that a pressure release is occurring. The device or monitoring system must be either specific to the pressure relief device itself or must be associated with the process system or piping, sufficient to indicate a pressure release to the atmosphere. Examples of these types of devices and systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, or pressure monitor.

(3) If you route emissions from a storage vessel to a control device, the control device must be designed and operated to reduce inlet VOC emissions by 98 percent or greater. If a flare is used as the control device or if an enclosed combustion device is used for which you elect to comply with the flare operating limits, you must meet the specifications described in paragraph (d)(5) of this section. The control device must be operated at all times when emissions from an affected storage vessel are routed to it except as provided in paragraph (d)(7) of this section.

(4) A system equivalent to those described in paragraphs (d)(1) through (3) of this section as provided in § 60.114c.

(5) If you route from a storage vessel to a flare or enclosed combustion device for with you elect to comply with these flare operating limits, you must meet all applicable requirements specified in 40 CFR 63.670(b) through (g) and (i) through (n) except as provided in paragraphs (d)(5)(i) through (v) of this section.

(i) For the purpose of this subpart,

(A) The term ''regulated materials'' refers to ''vapors from a storage vessel affected facility'';

(B) The term ''pilot flame'' means ''pilot flame or flare flame'';

(C) The terms ''petroleum refinery'' and ''refinery'' mean ''storage vessel affected facility''.

(ii) For visible emissions, use the following text instead of 40 CFR 63.670(c): The owner or operator shall operate with no visible emissions, except for periods not to exceed a total of five (5) minutes during any two (2) consecutive hours, when regulated material is routed to the flare. You must monitor for visible emissions from the flare as specified in § 60.113c(c)(1)(iv)(A).

(iii) The phrase ''and the flare vent gas flow rate is less than the smokeless design capacity of the flare'' in 40 CFR 63.670(d) for flare tip velocity requirements does not apply.

(6) If you route emissions from a storage vessel to a fuel gas system or process, you must meet the requirements in paragraphs (d)(6)(i) through (iv) of this section, as applicable.

(i) The fuel gas system or process must be operating at all times when emissions from an affected storage vessel are routed to it.

(ii) If all emissions are routed to a process, the VOL in the emissions must meet one or more of the conditions specified in paragraphs (d)(6)(ii)(A) through (D) of this section and you must comply with the compliance demonstration requirements in paragraph (d)(6)(iii) of this section.

(A) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process.

(B) Transformed by chemical reaction into materials that are not regulated materials.

(C) Incorporated into a product.

(D) Recovered.

(iii) To demonstrate compliance with paragraph (d)(6)(ii) of this section for an affected storage vessel, you must prepare a design evaluation (or engineering assessment) that demonstrates the extent to which one or more of the conditions specified in paragraphs (d)(6)(ii)(A) through (D) of this section are being met.

(iv) If emissions from an affected storage vessel are routed to a fuel gas system, you must submit the statement of connection for fuel gas systems specified in § 60.116c(a)(7).

(7) To the extent practical, routine maintenance on the control device should be conducted when the storage vessel(s) is(are) out of VOL service. If you comply with all the provisions in paragraphs (d)(7)(i) through (iv) of this section, you may conduct routine maintenance on a control device while one or more storage vessels vented to the control device are storing a VOL.

(i) The storage vessel(s) storing VOL must be designed to operate above the maximum true vapor pressure of the stored VOL according to paragraph (d)(1)(i) of this section.

(ii) The control device must be isolated from the storage vessel(s) using valves(s), blind flange(s), or similar device(s) at the control device or in the closed vent system as near as practical to the control device. You may purge the control device and downstream portion of the closed vent system to remove potentially explosive vapors and create a safe work environment only after the control device is isolated from the storage vessel(s).

(iii) You must continue to comply with the bypass and pressure relief device monitoring requirements in paragraphs (d)(1)(iii), (d)(2)(ii), and (d)(2)(iii) of this section and their associated recordkeeping and reporting requirements. If there are multiple storage vessels connected to the closed vent system with significantly different pressure design limits, you must isolate individual storage vessels to prevent venting during planned maintenance.

Compliance with this paragraph (d)(7)(iii) may limit VOL addition to the storage vessel. If VOL is added to the storage vessel, there must be an approximately equivalent withdrawal of VOL such that the liquid level does not rise sufficiently to increase the pressure in the storage vessel to cause a pressure release from the storage vessel or the closed vent system.

(iv) During this routine maintenance period the affected storage vessels cannot be actively degassed. If the storage vessel is to be emptied and actively degassed, the planned maintenance activity must be conducted when the storage vessel is out of VOL service.

(e) *Requirements for storage vessel degassing.* For each storage vessel meeting the specifications in paragraph (a)(3) of this section, you must meet the requirements in paragraphs (e)(1) through (3) of this section during emptying and degassing of a storage vessel until the vapor space concentration in the storage vessel is less than 10 percent of the LEL or, for nonflammable liquids, 5,000 ppmv as methane. You must determine the LEL or methane concentration using process instrumentation or a portable measurement device and follow procedures for calibration and maintenance according to manufacturer's specifications. You must check instrument calibration and check the instrumental offset response each day the instrument is used and prior to discontinuing controlled degassing to confirm the accuracy of the instrument's readings.

(1) Remove liquids from the storage vessel as much as practicable. Chemicals or a diluent such as a distillate fuel may be introduced into the storage vessel for the purpose of reducing vapor concentration before or during active degassing.

(2) Comply with one of the following:

(i) Reduce total VOC emissions by venting emissions through a closed vent system to a flare or enclosed combustion device for which you elect to comply with the flare provisions and meet the requirements specified in paragraph (d)(5) of this section.

(ii) Reduce total VOC emissions by 98 weight percent by venting emissions through a closed vent system to any combination of non-flare control devices.

(iii) Reduce total VOC emissions by routing emissions to a fuel gas system or process and meet the requirements specified in paragraph (d)(6) of this section.

(3) For floating roof storage vessels, the storage vessel may be opened to set up equipment (*e.g.,* making connections to a temporary control device) for the shutdown operations but must not be actively degassed during this time period.

§ 60.113c Testing, monitoring, and inspection procedures.

For each storage vessel subject to the provision in § 60.112c(a), you must meet the requirements of paragraph (a) of this section if you installed an internal floating roof, paragraph (b) of this section if you installed an external floating roof, or paragraph (c) of this section if you route emissions through a closed vent system to a control device, fuel gas system, or process. You must also meet the applicable requirements of paragraph (d) of this section.

(a) *Requirements for an internal floating roof.* After installing the control equipment for an internal floating roof to meet the provisions in § 60.112c(b), you must meet the requirements specified in paragraphs (a)(1) through (5) of this section.

(1) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), and deck fittings prior to filling the storage vessel with VOL. Any of the conditions described in paragraphs (a)(1)(i) through (iii) of this section constitutes inspection failure. You must repair the items before filling the storage vessel.

(i) Holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric;

(ii) Defects in the internal floating roof; or

(iii) A rim seal or deck fitting control not meeting the applicable requirements in § 60.112c(b)(2) through (13).

(2) Inspect the internal floating roof as specified in paragraph (a)(2)(i) of this section at least once every 12 calendar months after initial fill, and inspect the internal floating roof as specified in paragraph (a)(2)(ii) of this section each time the storage vessel is emptied and degassed, or at a frequency no greater than every 120 calendar months, whichever occurs first.

(i) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is service), and deck fittings, through openings in the fixed roof and conduct LEL monitoring. Any of the conditions described in paragraphs (a)(2)(i)(A) through (F) of this section constitutes inspection failure. Identification of holes or tears in the rim seal is required only for the seal that is visible from the top of the storage vessel. You must repair the items or empty and remove the storage vessel from service within 45 days. If a failure that is detected during inspections required in this paragraph (a)(2)(i) cannot be repaired within 45 days and if the storage vessel cannot be emptied within 45 days, you may request a 30-day extension from the Administrator. Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will assure that the control equipment will be repaired or the storage vessel will be emptied as soon as possible.

(A) Stored liquid on the floating roof;

(B) The internal floating roof is not resting on the surface of the VOL inside the storage vessel;

(C) Holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric;

(D) Defects in the internal floating roof;

(E) A rim seal or deck fitting control not meeting the applicable requirements in § 60.112c(b)(2) through (13); or

(F) The concentration measured according to paragraph (a)(3) of this section exceeds 25 percent of the LEL.

(ii) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any). Any of the conditions described in paragraphs (a)(2)(ii)(A) through (C) of this section constitutes an inspection failure. You must repair the items as necessary so that none of the conditions specified in this paragraph (a)(2)(ii) exist before refilling the storage vessel with VOL. The inspection may be performed entirely from the top side of the floating roof, as long as there is visual access to all deck fittings and rim seal system specified in § 60.112c(b). You must repair the items or empty and remove the storage vessel from service within 45 days. If a failure that is detected during inspections required in this paragraph (a)(2)(ii) cannot be repaired within 45 days and if the storage vessel cannot be emptied within 45 days, you may request a 30-day extension from the Administrator. Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will assure that the control equipment will be repaired or the storage vessel will be emptied as soon as possible.

(A) Defects in the internal floating roof;

(B) Holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric; or

(C) A rim seal or deck fitting control not meeting the applicable requirements in § 60.112c(b)(2) through (13).

(3) Compliance with the LEL limit for internal floating roof storage vessels at

§ 60.112c(b)(16) must be determined based on the procedures specified in paragraphs (a)(3)(i) through (v) of this section. If tubing is necessary to obtain the measurements, the tubing must be non-crimping and made of Teflon or other inert material.

(i) You must conduct LEL monitoring as part of the annual inspection specified in paragraph (a)(2)(i) of this section and at other times upon request by the Administrator. If the measurement cannot be performed during the visual inspection due to wind speeds exceeding those specified in paragraph (a)(3)(iii)(C) of this section, the measurement must be performed within 30 days of the visual inspection. If there is an exceedance of the LEL limit, you must re-monitor in accordance with § 60.112c(b)(16) within 30 days after repair or placing the storage vessel back in service.

(ii) The calibration of the LEL meter must be checked per manufacturer specifications immediately before and after the measurements as specified in paragraphs (a)(3)(ii)(A) and (B) of this section. If tubing will be used for the measurements, the tubing must be attached during calibration so that the calibration gas travels through the entire measurement system.

(A) Conduct the span check using a calibration gas recommended by the LEL meter manufacturer. The calibration gas must contain a single hydrocarbon at a concentration of the vapor corresponding to 50 percent of the LEL (*e.g.,* 2.50 percent by volume when using methane as the calibration gas). The vendor must provide a Certificate of Analysis for the gas, and the certified concentration must be within ±2 percent (*e.g.,* 2.45 percent–2.55 percent by volume when using methane as the calibration gas). The LEL span response must be between 49 percent and 51 percent. If the span check prior to the measurements does not meet this requirement, the LEL meter must be recalibrated or replaced. If the span check after the measurements does not meet this requirement, the LEL meter must be recalibrated or replaced, and the measurements must be repeated.

(B) Check the instrumental offset response using a certified compressed gas cylinder of zero air or an ambient environment that is free of organic compounds. The pre-measurement instrumental offset response must be 0 percent LEL. If the LEL meter does not meet this requirement, the LEL meter must be recalibrated or replaced.

(iii) Conduct the monitoring measurements as specified in paragraphs (a)(3)(iii)(A) through (D) of this section.

(A) Measurements of the vapors within the internal floating roof storage vessel must be collected no more than 3 feet above the internal floating roof.

(B) Measurements must be taken for a minimum of 20 minutes, logging the measurements at least once every 15 seconds, or until one 5-minute average as determined according to paragraph (a)(3)(v)(B) of this section exceeds the limit specified in § 60.112c(b)(16).

(C) Measurements shall be taken when the wind speed at the top of the storage vessel is 5 mph or less to the extent practicable, but in no case shall measurements be taken when the sustained wind speed at top of storage vessel is greater than the annual average wind speed at the site or 15 mph, whichever is less.

(D) Measurements should be conducted when the internal floating roof is floating with limited product movement (limited filling or emptying of the storage vessel).

(iv) To determine the actual concentration of the vapor within the storage vessel, the percent of the LEL ''as the calibration gas'' must be corrected according to one of the procedures in paragraph (a)(3)(iv)(A) or (B) of this section. Alternatively, if the LEL meter used has correction factors that can be selected from the meter's program, you may enable this feature to automatically apply one of the correction factors in paragraph (a)(3)(iv)(A) or (B) of this section.

(A) Multiply the measurement by the published vapor correction factor for the specific LEL meter, stored VOL, and calibration gas used; or

(B) If there is no published correction factor for the specific LEL meter used and the vapors of the stored VOL, multiply the measurement by the published correction factor for butane as a surrogate for determining the LEL of the vapors of the stored VOL. The correction factor must correspond to the calibration gas used.

(v) Use the calculation procedures in paragraphs (a)(3)(v)(A) through (C) of this section to determine compliance with the LEL limit.

(A) For each minute while measurements are being taken, determine the 1-minute average reading as the arithmetic average of the corrected individual measurements (taken at least once every 15 seconds) during the minute.

(B) Starting with the end of the fifth minute of data, calculate a 5-minute rolling average as the arithmetic average of the previous five 1-minute readings determined under paragraph (a)(3)(v)(A) of this section. Determine a new 5-minute average reading for every subsequent 1-minute reading.

(C) Each 5-minute rolling average must meet the LEL limit specified in § 60.112c(b)(16).

(4) Notify the Administrator as specified in § 60.116c(b) at least 30 days prior to the inspection of each storage vessel for which an inspection is required by paragraph (a)(1) or (a)(2)(ii) of this section to afford the Administrator the opportunity to have an observer present.

(5) You must equip each affected storage vessel that has an internal floating roof with an alarm system that provides a visual or audible signal that alerts the operator when the internal floating roof is approaching the landed height and that provides a separate visual or audible signal to alert the operator when the roof has landed. The roof is considered landed when the floating roof first rests on supports or when the vacuum breaker/automatic bleeder vent begins to open, whichever is first (for example, when using a leg-actuated vent that triggers the vent prior to resting on the roof supports).

(b) *Requirements for an external floating roof.* After installing the control equipment for an external floating roof to meet the provisions in § 60.112c(c), you must inspect the external floating roof according to the specifications in paragraphs (b)(1) through (8) of this section.

(1) Determine the gap areas and maximum gap widths, between the primary seal and the wall of the storage vessel and between the secondary seal and the wall of the storage vessel according to the frequency provided in paragraphs (b)(1)(i) and (ii) of this section. You must visually inspect all roof fittings to ensure that covers are closed and gasketed with no visible gaps and that there are no tears in sleeves, wipers, or similar controls used for a given fitting during each measurement of gaps as required under this paragraph (b)(1).

(i) Measurements of gaps between the storage vessel wall and the primary seal (seal gaps) must be performed during the hydrostatic testing of the storage vessel or within 60 days of the initial fill with VOL and at least once every 60 calendar months thereafter.

(ii) Measurements of gaps between the storage vessel wall and the secondary seal must be performed within 60 days of the initial fill with VOL and at least once every 12 calendar months thereafter.

(iii) If any source ceases to store VOL for a period of 12 calendar months or more, subsequent introduction of VOL into the storage vessel must be

considered an initial fill for the purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(2) Determine gap widths and areas in the primary and secondary seals individually by the following procedures:

(i) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof supports.

(ii) Measure seal gaps around the entire circumference of the storage vessel in each place where a 0.125-inch (0.32-centimeter (cm)) diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the storage vessel and measure the circumferential distance of each such location.

(iii) The total surface area of each gap described in paragraph (b)(2)(ii) of this section must be determined by using probes of various widths to measure accurately the actual distance from the storage vessel wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually and divide the sum for each seal by the nominal diameter of the storage vessel and compare each ratio to the respective standards in paragraph (b)(4) of this section.

(4) Except as provided in paragraph (b)(5) of this section, make necessary repairs or empty the storage vessel within 45 days of identification in any inspection failure as specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) For primary seals, any deviation of the requirements in paragraphs (b)(4)(i)(A) through (D) of this section is an inspection failure.

(A) The accumulated area of gaps between the storage vessel wall and the mechanical shoe or liquid-mounted primary seal must not exceed 10 square inches (in^2) per foot of storage vessel diameter (212 square centimeters (cm^2) per meter of storage vessel diameter).

(B) The maximum width of any portion of any gap must not exceed 1.5 inches (3.81 cm).

(C) If a mechanical shoe seal is used, one end of the mechanical shoe is to extend into the stored liquid, and the other end is to extend a minimum vertical distance of 2 feet (61 cm) above the stored liquid surface.

(D) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(ii) For secondary seals, any deviation of the requirements in paragraphs (b)(4)(ii)(A) through (D) of this section is an inspection failure.

(A) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the storage vessel wall except for allowed gaps as provided in paragraphs (b)(4)(ii)(B) and (C) of this section.

(B) The accumulated area of gaps between the storage vessel wall and the secondary seal must not exceed 1 in^2 per foot (21.2 cm^2 per meter) of storage vessel diameter.

(C) The maximum width of any portion of any gap must not exceed 0.5 inches (1.27 cm).

(D) There are to be no holes, tears, or other openings in the seal or seal fabric.

(iii) For roof fittings (*e.g.,* vacuum breaker/automatic bleeder vents and rim vents, gauge hatch/sample wells, access hatches, guidepoles, ladders, and emergency roof drains), any deviation of the requirements in paragraphs (b)(4)(iii)(A) through (D) of this section is an inspection failure.

(A) Each opening in an external floating roof except for vacuum breaker/automatic bleeder vents and the rim vents provides a projection below the liquid surface.

(B) Vacuum breaker/automatic bleeder vents and rim vents are equipped with a gasket and are closed with no visible gaps when the roof is floating.

(C) The gauge hatch/sample well, access hatch, and gauge float must have a gasketed cover and closed with no visible gaps.

(D) There are to be no tears or visible defects of sleeves, wipers, or fabric covers used to control emissions from a roof fitting.

(5) If a failure that is detected as specified in paragraph (b)(4) of this section cannot be repaired within 45 days and if the storage vessel cannot be emptied within 45 days, you may request a 30-day extension from the Administrator. Such extension request must include a demonstration of unavailability of alternate storage capacity and a specification of a schedule that will assure that the control equipment will be repaired or the storage vessel will be emptied as soon as possible.

(6) Notify the Administrator, as specified in § 60.116c(b)(2), 30 days in advance of any gap measurements required by paragraph (b)(1) of this section to afford the Administrator the opportunity to have an observer present.

(7) Visually inspect the external floating roof, primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(i) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, the secondary seal has holes, tears, or other openings in the seal or the seal fabric, covers have visible openings or missing or torn gaskets, or there are tears or other visible defects in flexible covers, sleeves, wipers, or other fitting controls, you must repair the items as necessary so that none of the conditions specified in this paragraph (b)(7)(i) exist before filling or refilling the storage vessel with VOL.

(ii) For each inspection required by paragraph (b)(7) of this section, notify the Administrator as specified in § 60.116c(b)(1) at least 30 days prior to the inspection of each storage vessel to afford the Administrator the opportunity to inspect the storage vessel.

(8) You must equip each affected storage vessel that has an external floating roof with an alarm system that provides a visual or audible signal that alerts the operator when the external floating roof is approaching the landed height and that provides a separate visual or audible signal to alert the operator when the roof has landed. The roof is considered landed when the floating roof first rests on supports or when the vacuum breaker/automatic bleeder vent begins to open, whichever is first (for example, when using a leg-actuated vent that triggers the vent prior to resting on the roof supports).

(c) *Requirements for closed vent systems routed to a control device, fuel gas system, or process.* For each source that is equipped with a closed vent system and routes to a control device, fuel gas system, or process to meet the requirements in § 60.112c(d), you must conduct performance testing and monitoring of the control device as specified in paragraph (c)(1) of this section, conduct monitoring and inspections of the closed vent system as specified in paragraph (c)(2) of this section, repair leaks as specified in paragraph (c)(3) of this section, and develop a monitoring plan as specified in paragraph (c)(4) of this section.

(1) For each control device used to meet the requirements in § 60.112c(d), you must comply with the requirements in paragraphs (c)(1)(i) through (iv) of this section, as applicable.

(i) For each enclosed combustion device or flare, you must install, calibrate, maintain, and operate a backpressure regulator valve calibrated to open at the minimum pressure set point corresponding to the minimum inlet gas flow rate. The set point must be consistent with manufacturer specifications for minimum flow or pressure and must be supported by an

engineering evaluation. At least annually, you must confirm that the backpressure regulator valve set point is correct and consistent with the engineering evaluation and manufacturer specifications and that the valve fully closes when not in the open position.

(ii) For each control device other than a flare, except as specified in paragraph (c)(1)(iii) of this section, you must conduct a performance test as specified in paragraphs (c)(1)(ii)(A) through (E) of this section not later than 180 days after becoming subject to § 60.112c(d). You must conduct subsequent performance tests within 60 calendar months after each previous performance test. Submit the results of all performance tests following the procedures in § 60.116c(e).

(A) Each performance test must demonstrate that the control device achieves greater than or equal to the required control device performance level specified in § 60.112c(d)(3). Performance tests must be conducted under such conditions as the Administrator specifies based on representative performance of the affected source for the period being tested. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent the entire range of normal operation, including operational conditions for maximum emissions if such emissions are not expected during maximum production. You must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(B) You must conduct a minimum of three test runs. Each test run must be at least 1 hour long.

(C) The following methods in appendix A to this part, except as provided in § 60.8(b), must be used as reference methods to determine compliance with the percent reduction requirement.

(*1*) Method 1 or 1A of appendix A–1 to this part, as appropriate, for selection of the sampling sites. Sampling sites must be located at the inlet of the first control device and at the outlet of the final control device to determine compliance with a control device percent reduction requirement.

(*2*) Method 2, 2A, 2C, or 2D of appendix A–1 to this part, as appropriate to determine the gas volumetric flow rate.

(*3*) Method 25A of appendix A–7 to this part. Use propane as the calibration gas. You must use Method 4 of appendix A–3 to this part to convert the Method 25A of appendix A–7 results to a dry basis.

(D) You must use the procedures in paragraphs (c)(1)(ii)(D)(*1*) and (*2*) of this section to calculate percent reduction efficiency.

(*1*) You must compute the mass rate of TOC using the following equations:

$E_i = K_2 C_i M_p Q_i$

$E_o = K_2 C_o M_p Q_o$

Equations 1 and 2 to Paragraph (c)(1)(ii)(D)(*1*)

Where:

E_i, E_o = Mass rate of TOC at the inlet and outlet of the control device, respectively, dry basis, kilograms per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 degrees Celsius.

C_i, C_o = Concentration of TOC, as propane, of the gas stream as measured by Method 25A of appendix A–7 to this part at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

M_p = Molecular weight of propane, 44.1 gram/gram-mole.

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

(*2*) You must calculate the percent reduction in TOC as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100\%$$

Equation 3 to Paragraph (c)(1)(ii)(D)(*2*)

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of TOC at the inlet to the control device as calculated under paragraph (c)(1)(ii)(D)(*1*) of this section, kilograms per hour.

E_o = Mass rate of TOC at the outlet of the control device, as calculated under paragraph (c)(1)(ii)(D)(*1*) of this section, kilograms per hour.

(E) Except as provided in paragraph (c)(1)(ii)(E)(*5*) of this section, you must establish the applicable operating parameter limit as specified in paragraphs (c)(1)(ii)(E)(*1*) through (*3*) of this section by calculating the value(s) as the arithmetic average of operating parameter measurements recorded during the three test runs conducted for the most recent performance test (the average of the test run averages). You may operate outside of the established operating parameter limit(s) during subsequent performance tests in order to establish new operating limits. You must include the updated operating limits with the performance test results submitted to the Administrator pursuant to § 60.116c(e). Upon establishment of a new operating limit, you must thereafter operate under the new operating limit. You must demonstrate compliance with your operating parameter according to paragraph (c)(1)(ii)(E)(*4*) of this section.

(*1*) If you use an enclosed combustion device, a boiler, or a process heater other than those specified in paragraph (c)(1)(iii) of this section to control emissions, you must set a minimum firebox temperature limit during the performance test. You must continuously monitor the firebox temperature with a temperature monitoring device installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs and equipped with a continuous recorder that records a reading at least once every 15 minutes. The monitoring device must have a minimum accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±2.5 degrees Celsius, whichever value is greater.

(*2*) If you use a catalytic incinerator other than those specified in paragraph (c)(1)(iii) of this section to control emissions, you must set a minimum temperature limit on the temperature at the inlet of the catalyst bed and a minimum temperature limit on the temperature difference between the catalyst bed outlet and inlet. You must continuously monitor the temperatures with a temperature monitoring device equipped with a continuous recorder that records a reading at least once every 15 minutes. The device must be capable of monitoring temperature at two locations and have a minimum accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±2.5 degrees Celsius, whichever value is greater. You must install one temperature sensor in the vent stream at the nearest feasible point to the catalyst bed inlet, and you must install a second temperature sensor in the vent stream at the nearest feasible point to the catalyst bed outlet. You must install the temperature sensor at a location representative of the firebox temperature.

(*3*) If you use a control device other than a flare or other than a device listed in paragraphs (c)(1)(ii)(E)(*1*), (c)(1)(ii)(E)(*2*), (c)(1)(ii)(E)(*5*), or (c)(1)(iii) to control emissions, you must submit the operating parameters you plan to monitor in the performance test

notice you provide to the Administrator pursuant to § 60.8(d).

(*4*) Using the continuous monitoring system (CMS) data, you must calculate the hourly average of each operating parameter. You must demonstrate compliance by maintaining the operating parameter at or above the minimum operating parameter limit on a 3-hour rolling average basis. For each hour, calculate the hourly value of the operating parameter from your CMS. Average the three most recent hours of data to determine the 3-hour average. Determine the 3-hour rolling average by recalculating the 3-hour average each hour. You must not include periods of data collected during monitoring system breakdowns, repairs, maintenance periods, instrument adjustments, or checks to maintain precision and accuracy in the operating parameter averages.

(*5*) For enclosed combustion devices for which you elect to comply with the flare requirements in § 60.112c(d)(5), you must comply with the monitoring provisions in paragraph (c)(1)(iv) of this section instead of paragraphs (c)(1)(ii)(E)(*1*) through (*4*) of this section.

(iii) No performance test is required for the control devices identified in paragraphs (c)(1)(iii)(A) through (C) of this section.

(A) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(B) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(C) A boiler, process heater, or incinerator burning hazardous waste, which is regulated under 40 CFR part 63, subpart EEE; part 264; part 265; or part 266.

(iv) For each source that is equipped with a closed vent system and a flare to meet the requirements in § 60.112c(d) or enclosed combustion device electing to comply with the requirements in § 60.112c(d)(5), you must conduct visible emission observations as specified in paragraph (c)(1)(iv)(A) of this section and install, operate, and maintain CMS for flares following the requirements specified in 40 CFR 63.671 and as specified in paragraphs (c)(1)(iv)(B) and (C) of this section.

(A) If visible emissions are observed for more than 1 continuous minute during normal duties, visible emissions observation using Method 22 of appendix A–7 to this part must be conducted for 2 hours or until 5-minutes of visible emissions are observed.

(B) Substitute ''pilot flame or flare flame'' for each occurrence of ''pilot flame.''

(C) As an alternative to determining the flare tip velocity rate for each 15-minute block to determine compliance with the flare tip velocity operating limit as specified in 40 CFR 63.670(k)(2), you may elect to conduct a one-time flare tip velocity operating limit compliance assessment as provided in paragraphs (c)(1)(iv)(C)(*1*) through (*4*) of this section. If the flare or storage vessel control configurations change (*e.g.,* flare tip modified or additional storage vessel or other sources are added for which vapors are directed to the flare), you must repeat this one-time assessment based on the new configuration.

(*1*) Determine the unobstructed cross-sectional area of the flare tip, in units of square feet, as specified in 40 CFR 63.670(k)(1).

(*2*) Determine the maximum flow rate, in units of cubic feet per second, based on the maximum cumulative loading rate for a 15-minute block period considering maximum filling rates for all storage vessel affected facilities controlled by the flare and, if applicable, considering the maximum release pressure of any other vapors directed to the flare.

(*3*) Calculate the maximum flare tip velocity as the maximum flow rate from paragraph (c)(1)(iv)(C)(*2*) of this section divided by the unobstructed cross-sectional area of the flare tip from paragraph (c)(1)(iv)(C)(*1*) of this section.

(*4*) Demonstrate that the maximum flare tip velocity as calculated in paragraph (c)(1)(iv)(C)(*3*) of this section is less than 60 feet per second.

(2) For each closed vent system, you must conduct the instrument monitoring in paragraphs (c)(2)(i) through (iii) of this section. You must conduct the initial instrument monitoring within 180 days of an affected facility being connected to the closed vent system. Subsequent instrument inspections must be conducted within 365 days of the previous inspection. Visual, audible, and olfactory inspections must be conducted quarterly.

(i) Conduct instrument monitoring using the procedures in Method 21 of appendix A–7 to this part. The detection instrument must meet the performance criteria of Method 21 of appendix A–7, except that the instrument response factor criteria in section 8.1.1 of Method 21 of appendix A–7 must be for the average composition of the fluid and not for each individual organic compound in the stream. For streams that contain nitrogen, air, water, or other inerts that are not organic VOC, the representative stream response factor must be determined on an inert-free basis. The instrument reading that defines a leak is 500 ppmv (as methane). The instrument shall be calibrated before use each day of its use by the procedures specified in Method 21 of appendix A–7. The calibration gases in paragraphs (c)(2)(i)(A) and (B) of this section must be used. The drift assessment specified in paragraph (c)(2)(i)(C) of this section must be performed at the end of each monitoring day.

(A) Zero air (less than 10 ppm of hydrocarbon in air).

(B) A mixture of methane in air at a concentration of approximately 500 ppmv.

(C) At the end of each monitoring day, check the instrument using the same calibration gas that was used to calibrate the instrument before use. Follow the procedures specified in Method 21 of appendix A–7 to this part, section 10.1, except do not adjust the meter readout to correspond to the calibration gas value. If multiple scales are used, record the instrument reading for each scale used. Divide the arithmetic difference of the initial and post-test calibration response by the corresponding calibration gas value for each scale and multiply by 100 to express the calibration drift as a percentage. If a calibration drift assessment shows a negative drift of more than 10 percent, then re-monitor all equipment monitored since the last calibration with instrument readings between the leak definition and the leak definition multiplied by (100 minus the percent of negative drift) divided by 100. If any calibration drift assessment shows a positive drift of more than 10 percent from the initial calibration value, then, at the owner/operator's discretion, all equipment with instrument readings above the leak definition and below the leak definition multiplied by (100 plus the percent of positive drift) divided by 100 monitored since the last calibration may be re-monitored.

(ii) Any parts of the closed vent system that are designated as unsafe to inspect are exempt from the inspection requirements of paragraph (c)(2)(i) of this section if the conditions of paragraphs (c)(2)(ii)(A) and (B) of this section are met.

(A) The owner or operator determines that the equipment is unsafe-to-inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (c)(2)(i) of this section; and

(B) The owner or operator has a written plan that requires inspection of

the equipment as frequently as practical during safe-to-inspect times. Inspection is not required more than once annually.

(iii) Any parts of the closed vent system that are designated as difficult-to-inspect are exempt from the inspection requirements of paragraph (c)(2)(i) of this section if the provisions of paragraphs (c)(2)(iii)(A) and (B) of this section apply.

(A) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters (7 feet) above a support surface; and

(B) The owner or operator has a written plan that requires inspection of the equipment at least once every 60 calendar months.

(3) Leaks, as indicated by an instrument reading greater than 500 ppmv or emissions detected by visible, audible, and olfactory methods, shall be repaired as soon as practical following the requirements outlined in paragraphs (c)(3)(i) and (ii) of this section.

(i) Except as allowed by paragraph (c)(3)(ii) of this section, a first attempt at repair shall be made no later than 5 days after the leak is detected. Repairs shall be completed no later than 15 days after the leak is detected or at the beginning of the next introduction of vapors to the system, whichever is later.

(ii) Delay of repair of a closed vent system for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible or unsafe or if the owner or operator determines that emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed as soon as practical.

(4) You must develop a monitoring plan that covers each CMS used to demonstrate continuous compliance for your control device as outlined in paragraphs (c)(4)(i) and (ii) of this section. You must install, calibrate, operate, and maintain each CMS in accordance with the procedures in your monitoring plan.

(i) For each control device other than those specified in paragraph (c)(4)(ii) of this section, your monitoring plan must contain the information required in paragraphs (c)(4)(i)(A) through (G) of this section.

(A) The parameter to be monitored and the operating limit for the parameter.

(B) Sampling interface (*e.g.,* thermocouple) location such that the monitoring system will provide representative measurements.

(C) Description of the monitoring system specifications, including the detector signal analyzer, data acquisition, and calculations.

(D) Equipment performance checks, system accuracy audits, or other audit procedures, including the information in paragraphs (c)(4)(i)(D)(*1*) through (*4*) of this section.

(*1*) You must conduct the CMS equipment performance checks, system accuracy audits, or other audit procedures specified in the monitoring plan at least once every 12 calendar months.

(*2*) You must also conduct calibration checks following any period of more than 24 hours throughout which the sensor exceeded the manufacturer's specified maximum range unless you install a new sensor.

(*3*) At least quarterly, you must inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion, unless you use a redundant CMS.

(*4*) Daily checks for indications that the system is responding.

(E) Description of how periods of data collected during CMS breakdowns, out-of-control periods, repairs, maintenance periods, instrument adjustments, or checks to maintain precision and accuracy, calibration checks, and zero (low-level), mid-level (if applicable), and high-level adjustments will be excluded from operating parameter averages.

(F) Ongoing operation and maintenance procedures.

(G) Ongoing recordkeeping procedures.

(ii) For each flare or enclosed combustion device for with you elect to comply with the flare provisions in § 60.112c(d)(5), your monitoring plan must contain the information required by 40 CFR 63.671(b).

(d) *Requirements for determining maximum true vapor pressure.* For each affected storage vessel, you must determine the maximum true vapor pressure of the stored VOL according to the requirements specified in paragraphs (d)(1) and (2) of this section. For storage vessels operated above or below ambient temperatures, the maximum true vapor pressure is calculated based upon the highest expected calendar-month average of the storage temperature. For storage vessels operated at ambient temperatures, the maximum true vapor pressure is calculated based upon the maximum local monthly average ambient temperature as reported by the National Weather Service.

(1) Prior to the initial filling of the storage vessel or to the refilling of the storage vessel with a new VOL, the highest maximum true vapor pressure for the range of anticipated liquids to be stored, including mixtures for which you can define the range of concentrations for constituents in the mixture or with a known maximum Reid vapor pressure, must be determined using any one of the methods described in paragraphs (d)(1)(i) through (iv) of this section.

(i) As obtained from standard reference texts.

(ii) ASTM D6377–20 (incorporated by reference; see § 60.17). Perform the method using a vapor-to-liquid ratio of 4:1, which is expressed in the method as VPCR.

(iii) ASTM D6378–22 (incorporated by reference; see § 60.17). Perform the method using a vapor-to-liquid ratio of 4:1.

(iv) As measured by an appropriate method as approved by the Administrator.

(2) For each affected storage vessel storing a mixture of indeterminate composition or a mixture of unknown variable composition, the initial determination of the vapor pressure required by paragraph (d)(1) of this section must be a physical test using one of the methods specified in paragraphs (d)(1)(ii) through (iv) of this section. Additional physical tests using one of the methods specified in paragraphs (d)(1)(ii) through (iv) of this section are required at least once every 6 calendar months thereafter as long as the measured vapor pressure remains below the applicable thresholds in § 60.110c(c)(1), (c)(2), (d)(1), or (d)(2). If the vapor pressure measured under this paragraph (d)(2) exceeds the threshold defined in § 60.110c(c)(1), (c)(2), (d)(1), or (d)(2) you must meet the requirements in § 60.112c and the corresponding requirements in §§ 60.113c through 60.116c. If the storage vessel does not have controls meeting the requirements in § 60.112c, the storage vessel must be emptied and taken out of service until controls meeting the requirements in § 60.112c can be installed. Upon compliance with the provisions in § 60.112c, no additional vapor pressure monitoring is required.

§ 60.114c Alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions at least equivalent to the reduction in emissions achieved by the applicable requirement in § 60.112c, the Administrator will publish in the **Federal Register** a

document permitting the use of the alternative means for purposes of compliance with that requirement.

(b) Any document under paragraph (a) of this section will be published only after notice and an opportunity for a hearing.

(c) Any person seeking permission under this section must submit to the Administrator a written application including either:

(1) An actual emissions test that uses a full-sized or scale-model storage vessel that accurately collects and measures all VOC emissions from a given control device and that accurately simulates wind and accounts for other emission variables such as temperature and barometric pressure; or

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(d) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same emission reduction as specified in § 60.112c.

§ 60.115c Recordkeeping requirements.

(a) Except as otherwise specified in paragraphs (b) through (d) of this section, you must keep copies of all records required by this section and all reports required under § 60.116c for at least 5 years.

(b) For each storage vessel affected facility as specified in § 60.110c(a), you must keep readily accessible records for the life of the source showing the dimension of the storage vessel and an analysis showing the capacity of the storage vessel.

(c) Except as provided in paragraphs (c)(1) and (2) of this section, for each storage vessel affected facility under this subpart, you must maintain a record of the VOL currently stored, including a description of the VOL stored, the date when the VOL was first stored in the storage vessel, and the maximum true vapor pressure of that VOL.

(1) For each vessel storing a mixture of indeterminate or variable composition that meets the requirements for vapor pressure measurement at least once every 6 calendar months in § 60.113c(d), you must maintain records of each vapor pressure measurement for 5 years.

(2) Each vessel equipped with a closed vent system routed to a control device, fuel gas system, or process meeting the specification of § 60.112c(d) is exempt from the requirements of paragraph (c) of this section.

(d) For each storage vessel as specified in § 60.112c(a), you must keep records as required in paragraphs (d)(1) through (5) of this section, as applicable depending upon the control equipment installed to meet the requirements of § 60.112c.

(1) After installing control equipment for an internal floating roof to meet the provisions in § 60.112c(b), you must keep the following records.

(i) Keep a record of each inspection performed as required by § 60.113c(a)(1), (a)(2)(i), and (a)(2)(ii). Each record must identify the storage vessel on which the inspection was performed and must contain the date the vessel was inspected and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

(ii) For each LEL monitoring event, keep records as specified in paragraphs (a)(1)(ii)(A) through (I) of this section.

(A) Date and time of the LEL monitoring, and the storage vessel being monitored.

(B) A description of the monitoring event (annual monitoring conducted concurrent with visual inspection required under § 60.113c(a)(2)(i); re-monitoring due to high winds during annual monitoring; re-monitoring after repair attempt; other monitoring event as required by the Administrator).

(C) Wind speed at the top of the storage vessel on the date of LEL monitoring.

(D) The LEL meter manufacturer and model number used, as well as an indication of whether tubing was used during the LEL monitoring, and if so, the type and length of tubing used.

(E) Calibration checks conducted before and after making the measurements, including both the span check and instrumental offset. This includes the hydrocarbon used as the calibration gas, the Certificate of Analysis for the calibration gas(es), the results of the calibration check, and any corrective action for calibration checks that do not meet the required response.

(F) Location of the measurements and the location of the floating roof.

(G) Each measurement (taken at least once every 15 seconds). The records should indicate whether the recorded values were automatically corrected using the meter's programming. If the values were not automatically corrected, record both the raw (as the calibration gas) and corrected measurements, as well as the correction factor used.

(H) Each of the 5-minute rolling average readings.

(I) If the vapor concentration of the storage vessel was above 25 percent of the LEL on a 5-minute rolling average basis, a description of whether the floating roof was repaired, replaced, or taken out of service.

(2) After installing control equipment for an external floating roof to meet the provisions in § 60.112c(c), you must keep a record of each inspection and gap measurement performed as required by § 60.113c(b). The record must contain:

(i) Identification of the storage vessel on which the inspection was performed;

(ii) The date the storage vessel was inspected;

(iii) The type of inspection [inspection with gap measurements as specified in § 60.113c(b)(1) through (4); visual inspection as specified in § 60.113c(b)(7)];

(iv) The observed condition of each component of the control equipment (seals, internal floating roof, and fittings); and

(v) For each inspection with gap measurements as specified in § 60.113c(b)(1) through (4):

(A) The raw data obtained in the measurement; and

(B) The calculations described in § 60.113c(b)(2) and (b)(3).

(3) After installing a closed vent system routed to a control device, fuel gas system, or process to comply with the provisions in § 60.112c(d), you must keep the following records, as well as the records in paragraph (d)(4) or (5) of this section, as applicable.

(i) The make and model of the backpressure regulator valve, date of installation, and inlet flow rating. Maintain records of the engineering evaluation and manufacturer specifications that identify the pressure set point corresponding to the minimum inlet gas flow rate, the annual confirmation that the backpressure regulator valve set point is correct and consistent with the engineering evaluation and manufacturer specifications, and the annual confirmation that the backpressure regulator valve fully closes when not in open position.

(ii) The CMS monitoring plan required by § 60.113c(c)(4), if the closed vent system is routed to a control device. Retain this plan for the life of the control equipment.

(iii) Monitoring for the closed vent system conducted under § 60.113c(c)(2), including the date of inspection.

(iv) The written plan(s) required under § 60.113c(c)(2)(ii) and (iii) for unsafe-to-inspect and difficult-to-inspect portions of the closed vent system.

(v) For each leak detected during the monitoring conducted under § 60.113c(c)(2) and (3), you must record: the date the leak was detected; the location of the leak; the method used to detect the leak (Method 21 of appendix

A–7 to this part or visible, audible, and olfactory methods); and the maximum concentration reading obtained by Method 21 of appendix A–7, if applicable. For each repair attempt, you must record: the date of each repair attempt; the actions taken to repair the leak during each repair attempt; and date the repair was completed. If the repair is delayed, you must record the reason for the delay and the date you expect to complete the repair.

(vi) For each bypass line, maintain a record of the following, as applicable: readings from the flow indicator; each inspection of the seal or closure mechanism; the date and time of each instance when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out.

(vii) For each pressure relief device or vacuum breaking device on a storage vessel or closed vent system required to be monitored according to § 60.112c(d)(1)(iii) or (d)(2)(iii): the device type; the monitoring device or system used for the device; data from the device or system indicating whether a pressure release occurred; and the date, time, and duration of each pressure release, if applicable.

(4) After installing a closed vent system routed to a control device other than a flare or enclosed combustion device electing to comply with § 60.112c(d), you must keep the following records.

(i) Each performance test.

(ii) All CMS performance checks, audits, maintenance, and repairs.

(iii) The hourly values recorded by the CMS and all 3-hour rolling averages.

(iv) The periods when the CMS is not operational.

(5) After installing a closed vent system routed to a flare to comply with § 60.112c(d) or an enclosed combustion device for which you elected to comply with § 60.112c(d)(5), you must keep the following records.

(i) Pilot flame or flare flame monitoring as specified in paragraphs (d)(5)(i)(A) and (B) of this section.

(A) The output of the monitoring device used to detect the presence of a pilot flame as required in 40 CFR 63.670(b). Retain these records for a minimum of 2 years.

(B) Each 15-minute block during which there was at least 1 minute that no pilot flame was present when VOL vapors were routed to the flare. Each record must identify the start and end time and date of each 15-minute block.

(ii) Visible emissions observations as specified in paragraphs (d)(5)(ii)(A) through (B) of this section, as applicable.

(A) If visible emissions observations are performed using Method 22 of appendix A–7 to this part, the record must identify the date, the start and end time of the visible emissions observation, and the number of minutes for which visible emissions were observed during the observation. If the owner or operator performs visible emissions observations more than one time during a day, include separate records for each visible emissions observation performed.

(B) For each 2-hour period for which visible emissions are observed for more than 5 minutes in 2 consecutive hours but visible emissions observations according to Method 22 of appendix A–7 to this part were not conducted for the full 2-hour period, the record must include the date, the start and end time of the visible emissions observation, and an estimate of the cumulative number of minutes in the 2-hour period for which emissions were visible based on best information available to the owner or operator.

(iii) Each 15-minute block period during which operating values are outside of the applicable operating limits specified in 40 CFR 63.670(d) through (f) when vapors from a storage vessel affected facility are directed to the flare for at least 15-minutes identifying each specific operating limit that was not met.

(iv) The 15-minute block average cumulative flows for the enclosed combustion device vent gas or flare vent gas and, if applicable, total steam, perimeter assist air, and premix assist air specified to be monitored under 40 CFR 63.670(i), along with the date and start and end time for the 15-minute block. If multiple monitoring locations are used to determine cumulative vent gas flow, total steam, perimeter assist air, and premix assist air, retain records of the 15-minute block average flows for each monitoring location for a minimum of 2 years, and retain the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years. If pressure and temperature monitoring is used, retain records of the 15-minute block average temperature, pressure and molecular weight of the flare vent gas, enclosed combustion device vent gas, or assist gas stream for each measurement location used to determine the 15-minute block average cumulative flows for a minimum of 2 years, and retain the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years.

(v) The flare vent gas or enclosed combustion device vent gas compositions specified to be monitored under 40 CFR 63.670(j). Retain records of individual component concentrations from each compositional analyses for a minimum of 2 years. If an NHV_{vg} analyzer is used, retain records of the 15-minute block average values for a minimum of 5 years, as well as records of quality assurance activities conducted on the analyzer and any cylinder gas certificates. If you demonstrate your gas streams have consistent composition using the provisions in 40 CFR 63.670(j)(6), retain records of the current application for which you are using for as long as you use the fixed NHV_{vg} as determined using the provisions in 40 CFR 63.670(j)(6).

(vi) Each 15-minute block average operating parameter calculated following the methods specified in 40 CFR 63.670(k) through (n), as applicable.

(vii) All periods during which you did not perform monitoring according to the procedures in 40 CFR 63.670(g), (i), and (j) as applicable. Note the start date, start time, and duration in minutes for each period.

(viii) If you conduct a one-time flare tip velocity operating limit compliance assessment according to § 60.113c(c)(1)(iv)(C), a copy of the assessment, including all calculations for as long as you use this compliance method.

(ix) For each parameter monitored using a CMS, retain the records specified in paragraphs (d)(5)(ix)(A) through (C) of this section, as applicable:

(A) For each deviation, record the start date and time, duration, cause, and corrective action taken.

(B) For each period when there is a CMS outage or the CMS is out of control, record the start date and time, duration, cause, and corrective action taken.

(C) Each inspection or calibration of the CMS including a unique identifier, make, and model number of the CMS, and date of calibration check.

(x) For an enclosed combustion device for which you elected to comply with § 60.112c(d)(5), you must also keep a copy of each performance test.

(e) If you are required to meet the degassing requirements in § 60.112c(a)(3), you must maintain records necessary to demonstrate compliance with the requirements in § 60.112c(e) including, if appropriate, records of existing standard site procedures used to empty and degas (deinventory) equipment for safety purposes.

§ 60.116c Reporting requirements.

(a) *Initial notification requirements.* You must submit initial notifications to the Administrator within 60 days after October 15, 2024 or within 60 days after becoming an affected storage vessel, whichever is later. Once the report template for this subpart has been available on the Compliance and Emissions Data Reporting Interface (CEDRI) website (*https://www.epa.gov/electronic-reporting-air-emissions/cedri*) for 1 year, you must submit all subsequent initial notifications using the appropriate electronic report template on the CEDRI website for this subpart and following the procedure specified in paragraph (f) of this section. The date report templates become available will be listed on the CEDRI website. For each storage vessel affected facility subject to the standards in § 60.112c, include the following information in the initial notification:

(1) The following general facility information:

(i) Facility name;

(ii) Facility physical address, including city, county, State, and zip code;

(iii) Latitude and longitude of facility's physical location. Coordinates must be in decimal degrees with at least five decimal places; and

(iv) The following information for the facility contact person:

(A) Name;

(B) Mailing address, including city, county, State, and zip code;

(C) Telephone number; and

(D) Email address.

(2) Identification of the storage vessel(s) subject to this subpart.

(3) Capacity (in gallons) of each storage vessel.

(4) Maximum true vapor pressure of the liquid stored (in psia) in each storage vessel.

(5) Indication of the standards for which the storage vessel complies [§§ 60.112c(b); 60.112c(c); 60.112c(d); 60.112c(e)].

(6) If you route emissions to a control device, specify the design of the storage vessel and closed vent system (*i.e.,* storage vessel designed according to § 60.112c(d)(1)(i); or closed vent system designed according to § 60.112c(d)(1)(ii)), the type of control device (*i.e.,* enclosed combustion device complying with temperature operating limit; enclosed combustion device electing to comply with § 60.112c(d)(5); process heater or boiler; catalytic incinerator; flare, or other control device (specify)).

(7) If you route emissions to a process, submit the information specified in § 60.112c(d)(6)(ii) and (iii).

(8) If you route emissions to a fuel gas system, as specified in § 60.112c(d)(6)(iv), submit a statement that the emission stream is connected to the fuel gas system.

(b) *Other notifications.* Submit notifications for filling and refilling an affected storage vessel and for conducting gap measurements as specified in paragraphs (b)(1) and (2) of this section.

(1) As specified in § 60.113c(a)(4) and (b)(7)(ii), you must notify the Administrator at least 30 days prior to inspection of each storage vessel for which an inspection is required by § 60.113c(a)(1), (a)(2)(ii) or (b)(7) to afford the Administrator the opportunity to have an observer present. Submit the notification using CEDRI as specified in paragraph (f) of this section. If the inspection required by § 60.113c(a)(2)(ii) or (b)(7) is not planned and you could not have known about the inspection 30 days in advance of refilling the storage vessel, you must notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation using CEDRI demonstrating why the inspection was unplanned.

(2) As specified in § 60.113c(b)(6), you must notify the Administrator 30 days in advance of any gap measurements required by § 60.113c(b)(1) to afford the Administrator the opportunity to have an observer present. Submit the notification using CEDRI as specified in paragraph (f) of this section. If the inspection required by § 60.113c(b)(1) is not planned and you could not have known about the inspection 30 days in advance of the gap measurement, you must notify the Administrator at least 7 days prior to the conducting the gap measurement. Notification must be made by telephone immediately followed by written documentation using CEDRI demonstrating why the gap measurement was unplanned.

(c) *Reporting requirements for semiannual report.* You must submit to the Administrator semiannual reports with the applicable information in paragraphs (c)(1) through (12) of this section by the dates specified in paragraph (d) of this section. For this subpart, the semiannual reports supersede the excess emissions and monitoring systems performance report and/or summary report form required under § 60.7. Once the report template for this subpart has been available on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/cedri*) for 1 year, you must submit all subsequent reports using the appropriate electronic report template on the CEDRI website for this subpart and following the procedure specified in paragraph (f) of this section. The date report templates become available will be listed on the CEDRI website. Unless the Administrator or delegated State agency or other authority has approved a different schedule for submission of reports, the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted.

(1) Report the following general facility information:

(i) Facility name;

(ii) Facility physical address, including city, county, and State;

(iii) Latitude and longitude of facility's physical location. Coordinates must be in decimal degrees with at least five decimal places;

(iv) The following information for the facility contact person:

(A) Name;

(B) Mailing address;

(C) Telephone number; and

(D) Email address.

(v) Date of report and beginning and ending dates of the reporting period. You are no longer required to provide the date of report when the report is submitted via CEDRI; and

(vi) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report. If your report is submitted via CEDRI, the certifier's electronic signature during the submission process replaces the requirement in this paragraph (c)(1)(vi).

(2) For storage vessels complying with the provisions of § 60.112c(b) or (c):

(i) Identification of the storage vessel and an indication of whether you comply with § 60.112c(b) or (c).

(ii) An indication whether the storage vessel was inspected during the reporting period, and if so, the date and type of each inspection conducted during the reporting period [the type of inspection shall be selected from the following list: initial IFR inspection according to § 60.113c(a)(1), IFR visual inspection from fixed roof according to § 60.113c(a)(2)(i), combined IFR visual inspection with LEL monitoring according to § 60.113c(a)(2)(i) and (3), internal IFR inspection according to § 60.113c(a)(2)(ii), IFR LEL monitoring according to § 60.113c(a)(3), EFR gap measurements according to § 60.113c(b)(1) through (4), or visual EFR inspection according to § 60.113c(b)(7)].

(iii) For storage vessels complying with the provisions of § 60.112c(b) that were not inspected according to

§ 60.113c(a)(2)(ii) during the reporting period, report the last date the storage vessel was inspected according to the provisions in § 60.113c(a)(2)(ii).

(3) For each failure of a visual inspection required under § 60.113c(a)(2)(i), report the information in paragraphs (c)(3)(i) through (iii) of this section. For each failure of LEL monitoring required under § 60.113c(a)(3), report the information in paragraphs (c)(3)(i) through (iv) of this section.

(i) Identification of the storage vessel;

(ii) The date of the inspection;

(iii) The nature of the defects; and

(iv) The following information regarding the LEL monitoring conducted:

(A) Date and start and end times of the LEL monitoring conducted.

(B) Wind speed in miles per hour at the top of the storage vessel on the date of LEL monitoring.

(C) The highest 5-minute rolling average reading during the monitoring event.

(D) If re-monitoring was required due to excessive wind or repair during the visual inspection, report the information in paragraphs (b)(3)(iv)(A) through (C) of this section for the re-monitoring event.

(E) Whether the floating roof was repaired, replaced, or taken out of VOL service. If the storage vessel was taken out of VOL service, report the date the storage vessel was emptied. If the floating roof was replaced or repaired, report the nature of and date the repair was made and the information in paragraphs (b)(3)(iv)(A) through (C) of this section for each re-monitoring conducted to confirm the repair.

(4) For each inspection required by § 60.113c(a)(2)(ii) that finds holes or tears in the seal or seal fabric, defects in the internal floating roof, or other control equipment defects listed in § 60.113c(a)(2)(ii), report:

(i) Identification of the storage vessel and date of inspection;

(ii) The reason it did not meet the specifications of § 60.112c(b) or § 60.113c(a)(2)(ii);

(iii) A description of each repair made; and

(iv) Date of repair.

(5) For each inspection required under § 60.113c(b)(1), report the following information:

(i) Identification of the storage vessel and the date of the inspection;

(ii) The accumulated area of gaps between the storage vessel wall and the primary seal (in square inches per foot of storage vessel diameter);

(iii) The maximum width of any portion of any gap in the primary seal (in inches);

(iv) The accumulated area of gaps between the storage vessel wall and the secondary seal (in square inches per foot of storage vessel diameter);

(v) The maximum width of any portion of any gap in the secondary seal (in inches); and

(vi) An indication whether there was an inspection failure. If there was an inspection failure, also include the following information in the report:

(A) An indication of the type of deviation(s) [indicating all that apply from: §§ 60.113c(b)(4)(i)(A), 60.113c(b)(4)(i)(B), 60.113c(b)(4)(i)(C), 60.113c(b)(4)(i)(D), 60.113c(b)(4)(ii)(A), 60.113c(b)(4)(ii)(B), 60.113c(b)(4)(ii)(C), 60.113c(b)(4)(ii)(D), 60.113c(b)(4)(iii)(A), 60.113c(b)(4)(iii)(B), 60.113c(b)(4)(iii)(C), 60.113c(b)(4)(iii)(D)]; and

(B) The date the storage vessel was emptied or the repairs made and date of repair.

(6) For each inspection required by § 60.113c(b)(7) that finds defects as listed in § 60.113c(b)(7)(i), report:

(i) Identification of the storage vessel and date of inspection;

(ii) The reason it did not meet the specifications of § 60.112c(c) or § 60.113c(b)(7);

(iii) A description of each repair made; and

(iv) Date of repair.

(7) For each landing of an internal floating roof or an external floating roof that triggers an alarm required by § 60.113c(a)(5) or (b)(8), report:

(i) Identification of the storage vessel;

(ii) Date the roof was landed; and

(iii) Indication of whether the roof landed because the storage vessel was being emptied.

(8) After installing a closed vent system that routes to a control device, fuel gas system, or process to comply with § 60.112c, report the following, as well as the information in paragraphs (c)(9) or (10) of this section, as applicable:

(i) Results of annual inspections that indicate a backpressure regulator valve is not set correctly or does not fully close when not in the open position. Include the date and time of the inspection, the type of deviation, the corrective action taken, and the date and time when the backpressure regulator valve is set correctly, repaired, or replaced.

(ii) For each inspection conducted under § 60.113c(c)(2), identification of the closed vent system, the date of inspection, the type of inspection (Method 21 of appendix A–7 to this part or visible, audible, and olfactory methods) and summary result of the inspection (no leaks detected or leaks were detected). For each leak detected, provide an identification of the part of the closed vent system associated with the leak, the date of the first attempt at repair, and the date of successful repair or anticipated repair if the repair is delayed.

(iii) The start date and time, duration in hours, and an estimate of the mass quantity in pounds of VOL released for times when flow is detected or emissions are diverted from the control device through a bypass line while a storage vessel affected facility vented to the closed vent system contains VOL or is being degassed.

(9) After installing a closed vent system and control device to comply with § 60.112c other than a flare or an enclosed combustion device electing to comply with § 60.112c(d)(5), report:

(i) For each instance when the CMS measured 3-hour rolling averages below the established operating limit:

(A) The date and start time of the deviation;

(B) The duration of the deviation in hours;

(C) The lowest 3-hour rolling average operating parameter reading during the period of the deviation;

(D) A unique identifier for the CMS;

(E) The make, model number, and date of last calibration check of the CMS; and

(F) The cause of the deviation and the corrective action taken.

(ii) For all instances when the CMS was inoperative:

(A) The date and start time of the deviation;

(B) The duration of the deviation in hours;

(C) A unique identifier for the CMS;

(D) The make, model number, and date of last calibration check of the CMS; and

(E) The cause of the deviation and the corrective action taken.

(10) After installing a closed vent system and a flare to comply with § 60.112c or an enclosed combustion device electing to comply with § 60.112c(d)(5), report:

(i) The date and start and end times for each of the following instances:

(A) Each 15-minute block during which there was at least 1 minute when storage vessel vapors were routed to the flare and no pilot flame or flare flame was present.

(B) Each period of 2 consecutive hours during which visible emissions exceeded a total of 5 minutes. Additionally, report the number of minutes for which visible emissions were observed during the observation or an estimate of the cumulative number of minutes in the 2-hour period for which

emissions were visible based on best information available to the owner or operator.

(C) Each 15-minute period for which the applicable operating limits specified in 40 CFR 63.670(d) through (f) were not met. You must identify the specific operating limit that was not met and report the value of the net heating value operating parameter(s) during the deviation determined following the methods in 40 CFR 63.670(k) through (n) as applicable.

(ii) The start date, start time, and duration in minutes for each period when storage vessel vapors were routed to the flare or enclosed combustion device and the applicable monitoring was not performed.

(iii) For each instance reported under paragraphs (c)(10)(i) and (ii) of this section that involves CMS, report the following information:

(A) A unique identifier for the CMS;

(B) The make, model number, and date of last calibration check of the CMS; and

(C) The cause of the deviation or downtime and the corrective action taken.

(11) For pressure relief devices on a storage vessel or closed vent system subject to § 60.112c(d)(1)(iii) or (d)(2)(iii), report each pressure release to the atmosphere, including pressure relief device identification name or number, the start date, start time, and duration (in minutes) of the pressure release; and an estimate of the mass quantity in pounds of VOL released.

(12) For vacuum breaking devices on a storage vessel subject to § 60.112c(d) and (d)(1)(iii), report the following information for each time the vacuum breaking device failed to close prior to the storage vessel reaching atmospheric pressure: identification name or number of vacuum breaking device; the start date, start time, and duration (in minutes) of the pressure release; and an estimate of the mass quantity in pounds of VOL released.

(d) *Timeframe for semiannual report submissions.* (1) The first semiannual report will cover the period starting with the date the source first becomes an affected facility subject to this subpart and ending June 30 or December 31, whichever date is earlier. For example, if the source becomes an affected facility on April 15, the first semiannual report would cover the period from April 15 to June 30. The first semiannual report must be submitted on or before the last day of the month 2 months after the last date covered by the semiannual report. In this example, the first semiannual report would be due August 31.

(2) Subsequent semiannual reports will cover subsequent 6 calendar month periods (January 1 through June 30 or July 1 through December 31, as applicable) with each report due on or before the last day of the month 2 months after the last date covered by the semiannual report (August 31 or February 28 or 29, as applicable).

(3) For each affected facility that is subject to permitting regulations pursuant to 40 CFR parts 70 or 71, if the delegated authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), you may submit the first and subsequent semiannual reports according to the dates the delegated authority has established instead of the dates in paragraphs (d)(1) and (2) of this section.

(e) *Reporting requirements for performance tests.* Within 60 days after the date of completing each performance test, you must submit the results following the procedures specified in paragraph (f) of this section. Data collected using test methods that are supported by the U.S. Environmental Protection Agency (EPA) Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test must be included as an attachment in the ERT or an alternate electronic file.

(f) *Requirements for electronically submitting reports.* If you are required to submit notifications or reports following the procedures specified in this paragraph (f), you must submit notifications or reports to the EPA via CEDRI, which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information in the report, you must submit a complete file in the format specified in this subpart, including information claimed to be CBI, to the EPA following the procedures in paragraphs (f)(1) and (2) of this section. Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data are not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph (f).

(1) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings. ERT files should be flagged to the attention of the Measurement Policy Group Leader and all other files should be flagged to the attention of the NSPS Kc Rule Lead. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link.

(2) If you cannot transmit the file electronically, you may send CBI information through the postal service to the following address: U.S. EPA, Attn: OAQPS Document Control Officer, Mail Drop: C404–02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, NC 27711. ERT files should be sent to the secondary attention of the Measurement Policy Group Leader and all other files should be sent to the secondary attention of the NSPS Kc Rule Lead. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(g) *Claims of EPA system outage.* If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (g)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(h) *Claims of force majeure.* If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (h)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

§ 60.117c Delegation of authority.

(a) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(b) Authorities which will not be delegated to State, local, or Tribal agencies: §§ 60.113c(d)(1)(iv) and 60.114c and approval of an alternative to any electronic reporting to the EPA required by this subpart.

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Part V

Environmental Protection Agency

40 CFR Part 52

Air Quality State Implementation Plans; Partial Approval, Partial Disapproval and Promulgation; Texas; Regional Haze; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0539; FRL–12282–01–R6]

Air Quality State Implementation Plans; Partial Approval, Partial Disapproval and Promulgation; Texas; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove the regional haze State implementation plan (SIP) revision submitted by Texas on July 20, 2021, under the Clean Air Act (CAA) and EPA's Regional Haze Rule (RHR) for the program's second implementation period. Texas'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: Written comments must be received on or before November 14, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2021–0539 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Jennifer Huser, U.S. Environmental Protection Agency, Region 6, 1201 Elm St., Suite 500, Dallas, Texas 75270, at (214) 665–7347, or by email at *Huser.Jennifer@epa.gov.*

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

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I. What action is the EPA proposing?

On July 20, 2021, the Texas Commission on Environmental Quality (TCEQ) submitted a plan (''2021 Texas Regional Haze Plan'' or ''Texas RH SIP'') to the EPA to satisfy the regional haze program requirements pursuant to CAA sections 169A and 40 CFR 51.308. The EPA is proposing to partially approve and partially disapprove Texas's Regional Haze plan for the second planning (implementation) period. Consistent with section 110(k)(3) of the CAA, the EPA may partially approve portions of a submittal if those elements meet all applicable requirements and may disapprove the remainder so long as the elements are fully separable.[1] As required by section 169A of the CAA, the Federal RHR calls for State and Federal agencies to work together to improve visibility in 156 national parks and wilderness areas. The rule requires the states, in coordination with the EPA, National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), Forest Service (FS), and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). As discussed in further detail below, the EPA is proposing to find that Texas has submitted a Regional Haze plan that does not meet all the Regional Haze requirements for the second planning period. For the reasons described in this document, the EPA is proposing to approve the elements of Texas's plan related to requirements contained in 40

[1] *See* CAA section 110(k)(3) and July 1992 EPA memorandum titled ''Processing of State Implementation Plan (SIP) Submittals'' from John Calcagni, at *https://www.epa.gov/sites/default/files/2015-07/documents/procsip.pdf.*

CFR 51.308(f)(1), (f)(4), (f)(5),[2] and (f)(6). The EPA is proposing to disapprove the elements of Texas's plan related to requirements contained in 40 CFR 51.308(f)(2), (f)(3), and (i). The State's submission can be found in the docket for this action.

II. Background and Requirements for Regional Haze Plans

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[3] CAA 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' CAA 169A(a)(1). The CAA further directs the EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA 169A(a)(4). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in mandatory Class I Federal areas (hereinafter referred to as ''Class I areas'') that is ''reasonably attributable'' to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of the EPA's efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from regional haze. CAA 169B. The EPA promulgated the RHR, codified at 40 CFR 51.308,[4] on July 1, 1999. (64 FR 35714, July 1, 1999). These regional haze regulations are a central component of the EPA's comprehensive visibility protection program for Class I areas.

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[5]

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and states ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to periodically submit SIP revisions to address such impairment. CAA 169A(b)(2);[6] see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); (64 FR at 35768, July 1, 1999). Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' CAA 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA 169A(b)(2)(A); 40 CFR 51.308(d), (e). States' first regional haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated long-term strategies originally due July 31, 2018, and every ten years thereafter. (64 FR at 35768, July 1, 1999). The EPA established in the 1999 RHR that all states either have Class I areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area''; therefore, all states must submit regional haze SIPs.[7] *Id.* at 35721.

Much of the focus in the first implementation period of the regional haze program, which ran from 2007 through 2018, was on satisfying states' BART obligations. First implementation period SIPs were additionally required to contain long-term strategies for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states containing Class I areas establish reasonable progress goals (RPGs) that are measured in deciviews and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of states' long-term strategies. The first planning period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I area in a State, the State was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five year period of 2000–2004) and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility

[2] 40 CFR 51.308(f)(5) requires that the second planning period SIP revision address the requirements listed in (g)(1) through (g)(5).

[3] Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

[4] In addition to the generally applicable regional haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions' regional haze plans submitted no later than December 17, 2007, and thus are not relevant here.

[5] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b^{ext}) is a metric used for expressing visibility and is measured in inverse megameters (Mm^{-1}). The EPA's Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (''2019 Guidance'') offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. See, *e.g.,* 2019 Guidance at 16, 19, *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period,* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is $10 \ln (b^{ext})/10 Mm - 1$). 40 CFR 51.301.

[6] The RHR expresses the statutory requirement for states to submit plans addressing out-of-state Class I areas by providing that states must address visibility impairment ''in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.'' 40 CFR 51.308(d), (f).

[7] In addition to each of the fifty states, the EPA also concluded that the Virgin Islands and District of Columbia must also submit regional haze SIPs because they either contain a Class I area or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. *See* 40 CFR 51.300(b), (d)(3).

impairment) for each Class I area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area.[8] 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that States' long-term strategies must include the ''enforceable emissions limitations, compliance, schedules, and other measures as necessary to achieve the reasonable progress goals.'' 40 CFR 51.308(d)(3). In establishing their long-term strategies, states are required to consult with other states that also contribute to visibility impairment in a given Class I area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i), (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their long-term strategies, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their regional haze plans and an assessment of whether anything additional is needed to make reasonable progress, see 40 CFR 51.308(g), (h)—and to consult with the Federal Land Manager(s)[9] (FLMs) responsible for each Class I area according to the requirements in CAA 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for regional haze SIPs to clarify States' obligations and streamline certain regional haze requirements. The revisions to the regional haze program for the second and subsequent implementation periods focused on the requirement that States' SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for States to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the long-term strategy, and focused on making visibility improvements on the days with the most *anthropogenic* visibility impairment, as opposed to the days with the most visibility impairment overall. The EPA also revised requirements of the visibility protection program related to periodic progress reports and FLM consultation. The specific requirements applicable to second implementation period regional haze SIP submissions are addressed in detail below.

The EPA provided guidance to the states for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, the EPA issued ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period'' (''2019 Guidance'').[10] On July 8, 2021, the EPA issued a memorandum containing ''Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period'' (''2021 Clarifications Memo'').[11] Additionally, the EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 ''Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' (''2018 Visibility Tracking Guidance''),[12] and the June 2020 ''Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' and associated Technical Addendum (''2020 Data Completeness Memo'').[13]

As explained in the 2021 Clarifications Memo, the EPA intends the second implementation period of the regional haze program to secure meaningful reductions in visibility impairing pollutants that build on the significant progress states have achieved to date. The Agency also recognizes that analyses regarding reasonable progress are State-specific and that, based on states' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from State-to-State. While there exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See generally 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's National Ambient Air Quality Standards and Prevention of Significant Deterioration programs, as

[8] The EPA established the URP framework in the 1999 RHR to provide ''an equitable analytical approach'' to assessing the rate of visibility improvement at Class I areas across the country. The starting point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, the EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, the EPA did not establish 2064 as the year by which the national goal *must* be reached. 64 FR at 35731–32. That is, the URP and the 2064 date are not enforceable targets but are rather tools that ''allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP.'' (82 FR 3078, 3084, January 10, 2017).

[9] The EPA's regulations define ''Federal Land Manager'' as ''the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.'' 40 CFR 51.301.

[10] Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

[11] Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[12] Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional* The EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

[13] Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-usage-and-completeness-regional-haze-program* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

further emission reductions may be necessary to adequately protect visibility in Class I areas throughout the country.[14]

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. To address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),[15] which include representation from State and Tribal governments, the EPA, and FLMs, were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from State and Tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

The Central Regional Air Planning Association (CenRAP), one of the five RPOs described above, that Texas was a member of during the first planning period, was a collaborative effort of State governments, Tribal governments, and Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in parts of the Great Plains, Midwest, Southwest, and South Regions of the United States.

After the first planning period SIPs were submitted, the planning was shifted to the Central State Air Resources Agencies (CenSARA). CenSARA was established to promote the exchange of air quality information, knowledge, experience, and data among and between participating organizations and other interested parties. It supports the membership with training and policy and technical projects. CenSARA supports and promotes collaborative efforts of State governments to initiate and coordinate activities associated with the management of regional haze and other air quality issues in parts of the Great Plains, Midwest, Southwest, and South Regions of the United States. Member states include: Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, and Texas. Unlike CenRAP, CenSARA has solely State and local government members. However, CenSARA does reach out to Tribal and Federal partners. The Federal partners of CenSARA are the EPA, the NPS, the FWS, and FS.

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and EPA's regulations, all 50 States, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA 169A(b)(2)(B). To this end, § 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in § 51.308(f)(1) through (f)(3) generally mirroring the order of the steps in the reasonable progress analysis[16] and (f)(4) through (f)(6) containing additional, related requirements. Broadly speaking, a State first must identify the Class I areas within the State and determine the Class I areas outside the State in which visibility may be affected by emissions from the State. These are the Class I areas that must be addressed in the state's long-term strategy. See 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a State must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. See 40 CFR 51.308(f)(1). Each State having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility impairing pollutants that the State has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors''[17] that states must consider in developing their long-term strategies. See 40 CFR 51.308(f)(2). A State evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state's long-term strategy. After a State has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the State in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2)–(3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the regional haze SIP revisions for the second implementation period must address the requirements in § 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A State must submit its regional haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and EPA's regulations. See CAA 169A(b)(2); CAA 110(a). Upon EPA approval, a SIP is enforceable by the Agency and the public under the CAA.

[14] See, *e.g.,* H.R. Rep No. 95–294 at 205 (''In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country.''), (''the mandatory class I increments of [the PSD program] do not adequately protect visibility in class I areas'').

[15] RPOs are sometimes also referred to as ''multi-jurisdictional organizations,'' or MJOs. For the purposes of this notice, the terms RPO and MJO are synonymous.

[16] The EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 51.308(d), ''tracked the actual planning sequence.'' (82 FR 3091, January 10, 2017).

[17] The five ''additional factors'' for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

If EPA finds that a State fails to make a required SIP revision, or if the EPA finds that a state's SIP is incomplete or disapproves the SIP, the Agency must promulgate a federal implementation plan (FIP) that satisfies the applicable requirements. CAA 110(c)(1).

A. Identification of Class I Areas

The first step in developing a regional haze SIP is for a State to determine which Class I areas, in addition to those within its borders, ''may be affected'' by emissions from within the State. In the 1999 RHR, the EPA determined that all states contribute to visibility impairment in at least one Class I area, 64 FR at 35720–22, and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' *Id.* at 35721.

A State must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the State. While the RHR does not require this evaluation to be conducted in any particular manner, EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.''

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in § 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this subsection apply only to states having Class I areas within their borders; the required calculations must be made for each such Class I area. EPA's 2018 Visibility Tracking Guidance [18] provides recommendations to assist states in satisfying their obligations under § 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR at 3103–05.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).[19] 40 CFR 51.301. A State must calculate visibility conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i), (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,[20] by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, states must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement.[21] Additionally, in the 2017 RHR Revisions, the EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR 3107 footnote 116.

The EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in § 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the State. The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40

[18] The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: ''Guidance for Tracking Progress Under the Regional Haze Rule,'' which can be found at *https://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf.*

[19] This notice also refers to the 20% clearest and 20% most anthropogenically impaired days as the ''clearest'' and ''most impaired'' or ''most anthropogenically impaired'' days, respectively.

[20] The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two sets of natural conditions values. The rule says ''most impaired days or the clearest days'' where it should say ''most impaired days and clearest days.'' This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR 3098: ''In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of ''or'' has been corrected to ''and'' to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.''

[21] Being on or below the URP is not a ''safe harbor''; *i.e.,* achieving the URP does not mean that a Class I area is making ''reasonable progress'' and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. *See, e.g.,* 82 FR at 3093.

CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a state's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As EPA previously explained, consistent with the first implementation period, EPA generally expects that each State will analyze at least SO_2 and NO_X in selecting sources and determining control measures. See 2019 Guidance at 12; 2021 Clarifications Memo at 4. A State that chooses not to consider at least these two pollutants should demonstrate why such consideration would be unreasonable. 2021 Clarifications Memo at 4.

While states have the option to analyze *all* sources, the 2019 Guidance explains that ''an analysis of control measures is not required for every source in each implementation period,'' and that ''[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the Regional Haze Rule, which sets up an iterative planning process and anticipates that a State may not need to analyze control measures for all its sources in a given SIP revision.'' 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process ''should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.'' 2021 Clarifications Memo at 3.

EPA explained in the 2021 Clarifications Memo that each State has an obligation to submit a long-term strategy that addresses the regional haze visibility impairment that results from emissions from within that State. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state's total contribution to visibility impairment in Class I areas. A State should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.[22]

Thus, while states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a state's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a State has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[23] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply to satisfy the CAA's reasonable progress mandate.'' 82 FR at 3091. Thus, for each source it has selected for four-factor analysis,[24] a State must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088. The 2019 Guidance provides that ''[a] State must reasonably pick and justify the measures that it will consider, recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.'' 2019 Guidance at 29.

EPA's 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: ''A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.'' 2021 Clarifications Memo at 7. In addition to add-on controls and other retrofits (*i.e.,* new emissions reduction measures for sources), EPA explained that states should generally analyze efficiency improvements for sources' existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance

[22] Similarly, in responding to comments on the 2017 RHR Revisions the EPA explained that ''[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.'' Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88.

[23] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

[24] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' 82 FR at 3088. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

costs. Additionally, the 2021 Clarifications Memo provides that states that have assumed a higher emissions rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emissions rates as potential control options. That is, a State should consider a source's recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the State should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. The EPA's recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing ''effective controls.'' See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a State then collects information on the four factors with regard to each option identified. The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.[25] The 2019 Guidance provides recommendations for the types of information that can be used to characterize the four factors (with or without visibility), as well as ways in which states might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how states can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, the EPA explained that while visibility can reasonably be used when comparing and choosing between multiple reasonable control options, it should not be used to summarily reject controls that are reasonable given the four statutory factors. 2021 Clarifications Memo at 13. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, § 51.308(f)(2)(i) provides that a State ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, § 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to § 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state's long-term strategy and in its SIP.[26] If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and must be included in the SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source's existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. See CAA 169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source's existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a State can demonstrate that a source's existing measures are *not* necessary to make reasonable progress. Specifically, if a State can demonstrate that a source will continue to implement its existing measures and will not increase its emissions rate, it may not be necessary to have those measures in the long-term strategy to prevent future emissions increases and future visibility impairment. The EPA's 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source's existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the State can make such a demonstration, it need not include a source's existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in § 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, § 51.308(f)(2)(iii) plays an important function in requiring a State to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the State relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the State relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all State participants. In addition to the explicit regulatory requirement to document the technical basis of their reasonable progress determinations, states are also subject to the general principle that those determinations must be reasonably moored to the statute.[27] That is, a state's decisions about the emission reduction measures that are necessary to make reasonable progress must be consistent with the statutory goal of remedying existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a state's long-term strategy

[25] See, *e.g.,* Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) (December 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

[26] States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. See 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to the EPA for inclusion in their SIPs but are not required to do so. See, *e.g.,* 82 FR at 3108–09 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

[27] See *Arizona ex rel. Darwin* v. *U.S. EPA*, 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska* v. *U.S. EPA*, 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota* v. *EPA*, 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma* v. *EPA*, 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); cf. also *Nat'l Parks Conservation Ass'n* v. *EPA*, 803 F.3d 151, 165 (3d Cir. 2015); *Alaska Dep't of Envtl. Conservation* v. *EPA*, 540 U.S. 461, 485, 490 (2004).

for making reasonable progress. Additionally, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [28] that states must consider in developing their long-term strategies: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The 2019 Guidance provides that a State may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be considered at the same stage of the process. See 2019 Guidance at 21. The EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a State should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas. Additionally, states generally should not rely on these additional factors to summarily assert that the State has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. 2021 Clarifications Memo at 13.

Because the air pollution that causes regional haze crosses State boundaries, § 51.308(f)(2)(ii) requires a State to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. Consultation allows for each State that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between states outside of RPO processes may also occur. If a State, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a State has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that State must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). The EPA will consider the technical information and explanations presented by the submitting State and the State with which it disagrees when considering whether to approve the state's SIP. See *Id.;* 2019 Guidance at 53. Under all circumstances, a State must document in its SIP submission all substantive consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals ''measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.'' 82 FR at 3091. Their primary purpose is to assist the public and the EPA in assessing the reasonableness of states' long-term strategies for making reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(3)(iii)–(iv). States in which Class I areas are located must establish two RPGs, both in deciviews—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the State with the Class I area, as well as all other contributing states, have included in their long-term strategies for the second implementation period.[29] The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in states' long-term strategies (as well as other measures required under the CAA), they cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they ''provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.'' 2019 Guidance at 46. While states are not legally obligated to achieve the visibility conditions described in their RPGs, § 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.'' Thus, states are required to have emission reduction measures in their long-term strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and shows no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. See 40 CFR 51.308(f)(1)(i), 82 FR at 3097–98.

So that RPGs may also serve as a metric for assessing the amount of progress a State is making towards the national visibility goal, the RHR requires states with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility

[28] The five ''additional factors'' for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

[29] RPGs are intended to reflect the projected impacts of the measures all contributing states include in their long-term strategies. However, due to the timing of analyses and of control determinations by other states, other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their long-term strategies on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each State that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each State contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.'' The 2019 Guidance provides suggestions about how such a ''robust demonstration'' might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or below the URP based on only on-the-books and/or on-the-way control measures (*i.e.,* control measures already required or anticipated before the four-factor analysis is conducted) is not a ''safe harbor'' from the CAA's and RHR's requirement that all states must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural visibility conditions. However, the URP is not based on consideration of the four statutory factors and therefore cannot answer the question of whether the amount of progress being made in any particular implementation period is ''reasonable progress.'' See 82 FR at 3093, 3099–3100; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this subsection apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. A State with Class I areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all Class I areas within the State. SIP revisions for such states must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I areas, as well as reporting of all visibility monitoring data to the EPA at least annually. Compliance with the monitoring strategy requirement may be met through a state's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), (f)(6)(iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I area and tracks visibility impairment over time.

All states' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the State to regional haze visibility impairment in affected Class I areas. 40 CFR 51.308(f)(6)(ii), (iii). Section 51.308(f)(6)(v) further requires that all states' SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to EPA review as part of the Agency's evaluation of a SIP revision.[30] All states' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a State may note in its regional haze SIP that its compliance with the Air Emissions Reporting Rule (AERR) in 40 CFR part 51 subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a State may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I areas.[31]

Separate from the requirements related to monitoring for regional haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at § 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment.'' [32] Under this provision, if the EPA or the FLM of an affected Class I area has advised a State that additional monitoring is needed to assess reasonably attributable visibility impairment, the State must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a state's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, 26950 (May 4, 2016); 82 FR at 3119 (January 10, 2017). To this end, every state's SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the state's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

[30] See ''Step 8: Additional requirements for regional haze SIPs'' in 2019 Guidance at 55.

[31] *Id.*

[32] The EPA's visibility protection regulations define ''reasonably attributable visibility impairment'' as ''visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.'' 40 CFR 51.301.

A core component of the progress report requirements is an assessment of changes in visibility conditions on the clearest and most impaired days. For second implementation period progress reports, § 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i)(B), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions to assess progress made to date. See 40 CFR 51.308(g)(3)(ii)(B). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(3)(iii)(B), (f)(5). Since different states submitted their first implementation period progress reports at different times, the starting point for this assessment will vary State by State.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the State over the period since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(4), (f)(5). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by the previous progress report and requires states' SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the State. This assessment must explain whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the State projected based on its long-term strategy for the first implementation period.

G. Requirements for State and Federal Land Manager Coordination

Clean Air Act section 169A(d) requires that before a State holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the State must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed ''early enough,'' but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). For the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the State addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the State and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. The EPA's Evaluation of Texas's Regional Haze Submission for the Second Implementation Period

A. Background on Texas's First Implementation Period SIP Submission

Texas submitted its regional haze SIP for the first implementation period to the EPA on March 31, 2009. The EPA issued a limited disapproval of Texas's RH SIP on June 7, 2012, due to its reliance on the Clean Air Interstate Rule (CAIR) to address BART requirements for Texas electric generating units (EGUs).[33] The EPA proposed a rule to partially approve and partially disapprove Texas's SIP on December 16, 2014;[34] however, due to a related ruling from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit),[35] the EPA could not finalize the December 2014 proposal in its entirety. As such, the EPA's obligations for the first implementation period for Texas's regional haze SIP were addressed in two separate actions. One action, finalized on January 5, 2016, addressed the regional haze requirements in Texas except for BART requirements for EGUs.[36] The second action, finalized on October 17, 2017, and affirmed on August 12, 2020, addressed BART requirements for Texas EGUs.[37] The EPA has convened separate reconsideration proceedings for both actions.[38] While these proceedings remain ongoing, they do not interfere with the EPA's statutory obligation to take action on Texas's SIP revision for the second implementation period.[39]

The requirements for regional haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e). Pursuant to 40 CFR 51.308(g), Texas was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period, which it did in 2014.[40]

B. Texas's Second Implementation Period SIP Submission and the EPA's Evaluation

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f) and (i), on July 20, 2021, Texas submitted a SIP revision to address its regional haze obligations for the second implementation period, which runs through 2028. Texas made its 2021 Regional Haze SIP submission available for public comment on October 9, 2020. Texas received and responded to public comments and included the comments and responses to those comments in their submission.

The following sections describe Texas's RH SIP submission, Texas's assessment of progress made since the first implementation period in reducing emissions of visibility impairing pollutants, and the visibility improvement progress at its Class I areas

[33] 77 FR 33642 (June 7, 2012).

[34] 79 FR 74818 (Dec. 16, 2014).

[35] *EME Homer City Generation, L.P* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015).

[36] 81 FR 296 (Jan. 5, 2016). In July 2016, the 5th Circuit Court of Appeals issued a stay of the action. *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016). Subsequent to the stay opinion, the EPA requested and the court granted EPA's motion for a partial voluntary remand.

[37] *See* 82 FR 48324 (Oct. 17, 2017); 85 FR 49170 (Aug. 12, 2020).

[38] *See* 88 FR 28918 (May 4, 2023); 88 FR 48152 (July 26, 2023).

[39] EPA is not precluded from acting on a submitted second planning period SIP revision because reconsideration proceedings on first planning period actions remains ongoing. All states had an obligation to submit second planning period SIP revisions by July 31, 2021, regardless of the status of first planning period obligations. After a second planning period SIP revision is submitted to EPA for review, EPA is statutorily required to review and act on that plan within 12 months of the submittal being deemed complete. *See* CAA 110(k)(1); 42 U.S.C. 7410(k)(1). Even with ongoing work on the second planning period, EPA will continue to work to address first planning period obligations.

[40] The EPA has not yet taken action on the progress report SIP.

and nearby Class I areas. This notice also contains EPA's evaluation of Texas's submission against the requirements of the CAA and RHR for the second implementation period of the regional haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each State in which any Class I area is located or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan ''must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State,'' and (f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas.

The EPA explained in the 1999 RHR preamble that the CAA section 169A(b)(2) requirement that states submit SIPs to address visibility impairment establishes ''an 'extremely low triggering threshold' in determining which States should submit SIPs for regional haze.'' [41] In concluding that each of the contiguous 48 States and the District of Columbia meet this threshold,[42] the EPA relied on ''a large body of evidence demonstrat[ing] that long-range transport of fine PM contributes to regional haze,'' [43] including modeling studies that ''preliminarily demonstrated that each State not having a Class I area had emissions contributing to impairment in at least one downwind Class I area.'' [44] In addition to the technical evidence supporting a conclusion that each State contributes to *existing* visibility impairment, the EPA also explained that the second half of the national visibility goal—preventing *future* visibility impairment—requires having a framework in place to address future growth in visibility impairing emissions and makes it inappropriate to ''establish criteria for excluding States or geographic areas from consideration as potential contributors to regional haze visibility impairment.'' [45] Thus, the EPA concluded that the agency's ''statutory authority and the scientific evidence are sufficient to require all States to develop regional haze SIPs to ensure the prevention of any future impairment of visibility, and to conduct further analyses to determine whether additional control measures are needed to ensure reasonable progress in remedying existing impairment in downwind Class I areas.'' [46] The EPA's 2017 revisions to the RHR did not disturb this conclusion.[47]

1. Texas Class I Areas

Texas has two mandatory Class I areas within its borders, both of which are located in west Texas. Big Bend National Park (Big Bend) is in Brewster County and borders the Rio Grande and Mexico. Guadalupe Mountains National Park (Guadalupe Mountains) is in Culberson County and borders New Mexico. Both are managed by the National Park Service.

Big Bend was authorized as a national park on June 20, 1935, and established and signed into law on June 12, 1944, as the nation's 27th national park. Big Bend encompasses an area of 801,163 acres, entirely within Brewster County, Texas. For more than 1,000 miles, the Rio Grande forms the boundary between Mexico and the U.S., with Big Bend administering approximately 118 miles along the international boundary. The park gets its name from the course of the Rio Grande, which makes a great bend from a southeasterly to northerly direction in the western portion of Texas. Big Bend has national significance as the largest protected area of Chihuahuan Desert in the continental U.S. The park contains river, desert, and mountain environments.

Guadalupe Mountains was established as a national park on September 30, 1972, and contains Guadalupe Peak, the highest point in Texas at 8,749 feet, and El Capitan, a 1,000 foot-high limestone cliff. Guadalupe Mountains are also part of a mostly buried 400-mile long U-shaped fossil reef complex, Capitan Reef. The park covers more than 86,000 acres and is in the same mountain range of Carlsbad Caverns National Park, which is located about 40 miles to the northeast in New Mexico. Guadalupe Mountains is also located in the Chihuahuan Desert. The park is surrounded by the South Plains to the east and north, Delaware Mountains to the south, and Sacramento Mountains to the west.

2. Identification of Impacted Class I Areas Outside the State

In addition to the two Class I areas in Texas, the TCEQ conducted area of influence analyses (AOIs) paired with emissions-over-distance (Q/d) analyses for 11 Class I areas in other states including Louisiana, Arkansas, Colorado, Missouri, Oklahoma, and New Mexico. The AOIs were generated using ammonium sulfate and ammonium nitrate extinction-weighted residence times (EWRT).[48] The Class I areas included in the analysis from Texas and neighboring states are presented in table 1, which is taken from table 7–3: *Class I Areas included in AOI Analyses* of the 2021 Texas Regional Haze Plan.[49]

TABLE 1—CLASS I AREAS INCLUDED IN AOI ANALYSES OF THE 2021 TEXAS REGIONAL HAZE PLAN

Site	Code	State	County	Latitude	Longitude
Big Bend National Park	BIBE1	TX	48043	29.3027	−103.178
Breton Island	BRIS1	LA	22075	30.10863	−89.76168
Caney Creek	CACR1	AR	05113	34.4544	−94.1429
Great Sand Dunes	GRSA1	CO	08003	37.7249	−105.5185
Guadalupe Mountains National Park	GUMO	TX	48109	31.833	−104.8094
Hercules-Glades	HEG1	MO	29213	36.6138	−92.9221
Mingo	MING1	MO	29207	36.9717	−90.1432

[41] 64 FR at 35721.

[42] The EPA determined that ''there is more than sufficient evidence to support our conclusion that emissions from each of the 48 contiguous States may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area.'' 64 FR at 35721. Hawaii, Alaska, and the U.S. Virgin Islands must also submit regional haze SIPs because they contain Class I areas.

[43] *Id.*

[44] *Id.* at 35722.

[45] *Id.* at 35721.

[46] *Id.* at 35722.

[47] *See* 82 FR at 3094.

[48] 2021 Texas Regional Haze Plan at 7–6. Extinction-weighted residence time is calculated from the time that a particular back-trajectory from a Class I area spent in the grid square containing the individual emission source of interest (residence time) weighted by the extinction coefficient for the visibility precursor (sulfate and nitrate).

[49] For the purposes of the AOI analysis, Carlsbad Caverns was represented by data from the Guadalupe Mountains National Park monitor. *See* 2021 Texas Regional Haze Plan at 1–5.

TABLE 1—CLASS I AREAS INCLUDED IN AOI ANALYSES OF THE 2021 TEXAS REGIONAL HAZE PLAN—Continued

Site	Code	State	County	Latitude	Longitude
Rocky Mountain National Park	ROMO1	CO	08069	40.2783	−105.5457
Salt Creek	SACR1	NM	35005	33.4598	−104.4042
Upper Buffalo Wilderness	UPBO1	AR	05101	35.8258	−93.203
Wheeler Peak	WHPE1	NM	35055	36.5854	−105.42
White Mountain	WHIT1	NM	35027	33.4687	−105.5349
Wichita Mountains	WIMO1	OK	40031	34.7323	−98.713

As explained above, the EPA concluded in the 1999 RHR that ''all [s]tates contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area,'' and this determination was not changed in the 2017 RHR.[50] Critically, the statute and regulation both require that the cause-or-contribute assessment consider all emissions of visibility impairing pollutants from a State, as opposed to emissions of a particular pollutant or emissions from a certain set of sources. Consistent with these requirements, the 2019 Guidance makes it clear that ''all types of anthropogenic sources are to be included in the determination'' of whether a state's emissions are reasonably anticipated to result in any visibility impairment.[51]

While Texas identified Class I areas within and outside of the State that are potentially impacted by Texas sources, Texas did not conduct an AOI analysis for the Bosque del Apache Class I area.[52] Texas justifies this decision based on ''past SIP and FIP documentation'' but provides no additional context or explanation of why that decision remains appropriate for this planning period.[53] In contrast, Texas's CAMx PSAT[54] modeling identified Bosque del Apache as having impacts from Texas sources. According to Texas's PSAT modeling, Texas sources contribute over seven percent of the total visibility impairment at Bosque del Apache.[55] Specifically, the 2021 Texas Regional Haze Plan identifies that the influence due to particulate sulfate from Texas sources is more than five times the influence of New Mexico sources, and the influence due to particulate nitrate from Texas sources is nearly twice the influence of New Mexico sources.[56] Thus, Texas's PSAT modeling suggests that emissions from Texas sources are reasonably anticipated to contribute to visibility impairment at the Bosque del Apache Class I area given the low threshold for visibility impact on Class I areas discussed previously.[57] Therefore, Texas did not complete its obligation under 40 CFR 51.308(f), which provides that each state's plan ''must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State,'' and (f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas.

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires states to determine the following for ''each mandatory Class I Federal area located within the State'': baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives.[58]

In Chapter 4 of the 2021 Texas Regional Haze Plan, Texas determines and presents the baseline, natural, and current visibility conditions for both the 20 percent most anthropogenically impaired days and the 20 percent clearest days for the State's two Class I Areas consistent with the EPA's RHR and guidance. In the 2021 Texas Regional Haze Plan, the TCEQ used visibility data from IMPROVE monitoring sites to calculate baseline visibility conditions. Consistent with the RHR, Texas calculated baseline visibility based on data from 2000–2004. For Big Bend specifically, baseline visibility conditions are based on valid data for 2001 through 2004 because 2000 did not meet completeness criteria.[59] Baseline visibility indices for Big Bend and Guadalupe Mountains are presented in the 2021 Texas Regional Haze Plan in table 4–4. In our review, we identified that the information provided by Texas in Chapter 4 of its 2021 Regional Haze Plan as to the baseline and current conditions on the 20 percent clearest days is inconsistent with the IMPROVE monitoring data and information presented in Chapter 8. Based on the information in table 8–42 of the 2021 Regional Haze Plan, Texas identifies the correct data set for where this information is located but presents the incorrect data in Chapter 4. Based on the data source that Texas identified in Chapter 8, we present information in tables 2 and 4 consistent with information in Chapter 8 of its Plan and the IMPROVE monitoring data.[60]

[50] 64 FR at 35721.

[51] 2019 Guidance at 8.

[52] Texas also did not conduct an AOI analysis for the Bandelier Class I area for the same reasons provided for Bosque del Apache.

[53] 2021 Texas Regional Haze Plan, appendix A at 19 of 227; 2021 Texas Regional Haze Plan, Response to Comments at 460 of 653.

[54] Comprehensive Air quality Model with extensions (CAMx) Particulate Source Apportionment Technique (PSAT). CAMx PSAT is capable of tracking source category emissions and separate source regions for certain PM species and precursor emissions. We discuss this further in the Technical Support Document (TSD) for this action, included in the docket.

[55] 2021 Texas Regional Haze Plan, appendix A at 26 of 227.

[56] *See* 2021 Texas Regional Haze Plan, table 8–41 at 8–53; and 2021 Texas Regional Haze Plan, appendix F at F–59 to F–61.

[57] 2021 Texas Regional Haze Plan, appendix F at F–36.

[58] 40 CFR 51.308(f)(1)(vi)(B).

[59] *See* 2021 Texas Regional Haze Plan at 4–4.

[60] *https://views.cira.colostate.edu/fed/. See also* 2020 Data Completeness Memo, table 1.

TABLE 2—ESTIMATE OF BASELINE VISIBILITY CONDITIONS (2000–2004) FOR CLASS I AREAS IN TEXAS

Class I area	Most impaired haze index (dv)	Clearest haze index (dv)
Big Bend	15.57	5.78
Guadalupe Mountains	14.60	5.92

Using the revised IMPROVE algorithm [61] and the methodology described in the 2018 Visibility Tracking Guidance, the TCEQ determined natural visibility conditions for Big Bend and Guadalupe Mountains, presented in table 4–3 of the 2021 Texas Regional Haze Plan, and included in the following table 3.

TABLE 3—ESTIMATE OF NATURAL VISIBILITY CONDITIONS FOR CLASS I AREAS IN TEXAS

Class I area	Most impaired haze index (dv)	Clearest haze index (dv)
Big Bend	5.33	1.62
Guadalupe Mountains	4.83	0.99

The current visibility conditions, which are based on 2014–2018 monitoring data, are presented in the 2021 Texas Regional Haze Plan in table 4–5 with corrected values included in the following table 4.

TABLE 4—ESTIMATE OF CURRENT VISIBILITY CONDITIONS (2014–2018) FOR CLASS I AREAS IN TEXAS

Class I area	Most impaired haze index (dv)	Clearest haze index (dv)
Big Bend	14.06	5.17
Guadalupe Mountains	12.64	4.73

While the 2021 Texas Regional Haze Plan does not specifically present the differences between current visibility conditions and natural visibility conditions as well as the progress to date, we include these calculations using the corrected information in tables 5 and 6.

TABLE 5—PROGRESS TO DATE (DIFFERENCES BETWEEN BASELINE AND CURRENT CONDITIONS)

Class I area	Most impaired (dv)	Clearest haze (dv)
Big Bend	1.51	0.61
Guadalupe Mountains	1.96	1.19

TABLE 6—DIFFERENCES BETWEEN CURRENT AND NATURAL CONDITIONS

Class I area	Most impaired (dv)	Clearest haze (dv)
Big Bend	8.73	3.55
Guadalupe Mountains	7.81	3.74

The Regional Haze Rule allows states the option to adjust the 2064 glidepath endpoint to account for both international anthropogenic and certain prescribed fire impacts at Class I areas. In the EPA's September 2019 Availability of Modeling Data and Associated Technical Support Document for the EPA's Updated 2028 Visibility Air Quality Modeling memorandum [62] (EPA 2019 Modeling TSD), the EPA used 2028 modeling results to quantify the international and prescribed fire impacts at Class I areas on the 20% most anthropogenically impaired days. Texas used its own CAMx modeling results to adjust the URP to account for international anthropogenic emissions consistent with the approach used by the EPA in the TSD associated with the EPA's Updated 2028 Visibility Air Quality Modeling memorandum. Texas's adjusted URP for Big Bend and Guadalupe Mountains are presented in Figures 8–28 and 8–29 of its 2021 Texas

[61] Marc Pitchford et al., *Revised Algorithm for Estimating Light Extinction from IMPROVE Particle Speciation Data*, j. Air & waste mgmt. Ass'n 1326, 1326–1336 (2007), *https://doi.org/10.3155/1047-3289.57.11.1326*.

[62] Availability of Modeling Data and Associated Technical Support Document for the EPA's Updated 2028 Visibility Air Quality Modeling. *https://www.epa.gov/visibility/technical-support-document-epas-updated-2028-regional-haze-modeling*. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (Sep. 19, 2019).

Regional Haze Plan.[63] Texas's adjusted URP in 2028 on the 20% most impaired visibility days is 14.38 deciviews for Big Bend and 12.81 for Guadalupe Mountains.[64] These values for Big Bend and Guadalupe Mountains are within the range of 2028 adjusted glidepath values provided for in the EPA 2019 Modeling TSD.[65]

The EPA finds that the visibility condition calculations for the two Texas Class I Areas meet the requirements of 40 CFR 51.308(f)(1). Therefore, the EPA proposes to approve the portions of the 2021 Texas Regional Haze Plan relating to 40 CFR 51.308(f)(1).

E. Long-Term Strategy for Regional Haze

Each State having a Class I area within its borders or emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress towards the national visibility goal.[66] As explained in the Background section of this notice, reasonable progress is achieved when all states contributing to visibility impairment in a Class I area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress.[67] Each state's long-term strategy must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress.[68] All new (*i.e.,* additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the long-term strategy. If the outcome of a four-factor analysis and other measures necessary to make reasonable progress is that no new measures are reasonable for a source, that source's existing measures are necessary to make reasonable progress, unless the State can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be in the long-term strategy. In developing its long-term strategies, a State must also consider the five additional factors in § 51.308(f)(2)(iv). As part of its reasonable progress determinations, the State must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.,* subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy.[69]

1. Source Selection

a. Overview of Texas's Source Selection

Under 40 CFR 51.308(f)(2)(i), states must evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment.[70] In doing so, states should consider evaluating major and minor stationary sources or groups of sources, mobile sources, and area sources as part of their long-term strategy for regional haze. Furthermore, the State must include in its implementation plan a description of the criteria it used to determine which sources or groups of sources it evaluated. States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under 40 CFR 51.308(f)(2). Texas, however, conducted its own analysis separate from CenSARA's analysis to select sources for further evaluation using the four statutory factors.

Texas focused on sources of NO_X and SO_2 emissions in its control strategy analysis for the second planning period. Texas explained these are the main anthropogenic pollutants that affect visibility at Class I areas in Texas and Class I areas in neighboring states. Texas further stated that, ''on an individual basis, point sources are the largest contributors to SO_2 and NO_X,'' and thus Texas elected to focus on point sources in this planning period.[71]

Texas's source selection methodology relied on a two-step approach. As the first step for source selection, Texas developed areas of influence (AOIs) for thirteen[72] Class I areas (in Texas and nearby states) to identify areas that may contain sources of NO_X and SO_2 that were expected to contribute to visibility impairment at these areas. The AOIs are graphical representations of the extinction weighted residence time (EWRT), which combines air flow patterns with ammonium sulfate and ammonium nitrate extinction measured at IMPROVE monitors at the Class I areas on the 20% most impaired days. The TCEQ used the AOI of a Class I area as a brightline cutoff to define the boundaries within which to further evaluate sources located within that area. As the second step, Texas then applied a Q/d threshold for NO_X and for SO_2 of greater than or equal to five to point sources located within the geographical area of the selected AOI threshold.[73] As a result, any source within the AOI boundaries with a Q/d less than five or any source, regardless of its Q/d, that fell outside of the AOI boundaries were eliminated from further consideration.

Although Texas determined AOIs for 13 Class I areas in Texas and nearby states, Texas's 2021 Regional Haze Plan focused only on those Class I areas where sources with a Q/d greater than or equal to five fell within the AOI boundary.[74] Following this methodology, Texas selected 18 sources for further analysis for only four Class I areas: Wichita Mountains, Caney Creek, Guadalupe Mountains, and Salt Creek.[75]

[63] After Texas adjusted the glidepath endpoint to account for contributions from international anthropogenic emissions, one site (Salt Creek, NM) was projected to be above the adjusted URP. The EPA 2019 Modeling TSD also had Salt Creek above the adjusted glidepath.

[64] 2021 Texas Regional Haze Plan, table 8–43 at 8–59 and table 8–46 at 8–67.

[65] EPA 2019 Modeling TSD at 54, 56, and table 5–2 at 59.

[66] CAA 169A(b)(2)(B).

[67] 40 CFR 51.308(f)(2)(i).

[68] 40 CFR 51.308(f)(2).

[69] 40 CFR 51.308(f)(2)(i), (iii).

[70] *See also* CAA 169A(g)(1).

[71] 2021 Texas Regional Haze Plan at 7–3.

[72] As discussed previously in section IV.C., the monitor for Guadalupe Mountains also serves as the monitor for Carlsbad Caverns in New Mexico.

[73] To calculate the Q/d for point sources, the TCEQ used 2028 projected emissions (Q in tons per year) and distance from the Class I area monitor to the source (d in kilometers). For non-EGUs, Texas estimated 2028 future year emissions from 2016 reported emissions from the State of Texas Air Reporting System (STARS) coupled with growth factors developed by the consulting firm, Eastern Research Group, Inc. (ERG) *See* 2021 Texas Regional Haze Plan at 7–9. For EGUs, the TCEQ used data from the Eastern Regional Technical Advisory Committee (ERTAC) to estimate EGU projections for 2028. *See* 2021 Texas Regional Haze Plan at 7–9.

[74] *See* 2021 Texas Regional Haze Plan, Figure 7–1 at 7–4 and Figure 7–2 at 7–5. Texas stated that those additional AOIs not represented in those figures in the SIP did not add additional sources for consideration. 2021 Texas Regional Haze Plan at 7–6.

[75] *See* Texas 2021 Regional Haze Plan at 7–5 to 7–6. Presented Class I areas are: Caney Creek, Guadalupe Mountains, Salt Creek, and Wichita Mountains for the NO_X analysis, and Caney Creek, Guadalupe Mountains, and Wichita Mountains for the SO_2 analysis.

TABLE 7—TEXAS'S SOURCE SELECTION FOR ITS 2021 REGIONAL HAZE PLAN [76]

Company/site name	Unit(s)	Class I area(s)	Pollutant(s)
Coleto Creek Power/Coleto Creek Power Station.	(1) coal boiler	Wichita Mountains	SO_2.
Southwestern Electric Power/Welsh Power Plant.	(2) coal boilers	Caney Creek & Wichita Mountains.	SO_2.
AEP/Pirkey Power Plant	(1) coal boiler	Caney Creek & Wichita Mountains.	SO_2.
NRG Energy/Limestone Electric Generating Station.	(2) coal boilers	Wichita Mountains	SO_2.
Vistra Energy/Martin Lake Electric Station	(3) coal boilers	Caney Creek & Wichita Mountains.	SO_2.
San Miguel Electric Cooperative/San Miguel Elec. Plant.	(1) coal boiler	Guadalupe Mountains & Wichita Mountains.	SO_2.
Public Service Co. of Oklahoma/Oklaunion Power Station.	(1) coal boiler	Wichita Mountains	SO_2 & NO_X.
Vistra Energy/Oak Grove Steam Electric Station.	(2) coal boilers	Wichita Mountains	SO_2.
Holcim Texas LP/Midlothian Plant	(2) cement kilns	Wichita Mountains	SO_2.
Vitro Flat Glass/Works No. 4 Wichita Falls Plant.	(2) glass melting furnaces	Wichita Mountains	SO_2 & NO_X.
Graphic Packaging International/Texarkana Mill.	(4) boilers: (2) black liquor solids & NG; (1) NG & fuel oil; (1) NG, fuel oil, & other materials.	Caney Creek	NO_X.
El Paso Natural Gas Co./Keystone Compressor Station.	(15) reciprocating engines	Guadalupe Mountains & Salt Creek.	NO_X.
El Paso Natural Gas Co./Cornudas Plant	(6) turbines	Guadalupe Mountains	NO_X.
El Paso Natural Gas Co./Guadalupe Compressor Station.	(1) turbine	Guadalupe Mountains	NO_X.
GCC Permian/Odessa Cement Plant	(2) cement kilns	Guadalupe Mountains	NO_X.
Orion Engineered Carbons/Orange Carbon Black Plant.	(1) incinerator; (4) dryers; (2) tail gas and NG boilers; (1) flare.	Caney Creek	SO_2.
Oxbow Calcining/Oxbow Calcining-Port Arthur.	(4) coke calcining kilns	Caney Creek	SO_2.
Trinity Lightweight Aggregate (TRNLWS)/Streetman Plant.	(1) lightweight aggregate kiln	Wichita Mountains	SO_2.

b. EPA's Evaluation of Texas's Source Selection Methodology

In identifying the required emission limits, schedules of compliance, and other measures as may be necessary to make reasonable progress toward meeting the national goal, States first select sources for consideration of the four statutory factors.[77] Under the RHR, States have flexibility in conducting their source selection; however, Texas's source selection methodology was neither well-reasoned nor adequately justified.[78] Notably, Texas did not select any sources for further analysis of control measures that may be necessary for inclusion as part of the long-term strategy to make reasonable progress for Big Bend National Park and did not select any SO_2 sources for consideration for Salt Creek. Moreover, the EPA finds the source selection methodology used by Texas was not adequately or accurately described. As such, the threshold Texas applied to define its AOIs was not justified. Without the proper justification, it is unclear how, despite these deficiencies, Texas makes reasonable progress at these Class I areas.

i. The TCEQ Failed To Adequately Describe the Criteria It Used To Select Sources

Under 40 CFR 51.308(f)(2)(i), States are required to include a ''description of the criteria it used to determine which sources or groups of sources it evaluated.'' Based on our review of the 2021 Texas Regional Haze Plan, the methodology Texas described in its SIP to develop its AOIs is inconsistent with, and would not result in, the AOIs presented in Texas's SIP. Texas states in its SIP that the AOIs were determined by dividing the EWRT for each cell by the sum total of all the EWRTs (*i.e.,* EWRT for each cell) across the entire domain.[79] However, based on the documentation the EPA obtained during early engagement in the Fall of 2020 and comparing it to what was in its 2021 Regional Haze Plan, Texas actually divided the EWRT for each cell by the *maximum* EWRT in the domain for each respective pollutant. There was thus an inconsistency between what Texas said its methodology was, and what was in its 2021 Regional Haze Plan submission. Specifically, in the 2020 early engagement document, Texas stated, ''. . . prior to plotting the AOIs, the weighted probabilities were scaled to 1 by dividing the weighted probabilities in each cell by the maximum value in

[76] Texas 2021 Regional Haze Plan, table 7–5.

[77] *See* 40 CFR 51.308(f)(2); CAA 169A(g)(1).

[78] 2019 Guidance at 9, 13. The 2019 Guidance explains that in selecting sources, states must reasonably choose factors and apply them in a reasonable way given the statutory requirement to make reasonable progress towards national goal of preventing future and remedying existing anthropogenic visibility impairment). *See* CAA 169A(b)(2). To that end, the 2019 Guidance recommends that states provide a detailed description of how the state used technical information to select a reasonable set of sources for an analysis of control measures including the basis for the visibility impact thresholds the state used (if applicable), and any other relevant information. *See also* 2021 Clarifications Memo at 3 (''States cannot reasonably determine that they are making reasonable progress if they have not adequately considered the contributors to visibility impairment. Thus, while states have discretion to reasonably select sources, this analysis should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.'').

[79] 2021 Texas Regional Haze Plan at 7–7.

a cell in the domain.'' [80] The EPA compared the plotted AOIs Texas had submitted during the 2020 early engagement period with the plotted AOIs Texas submitted with its 2021 Regional Haze Plan. These AOIs are the same, confirming that, despite what Texas stated in its 2021 Regional Haze Plan, Texas was actually following its articulated methodology in the 2020 early engagement document.

This early engagement information was not included in the proposed SIP Texas published during its state-level notice-and-comment process. Thus, Texas's SIP failed to accurately or adequately describe the criteria actually used in its 2021 Regional Haze Plan submission to determine which sources, or groups of sources, it chose to evaluate for additional control measures as required by 40 CFR 51.308(f)(2)(i). Without an accurate and adequate description of Texas's source selection methodology, it is not clear from its 2021 Texas Regional Haze Plan how Texas evaluated and determined the emission reduction measures that are necessary to make reasonable progress for its second planning period long-term strategy. We discuss the AOI methodologies and these inconsistencies further in the Technical Support Document (TSD) included in the docket for this action.

ii. Texas Failed To Adequately Justify Its AOI Threshold

As noted in the previous section and more fully explained in the EPA's TSD, Texas selected sources using AOIs it developed for each Class I area then followed with a Q/d analysis. The AOIs established a brightline geographic boundary within which Texas selected sources with a Q/d of greater than or equal to five. In other words, Texas did not consider a source, regardless of the size of its emissions, if it was not first within the geographic area defined by the chosen AOI threshold.

To define the brightline geographic boundaries of the AOIs, Texas applied a threshold of 0.1 or 10% of the maximum EWRT value for that AOI.[81] Texas did not provide any discussion or justification for its selection of this threshold, nor did Texas explain how this threshold resulted in evaluating a meaningful set of sources for possible controls measures to improve visibility impairment. Further, Texas did not evaluate whether the selected threshold provided for AOIs that included a sufficiently large area to capture the sources with the highest emissions, or Q/d values, that impact visibility at certain Class I areas. The need for a justification is crucial when a State is applying the threshold as a brightline when selecting sources to evaluate for additional control measures, such as what Texas did here. The AOIs generated from EWRTs represent the general location that air parcels are coming from when visibility extinction is high. However, unless an appropriate threshold value is applied, they do not necessarily capture the specific sources of emissions that are contributing to visibility impairment at the Class I area.[82] Texas's approach did not consider the size or location of point sources, despite articulating a specific focus on point sources,[83] or the total emissions captured to support that their approach and chosen threshold resulted in a reasonable identification of sources for analysis in development of the long term strategy. This problem is evident in Texas's 2021 Regional Haze Plan, where several AOIs contained no sources identified for further consideration and several large emission sources with Q/d values far exceeding Texas's Q/d threshold of five being excluded from further consideration because they were located outside of Texas's generated AOIs.

For example, W A Parish is located just outside of Texas's ammonium sulfate AOIs for both Caney Creek and Wichita Mountains, and outside of Texas's ammonium sulfate AOI for Big Bend.[84] The SO_2 Q/d values for W A Parish are 32.2 for Caney Creek, 28.2 for Wichita Mountains, and 25.1 for Big Bend.[85] Tolk Generating Station is also located outside of Texas's ammonium sulfate AOI for Salt Creek; however, it has a Q/d value of over 84.[86] Ammonium sulfate is the largest contributor to observed light extinction at Salt Creek [87] but Texas did not identify *any* source of SO_2 emissions for further analysis due to the application of their AOI brightline test and selected EWRT threshold, despite the large SO_2 emissions from Tolk and the relative proximity of the facility to Salt Creek.[88] Given the large emissions from these facilities, these sources likely are meaningfully contributing to visibility impairment, even if they happen to fall outside of the chosen Texas AOIs. Based on its analysis of other coal-fired EGUs with no controls or underperforming controls, had Texas selected these sources for further evaluation under the four factors, Texas may have found cost-effective controls available, resulting in emission reductions that may have been necessary for inclusion in its long-term strategy to make reasonable progress toward meeting the national goal. Moreover, Texas did not explain how not evaluating these high-emitting sources nonetheless results in a long-term strategy that makes reasonable progress toward the national goal.

We therefore find Texas's unjustified use of its selected threshold and resulting AOIs as a brightline cutoff in

[80] See ''*README.AOIdevelopmentFor 2021RHSIP_Response_to_EPArequest.20Nov2020 update.docx*'' available in the docket for this action.

[81] Texas discusses its AOI and Q/d analysis in section 7.2.1 of its 2021 Texas Regional Haze Plan.

[82] The 2019 Guidance describes a source selection approach utilizing residence time analysis that selects sources for further analysis by giving each point source a score that takes into account the source's emissions, the daily values of light extinction at a Class I area, the distance between the source and a Class I area, and the relative frequency with which wind trajectories indicate that each source is upwind of the IMPROVE monitoring site. 2019 Guidance at 13. This is the general approach followed by CenSARA and WRAP.

[83] Texas found that on an individual basis point sources are the largest contributors to visibility impairment in Class I areas. 2021 Texas Regional Haze Plan at 7–3.

[84] *See* 2021 Texas Regional Haze Plan, Figure 7–2 at 7–5; AOI for Big Bend located in Texas's EWRT AMDA spreadsheet on TCEQ's AMDA website at *https://www.tceq.texas.gov/assets/public/implementation/air/sip/haze/EWRT_AMDA_Pivot_final.xlsx.* This spreadsheet is also available in our docket as ''Texas EWRT AMDA spreadsheet.xlsx''.

[85] *See* ''EPA Q_d Spreadsheet.xlsx'' available in the docket for this action. The information included in the EPA's spreadsheet used information available in our docket as ''Texas EWRT AMDA spreadsheet.xlsx''. *See also* Letter from Arkansas Department of Energy and Environment to TCEQ requesting that TCEQ consider, among other sources, whether performing a four-factor analysis is appropriate for the W A Parish facility in accordance with 40 CFR 51.308(f)(2)(i) due to impacts on Caney Creek based on CenSARA's AOI study (Feb. 4, 2020). The letter is available in Appendix A of Texas's 2021 Regional Haze Plan at 84 of 227. *See also* Letter from Oklahoma Department of Environmental Quality to TCEQ requesting that TCEQ consider further evaluating the W A Parish facility based on its identification that the source is reasonably anticipated to contribute to visibility impairment at the Wichita Mountains Wilderness Area (July 17, 2020). The letter is available in Appendix A of Texas's 2021 Regional Haze Plan at 125 of 227.

[86] *See* AOI for Salt Creek located in ''Texas EWRT AMDA spreadsheet.xlsx'' available in the docket for this action. *See* ''EPA Q_d Spreadsheet.xlsx'' available in the docket for this action. *See also* Letter from New Mexico Environment Department to TCEQ requesting among other things that Texas specifically evaluate the Tolk facility for additional controls based on its impact to Class I areas in New Mexico, including Salt Creek (Feb. 2, 2021). The letter is available in Appendix A of Texas's 2021 Regional Haze Plan at 111 of 227. *See also,* information provided by the FLMs during consultation that Tolk and W A Parish merit further evaluation based on emissions and potential emission reductions available. The information provided by the FLMs is available in Appendix A of Texas's 2021 Regional Haze Plan at 205 of 227.

[87] *See* 2021 Texas Regional Haze Plan, appendix F, Figure 1–60.

[88] EPA used information from Texas's EWRT AMDA spreadsheet, also available in our docket as ''Texas EWRT AMDA spreadsheet.xlsx''. We used the same information to calculate the SO_2 Q/d values for Tolk at White Mountain (56) and at Wheeler Peak (42.7).

source selection to be unreasonable. Texas's methodology resulted in several of the highest emitting SO_2 stationary point sources in the State of Texas not being selected for further evaluation of controls to improve visibility impairment at the Class I areas they likely impact, and in the case of some Class I areas, no sources selected at all for further analysis using the four statutory factors for those areas.

iii. PSAT Modeling Results Further Demonstrate Unreasonableness of Texas's Source Selection Methodology

The 2019 Guidance identifies photochemical modeling and the use of source apportionment modeling as possible methods to assess PM species impacts from sources or groups of sources for source selection.[89] Texas conducted photochemical source apportionment modeling (known as the Particulate Matter Source Apportionment Technology, or PSAT, function of CAMx modeling) as part of its 2021 Regional Haze Plan to evaluate the impact of emissions from source categories on visibility in Class I areas.[90] While Texas did not conduct PSAT modeling for the explicit purpose of source selection, Texas nevertheless included the results of the PSAT modeling in its SIP.[91] The EPA finds Texas's own PSAT modeling results illustrate the flaws in Texas's source selection methodology.

The TCEQ failed to address in its 2021 Regional Haze Plan how its source selection approach and resulting failure to select sources for further analysis to address visibility impairment at Big Bend are consistent with the CAA's statutory goal and Regional Haze Rule requirements.[92] TCEQ's source selection methodology did not identify any sources for further analysis of control measures that may be necessary to include in its long-term strategy to make reasonable progress at Big Bend. The TCEQ's PSAT model results indicate that emissions from Texas anthropogenic sources account for over 10% of the total light extinction at Big Bend, and 67% of the light extinction due to U.S. anthropogenic emissions.[93] The influence from Texas sources on light extinction at Big Bend is approximately double the influence from anthropogenic sources in the rest of the U.S. combined.[94] While Texas states that visibility at Big Bend is heavily influenced by international emissions, the TCEQ has already accounted for this by adjusting the glidepath for its Class I areas to remove visibility impairment from international emissions, consistent with the EPA's guidance, and thus should not be used as a rationale for not evaluating sources for additional control measures. CAA 169A(a)(1), (b)(2) and the RHR require states to make reasonable progress towards addressing anthropogenic impairment from U.S. sources in the second planning period in furtherance of Congress's national goal.

The influence of Texas sources on sulfate and nitrate concentrations at Big Bend shows that emissions from Texas sources are projected to account for approximately 65.4% of the particulate sulfate concentration and 59.3% of the nitrate concentration due to U.S. anthropogenic emissions.[95] The vast majority (93.9%)[96] of the Texas influence on particulate sulfate concentrations at Big Bend can be attributed to Texas anthropogenic emissions from electricity generating unit (EGU) point and non-EGU point sources.[97] Therefore, these data demonstrate that Texas's AOI analysis and threshold selection for Big Bend did not adequately identify the relevant sources that impact visibility impairment for further analysis necessary to develop a long-term strategy to make reasonable progress at Big Bend.

Similarly, Texas's PSAT modeling also underscores inadequacies with its source selection for Class I areas in New Mexico, for example, Salt Creek. As noted above, Texas's AOI analysis for Salt Creek identified no sources of SO_2 in Texas for consideration for further analysis. However, the results of Texas's PSAT modeling show that Texas sources account for almost 12% of the light extinction at Salt Creek.[98] The largest contributor to light extinction at Salt Creek is sulfate.[99] Focusing on modeled U.S. anthropogenic impacts alone, Texas anthropogenic sources account for approximately 51.3% of the particulate sulfate concentrations at Salt Creek.[100] Texas's chosen approach for source selection failed to identify any SO_2 point sources, despite accounting for over half of all the U.S. anthropogenic particulate sulfate concentrations at Salt Creek.

Class I areas like Salt Creek that are not projected to be on or under the glidepath are subject to additional requirements in the RHR. Under 40 CFR 51.308(f)(3)(ii)(B), Texas must provide a robust demonstration that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that may reasonably be anticipated to contribute to visibility impairment in the Class I area that would be reasonable to include in its own long-term strategy.[101] The influence from Texas's point sources on particulate sulfate concentrations at Salt Creek is more than double the amount of New Mexico's total (point source, non-point source, and mobile source) influence on particulate sulfate concentrations at Salt Creek.[102] Meaning, SO_2 emissions from Texas sources contribute more to visibility impairment at Salt Creek than SO_2 emissions from New Mexico sources. Given the meaningful contribution to visibility impairment demonstrated by its PSAT modeling, Texas's decision not to select any SO_2 sources for further analysis and consideration of the four statutory factors (or to adequately justify the decision not to select these sources) fails to satisfy the requirement to provide for a robust demonstration for those Class I areas projected to be above the glidepath, as required by 40 CFR 51.308(f)(3)(ii)(B).

iv. EPA's Conclusions and Proposed Action on Source Selection

The EPA finds the source selection methodology used by Texas was not adequately described as required by the RHR.[103] Nevertheless, the EPA was able to discern the state's approach to

[89] 2019 Guidance at 14–15.

[90] 2021 Texas Regional Haze Plan at 8–2.

[91] As explained in our 2019 Guidance, photochemical models are a more detailed and sophisticated technique for evaluating visibility impacts. Photochemical modeling considers the dispersion transformation and deposition processes. Source apportionment can ''tag'' and track emissions sources by any combination of region and sector, or by individual source. As evidenced in Appendix A of Texas's 2021 Regional Haze Plan, Texas had the results of the PSAT modeling at least by March 31, 2020, when Texas presented the results to the FLMs during a consultation meeting.

[92] CAA 169A(a)(1), (b)(2); 40 CFR 51.308(f)(2).

[93] *See* 2021 Texas Regional Haze Plan Figure 8–21 at 8–46.

[94] *See* 2021 Texas Regional Haze Plan Figure 8–21 at 8–46.

[95] *See* 2021 Texas Regional Haze Plan, appendix F, Figure 1–52 at F–54 and Figure 1–53 at F–55.

[96] *See* 2021 Texas Regional Haze Plan, appendix F, Figure 1–52 at F–54.

[97] *See* 2021 Texas Regional Haze Plan, appendix F, Figure 1–52 at F–54.

[98] *See* 2021 Texas Regional Haze Plan, appendix F at F–36.

[99] *See* 2021 Texas Regional Haze Plan, appendix F at F–62.

[100] *See* 2021 Texas Regional Haze Plan, appendix F at F–63.

[101] Texas's own modeling and the EPA's modeling demonstrated that Salt Creek would be above the adjusted glidepath.

[102] *See* 2021 Texas Regional Haze Plan, appendix F, Figure 1–61 at F–63.

[103] 40 CFR 51.308(f)(2)(i) (''The State must evaluate and determine the emission reduction measures that are necessary to make reasonable progress . . . The State must include in its implementation plan a description of the criteria it used to determine which sources or groups of sources it evaluated'').

developing its AOIs which relied upon drawing a boundary based on a threshold of ten percent of the maximum EWRT values. Texas, however, did not provide any rationale or justification for this ten percent threshold. The boundaries of the AOIs were used as a brightline cutoff, with sources outside the AOIs not given any further consideration. As demonstrated in previous sections, Texas's methodology was unreasonable because it resulted in the selection of no sources for further evaluation at Big Bend and no SO_2 sources for further analysis at Salt Creek. Texas's own PSAT modeling results confirm that its methodology was unreasonable because the results show significant contribution from Texas anthropogenic sources to visibility impairment at Big Bend and Salt Creek. Texas made no attempt to explain the disconnect between its PSAT results and its source selection approach.

The selection of a reasonable set of sources is a necessary first step in identifying the required emission limits, schedules of compliance, and other measures as may be necessary for inclusion in its long-term strategy to make reasonable progress toward meeting Congress's goal of preventing any future, and remedying any existing, impairment at Class I areas after consideration of the four statutory factors.[104] It is evident that developing a long term strategy to make reasonable progress cannot be met, if no sources of pollutants shown to be meaningful contributors to impairment are selected for further evaluation. It is further evident that, at least for Big Bend for both NO_X and SO_2 and for Salt Creek for SO_2, Texas's method of establishing an AOI is not adequate to identify sources of visibility impairment in Texas.

Therefore, the EPA is proposing to disapprove the portion of Texas's 2021 Regional Haze Plan addressing the regulatory requirements of the long-term strategy under 40 CFR 51.308(f)(2).

2. Four Factor Analysis

This section discusses the technical bases and information Texas relied on in the evaluation of emission reduction measures necessary to make reasonable progress in each Class I area affected by emissions from Texas when developing its long-term strategy for the second planning period. As discussed in the preceding section, Texas selected 18 sources for evaluation of emissions reductions necessary to make reasonable progress.[105] If a source triggered analysis for both NO_X and SO_2, control strategies for both pollutants were analyzed separately and concurrently.[106] Of the 18 sources selected for evaluation, eight are EGU sources and 10 are non-EGU sources.

Based on the statutory and regulatory requirements, Texas evaluated emission reduction measures that are necessary to make reasonable progress by considering the four statutory factors listed in CAA § 169A(g)(1) and 40 CFR 51.308(f)(2)(i) for these selected sources. The four statutory factors are (1) the cost of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. This is commonly referred to as ''the four-factor analysis.'' The four statutory factors must be considered when evaluating and determining the emissions reductions measures that are necessary to make reasonable progress.[107] Although visibility impact is not one of the factors required for consideration under the CAA and the RHR, Texas opted to evaluate and consider the visibility benefits from selected control measures evaluated in the four-factor analysis by conducting photochemical sensitivity modeling.[108] In the subsections that follow, we discuss Texas's analysis of the four statutory factors.

a. Identification of Potential Controls

In accordance with EPA's 2019 Guidance, ''the first step in characterizing control measures for a source is the identification of technically feasible control measures for those pollutants that contribute to visibility impairment.'' [109] The EPA's 2019 Guidance does not define the term ''technically feasible;'' however, EPA's Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations (the BART Guidelines) states:

> Control technologies are technically feasible if either (1) they have been installed and operated successfully for the type of source under review under similar conditions, or (2) the technology could be applied to the source under review. Two key concepts are important in determining whether a technology could be applied: ''availability'' and ''applicability.'' . . . a technology is considered ''available'' if the source owner may obtain it through commercial channels, or it is otherwise available within the common sense meaning of the term. An available technology is ''applicable'' if it can reasonably be installed and operated on the source type under consideration. A technology that is available and applicable is technically feasible.[110]

A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.[111] In order to provide guidance on what control measures should be included in their four-factor analysis, the RHR Guidance lists examples of different types of control measures that states may consider.[112]

For EGUs without existing controls, Texas considered and evaluated dry sorbent injection (DSI), spray dryer absorber (SDA), and wet limestone scrubbing systems (wet FGD) as potential SO_2 control options, and selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR) as potential NOx controls.[113] For EGUs with existing SO_2 controls, Texas considered and evaluated upgrading the control efficiency of the controls to 95%.[114] For non-EGUs, Texas considered various NO_X and SO_2 control options depending on the type of source and whether it had existing controls.[115]

For selected sources where Texas could not identify any feasible control options for a particular source-type, that particular source and pollutant was not further evaluated in the four-factor analysis. Texas stated that it only considered control technologies that have been demonstrated as technically feasible for units at each source type and evaluated those control technologies using available unit-specific data. Texas deemed a given control technology to be ''demonstrated to be technically feasible'' if it was identified in the EPA's Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate (RACT/BACT/LAER) Clearinghouse or operated in industrial applications for units within an industry type not in a performance ''trial'' phase.[116] Texas further explained that a control measure or technique that has been established as technically demonstrated or feasible

[104] *See* 40 CFR 51.308(f)(2).

[105] 2021 Texas Regional Haze Plan table 7–5 at 7–15.

[106] 2021 Texas Regional Haze Plan at 7–11.

[107] 40 CFR 51.308(f)(2)(i).

[108] 2021 Texas Regional Haze Plan at 7–11.

[109] 2019 Guidance at 22.

[110] 40 CFR part 51, appendix Y, Section D, Step 2.

[111] 2019 Guidance at 22.

[112] 2019 Guidance at 29–30.

[113] 2021 Texas Regional Haze Plan, appendix B at B–1.

[114] 2021 Texas Regional Haze Plan, appendix B at B–1 and B–5 to B–6.

[115] 2021 Texas Regional Haze Plan, appendix B at B–1.

[116] 2021 Texas Regional Haze Plan, appendix B at B–3.

in one industry type was not considered to extend automatically to other industry types. Based on Texas's approach, Texas determined that there were no technically feasible controls for three of the 18 sources selected for further evaluation using the four factors: the Orion Carbon Black facility in Orange County, the Oxbow Calcining facility in Jefferson County, and the Streetman facility in Navarro County. These three determinations are discussed in more detail in the following paragraphs.

Initially we note that Texas's search for available controls relied primarily on the RACT/BACT/LAER Clearinghouse. BACT and LAER are terms associated with EPA's ''New Source Review'' (NSR) permitting program and is triggered when a company is planning to build a new plant or modify an existing plant such that air pollution emissions will increase by a large amount. EPA established the RACT/BACT/LAER Clearinghouse to provide a central data base of air pollution technology information (including past RACT, BACT, and LAER decisions contained in NSR permits) to promote the sharing of information among permitting agencies and to aid in future case-by-case determinations.[117] We note that many of the petroleum coke calcining plants and carbon black plants were constructed prior to the start of EPA's NSR permitting program and have generally not been modified in ways that would trigger the permitting programs.[118] As a result, Texas's reliance on that RACT/BACT/LAER Clearinghouse is not a sufficient search for these types of facilities.

In fact, several groups commented during Texas's state-level comment period that there were technically feasible controls available for petroleum coke calcining facilities similar to the Oxbow facility. For example, commenters referenced a report which includes a discussion of a petroleum coke calcining plant that currently operates a DSI system to control emissions.[119] Additionally, the report identifies a Tesoro facility that operates a semi-dry scrubber combined with a wet electrostatic precipitator that reduces SO_2 emissions in excess of 95%.[120] In response to these comments, Texas stated that:

> The control technology the commenter provided may be technically feasible for petroleum coke calcining manufacturing sites but would not necessarily be considered technically demonstrated directly on the kilns such that this technology could be implemented at Oxbow's Port Arthur facility as suggested by the commenter. The possible control options suggested by the commenter would require modification to a site's operational process such that a potential SO_2 post-combustion control strategy could technically be implemented to control SO_2 emissions from petroleum coke calcining kilns. The TCEQ notes these potential strategies would be implemented downstream of the kiln, or kilns, and not directly on the kiln. The operational process modification would require additional process units to the site to make the potential post-combustion SO_2 control measure technically feasible, thereby increasing capital expenditures not directly associated with the new, additional control measure but necessary for the control measure to effectively function and control SO_2 emissions from the petroleum coke calcining kiln. The TCEQ contends these higher-level control analysis approaches require much broader and resource intensive engineering and economic analyses, and they may not result in the potential control strategy being deemed cost-effective or reasonable and necessary for making reasonable progress for long-term strategies for a planning period.[121]

While Texas's response indicates that such control technologies may not be cost effective based on the modifications that may need to occur at the site, such a determination would necessarily come out of a four-factor analysis; it does not explain why Texas's SIP continued to find that such control measures were not technically feasible.[122] In fact, it acknowledges that such control technologies may be technically feasible. To the extent Texas is relying on the fact that the costs of this control technology would be prohibitive, Texas needed to provide a cost analysis to document and support such an assumption.[123]

Furthermore, information provided by Oxbow during Texas's comment period acknowledge that while there is limited publicly available information there are ''a few commercially operating post-combustion SO_2 controls systems installed on petroleum coke kilns.''[124] Oxbow also provided a four-factor analysis conducted by Sargent & Lundy.[125] Specifically, Sargent & Lundy concluded that, based on engineering judgment and information from control system vendors, several control technologies were technically feasible and commercially available including: a DSI system with a fabric filter;[126] a spray dryer flue gas scrubber system;[127] a wet limestone scrubbing system;[128] and a circulating dry scrubber system.[129] Despite information provided to Texas to the contrary, the State continued to find that control technologies were not technically feasible. Therefore, Texas's determination that such control technologies were not technically feasible for petroleum coke calcining facilities was not reasonable. As a result, because Texas selected this source for further evaluation of control measures, it was unreasonable for Texas to not take into consideration the four statutory factors to determine whether there were cost-effective measures that were thus necessary for reasonable progress in fulfillment of their long-term strategy requirements for the second planning period.[130]

Texas received similar comments regarding Texas's determination that there were no feasible controls for the Orion carbon black plant. Notably, the commenter states that the EPA had entered into consent decrees with several carbon black manufacturing companies that required control of SO_2 emissions to 95%.[131] In response to these comments, Texas stated that while these consent decrees required certain control efficiencies, installing controls on carbon black facilities had yet to be demonstrated in practice. However, the EPA entered into a consent decree with

[117] *See* RACT/BACT/LAER Clearinghouse (RBLC) Basic Information available at *https://www.epa.gov/catc/ractbactlaer-clearinghouse-rblc-basic-information.*

[118] *See, e.g.,* Port Arthur Steam Energy/Oxbow Corp., available at *https://chptap.ornl.gov/profile/186/Port_Arthur_Steam-Project_Profile.pdf.*

[119] Bay Area Air Quality Management District Regulation 9, Rule 14 Report at 4, 9 (Oct. 2015).

[120] Bay Area Air Quality Management District Regulation 9, Rule 14 Report at 11 (Oct. 2015).

[121] 2021 Texas Regional Haze Plan, Response to Comments, at 481–482 of 653.

[122] See EPA's TSD for this action, available in the docket, for additional information regarding the installation and operation of controls on petroleum coke calcining plants.

[123] 40 CFR 51.308(f)(2)(iii).

[124] Oxbow Comments on 2021 Texas Regional Haze Plan, at 306 of 653. According to a 2022 technical support document (TSD) prepared by EPA, there are only approximately 15 petroleum coke calcining facilities operating in the United States. The EPA 2022 TSD is available in the docket for this action.

[125] Oxbow Comments on 2021 Texas Regional Haze Plan, Report from Sargent & Lundy at 312 of 653.

[126] Oxbow Comments on 2021 Texas Regional Haze Plan, Report from Sargent & Lundy at 338 of 653.

[127] Oxbow Comments on 2021 Texas Regional Haze Plan, Report from Sargent & Lundy at 336 of 653.

[128] Oxbow Comments on 2021 Texas Regional Haze Plan, Report from Sargent & Lundy at 334 of 653.

[129] Oxbow Comments on 2021 Texas Regional Haze Plan, Report from Sargent & Lundy at 336 of 653.

[130] We discuss additional examples of existing controls at coke calcining facilities in the TSD for this action, included in the docket.

[131] *See* 2021 Texas Regional Haze SIP, Comments by Sierra Club, et al., on Texas's Regional Haze SIP at 253 of 653.

the carbon black manufacturing company Cabot, which required the installation of wet gas scrubbers to control SO_2 emissions from their carbon black units. While the compliance dates were delayed,[132] Cabot completed construction of the wet gas scrubber at its Canal Plant in 2020.[133] Thus, the available information identifies technically feasible and available control technologies for carbon black facilities. Therefore, Texas's determination that no control technologies were technically feasible was unreasonable. Texas should have conducted a four-factor analysis for the Orion carbon black plant considering these available controls to determine whether cost-effective control measures were necessary for reasonable progress in fulfillment of its long-term strategy requirements.

Texas also received comments during Texas's state-level public comment period that there were technically feasible controls identified for lightweight aggregate plants like Streetman's plant.[134] Specifically, commenters referenced EPA's AP–42 emission factor documentation [135] for lightweight aggregate manufacturing. Among other information, the document identifies that emissions from kilns at these lightweight aggregate facilities are controlled with wet scrubbers as well as fabric filters and electrostatic precipitators (ESPs). In response to this information, Texas stated that review of the data and information in the EPA's AP–42 emission factor dataset led the TCEQ to conclude that ''while wet scrubbers designed for PM control may result in some emissions reductions of SO_2, the TCEQ does not view this as a control strategy for the direct control of SO_2 that could result in meaningful SO_2 emissions reductions.'' [136]

While the EPA's AP–42 emission factor documentation discusses the use of scrubbers to control PM emissions, it also provides information and emission factors related to the control of SO_2 emissions from the installation of wet scrubbers.[137] Several of the studies referenced in the documentation were done to measure SO_2 emissions.[138] This information together shows reductions in emissions of SO_2 from the installation of wet scrubbers at lightweight aggregate plants.[139] Regardless of whether the main pollutant of concern from these types of facilities is PM or SO_2, Texas does not adequately or reasonably explain how a proven control technology, installed within the same industry type and for which reduces the pollutant of concern (SO_2), becomes technically infeasible based on the fact that it also reduces PM. Texas's determination that there were no technically available controls for lightweight aggregate plants such as the Streetman facility was unreasonable and unsupported by information provided to Texas during its public comment period.[140] Therefore, it was unreasonable for Texas not to have evaluated potential control measures for the Streetman facility using the four statutory factors to determine whether control measures were necessary for reasonable progress in fulfillment of their long-term strategy requirements.

b. Cost of Compliance

Texas evaluated the cost of compliance for each control option determined to be technically feasible for each selected EGU and non-EGU to arrive at an annualized cost and cost per ton of emissions reduced ($/ton), also referred to as a cost-effectiveness calculation, for each control option.[141] Texas stated that as part of the cost analysis, individual units at a source selected for evaluation with NO_X or SO_2 emissions of less than five percent of the facility's total emissions of the same pollutant were eliminated from further analysis.[142] Texas explained that excluding such units with smaller emissions is reasonable with respect to application of the cost of compliance criterion because controlling these smaller units would not be justified at this time considering both the cost to control and the anticipated improvement in visibility. Using this approach, Texas focused on the units with relatively greater NO_X and SO_2 emissions at a given source.

In the cost analysis for EGUs without existing controls, Texas stated it estimated the capital cost and annual operating and maintenance costs of technically feasible air pollution control options using the most recent data available from Sargent & Lundy.[143] In the cost analysis for upgrading scrubbers at EGUs, Texas provided an example cost, but did not explain how that example was used.[144] In the cost analysis for non-EGUs, Texas stated it estimated the capital cost and annual operating and maintenance costs of technically feasible air pollution control options using cost data and information from the EPA and available industry literature.[145] For one non-EGU source, the Works No. 4 Glass Plant, Texas relied on vendor cost information for capital cost and annual operating and maintenance costs of control equipment.[146] For all sources, Texas estimated annualized capital costs by multiplying the capital costs by the capital recovery factor.[147] The capital recovery factor accounts for source financing of air pollution control equipment and is based on the assumed equipment life and interest rate. Texas stated that ''capital recovery factors were estimated using the techniques listed in the EPA's Control Cost Manual'' where it found appropriate.[148] Texas estimated the capital recovery factor assuming an interest rate of 10 percent and an equipment life of five, 15, and 30 years. Ultimately, Texas chose to base its cost analysis on a

[132] *See, United States of America, et al.* v. *Cabot Corporation*, Civil Action Number 6:13–cv–03095 (W.D. LA), Second Amendment to Consent Decree (filed Dec. 22, 2017) and available in the docket for this action.

[133] *See* Cabot press release dated June 26, 2020, regarding the successful installation of control technologies, available at *https://investor.cabot-corp.com/node/21156.*

[134] *See* 2021 Texas Regional Haze Plan, Comments by Sierra Club, et al. on Texas's Regional Haze SIP at 252 of 653.

[135] AP–42 emission factors are published by EPA and serve as the primarily compilation of emission factor information. The various chapters contain emissions factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emissions factors have been developed and compiled from source test data, material balance studies, and engineering estimates. *See* AP–42: Compilation of Air Emissions Factors from Stationary Sources available at *https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors-stationary-sources* for more information.

[136] 2021 Texas Regional Haze Plan, Response to Comments at 482–483 of 653.

[137] AP–42, section 11.20 available at *https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-fifth-edition-volume-i-chapter-11-mineral-products-0* and in the docket for this action.

[138] *See* AP–42, section 11.20 *See also* AP–42 section 11.20 at pgs. 5, 10–12.

[139] *See* AP–42, section 11.20, table 4–13, Emission factors for rotary kilns without a scrubber are 5.6 lbs SO_2/ton feed, with a scrubber 3.4 lbs SO_2/ton feed.

[140] *See* 2021 Texas Regional Haze Plan, Comments by Sierra Club, et al, on Texas's Regional Haze SIP at 252 of 653. *See also* 2021 Texas Regional Haze Plan, appendix A at 206 of 227.

[141] 2021 Texas Regional Haze Plan, appendix B.

[142] 2021 Texas Regional Haze Plan, appendix B at B–3.

[143] 2021 Texas Regional Haze Plan at 7–11 to 7–12.

[144] 2021 Texas Regional Haze Plan, appendix B at B–12.

[145] 2021 Texas Regional Haze Plan, appendix B at B–12.

[146] 2021 Texas Regional Haze Plan, appendix B at B–7 to B–8, B–12.

[147] 2021 Texas Regional Haze Plan, appendix B at B–14.

[148] 2021 Texas Regional Haze Plan, appendix B at B–14.

capital life of 15 years for all selected sources.[149]

Texas stated that annual operating and maintenance costs associated with each control option evaluated ''were estimated from the same data and information used for estimating capital costs for each source.'' [150] Texas added the annualized capital cost and the annual operating and maintenance cost to arrive at the total annualized cost for each control option for each source.[151] After estimating the potential emission reductions of each control option using baseline emissions from the EPA's 2018 Clean Air Markets Program Data (AMPD) emission data for EGUs and 2016 TCEQ point source emission inventory data for non-EGUs, the total annualized cost was divided by the tons of pollutant emissions reduced to estimate the cost per ton of emissions reduced ($/ton), or cost-effectiveness.[152] Texas then applied a cost-effectiveness ($/ton) threshold of $5,000/ton for NO_X and SO_2 emissions reduced to eliminate controls from further consideration by explaining that this allowed for the identification of sources to which potential control measures could be applied cost-effectively.[153] The results of Texas's cost analysis are presented in the following tables.[154]

TABLE 8—TEXAS's COST ESTIMATES OF SO_2 CONTROLS FOR EGUS WITHOUT EXISTING CONTROLS

Source	SO_2 baseline emissions (tons/yr)	Control	Control efficiency (%)	SO_2 reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Coleto Creek Unit 1	13,213	DSI	90	11,892	$3,261	$3,022	$2,976
		SDA	95	12,552	6,720	3,884	3,340
		Wet FGD	98	12,949	7,406	4,215	3,603
Welsh Unit 1	7,528	DSI	90	6,775	4,406	4,029	3,957
		SDA	95	7,152	11,380	6,481	5,540
		Wet FGD	98	7,377	12,032	6,812	5,811
Welsh Unit 3	6,694	DSI	90	6,025	4,814	4,394	4,314
		SDA	95	6,359	12,622	7,179	6,135
		Wet FGD	98	6,560	13,357	7,558	6,445

TABLE 9—TEXAS's COST ESTIMATES OF SO_2 WET SCRUBBER UPGRADES FOR EGUS

Source	Unit size (MW)	SO_2 baseline emissions (tons/yr)	Capital cost ($)	Annual operating and maintenance costs ($)	SO_2 reduction due to scrubber upgrade at 95% control efficiency (tons/yr)	Cost-effectiveness ($/ton)		
						5-Year life	15-Year life	30-Year life
AEP Pirkey Unit 1	721	5,085	99,921,030	2,740,188	3,874	$7,511	$4,098	$3,443
Limestone Unit 1	893	4,156	123,757,947	3,393,881	3,212	11,222	6,123	5,145
Limestone Unit 2	957	4,164	132,627,498	3,637,115	3,259	11,853	6,467	5,434
Martin Lake Unit 1	793	19,282	109,899,275	3,013,827	16,172	1,979	1,080	907
Martin Lake Unit 2	793	17,167	109,899,275	3,013,827	14,101	2,270	1,238	1,040
Martin Lake Unit 3	793	19,749	109,899,275	3,013,827	16,458	1,945	1,061	891
San Miguel Unit 1	410	12,006	56,820,558	1,558,221	2,001	8,270	4,512	3,791
Oklaunion Unit 1	720	2,191	99,782,444	2,736,387	1,826	15,913	8,682	7,295

TABLE 10–TEXAS's COST ESTIMATES OF NO_X CONTROLS OKLAUNION UNIT 1

Source	NO_X baseline emissions (tons/yr)	Control	Control efficiency (%)	NO_X reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Oklaunion Unit 1	6,804	SNCR	50	3,402	$4,705	$4,152	$4,046
		SCR	98	6,668	11,222	6,455	5,541

TABLE 11—TEXAS's COST ESTIMATE OF SO_2 WET SCRUBBER UPGRADES FOR MIDLOTHIAN PLANT

Unit	SO_2 baseline emissions (tons/yr)	Baseline SO_2 control efficiency of wet scrubber (%)	Capital cost ($)	Annual operating and maintenance costs ($)	SO_2 reduction due to scrubber upgrade at 95% control efficiency (tons/yr)	Cost-effectiveness ($/ton)		
						5-Year life	15-Year life	30-Year life
Cement Kiln No 1	522	90	8,196,683	224,782	261	$9,138	$4,986	$4,189
Cement Kiln No 2	856	90	8,300,438	227,627	428	5,647	3,081	2,589

[149] 2021 Texas Regional Haze Plan, appendix B at B–14.

[150] 2021 Texas Regional Haze Plan, appendix B at B–14.

[151] 2021 Texas Regional Haze Plan, appendix B at B–14.

[152] 2021 Texas Regional Haze Plan, appendix B at B–14.

[153] 2021 Texas Regional Haze Plan, appendix B at B–15.

[154] The information contained in tables 8 through table 17 are presented in the 2021 Texas Regional Haze Plan, appendix B at B–16–B–42.

TABLE 12—TEXAS'S COST ESTIMATE OF TRI-MER CAT CONTROLS FOR VITRO FLAT GLASS WORKS NO 4 PLANT

Unit	Pollutant evaluated	Baseline emissions (tons/yr)	Control efficiency evaluated (%)	Emissions reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Glass Melting Furnace Line No.1	SO_2	136	80	109	$15,100	$10,300	$9,400
	NO_X	674	80	539	15,100	10,300	9,400
Glass Melting Furnace Line No. 2	SO_2	301	80	241	4,600	3,200	2,900
	NO_X	2,533	80	2,026	4,600	3,200	2,900

TABLE 13—TEXAS'S COST ESTIMATES OF NO_X CONTROLS FOR GRAPHIC PACKAGING TEXARKANA MILL

Unit	NO_X baseline emissions (tons/yr)	Control	Control efficiency (%)	NO_X reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Power Boiler No 1	109	LNB	40	44	$21,788	$10,859	$8,762
		SCR	80	87	36,200	26,350	24,469
Power Boiler No 2	692	LNB	40	277	3,525	1,757	1,417
		SCR	80	554	7,100	5,254	4,956
Recovery Boiler/Furnace No 1	275	LNB	40	110	7,438	3,707	2,991
		SCR	80	220	11,800	9,248	8,755
Recovery Boiler/Furnace No 2	674	LNB	40	270	3,619	1,804	1,455
		SCR	80	539	7,000	5,395	5,089

TABLE 14—TEXAS'S COST ESTIMATES OF NO_X CONTROLS FOR EL PASO NATURAL GAS COMPANY KEYSTONE COMPRESSOR STATION

Unit	NO_X baseline emissions (tons/yr)	Control	Control efficiency (%)	NO_X reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Reciprocating Internal Combustion Engine, A01.	131	LEC	40	53	$1,091	$544	$439
		SCR	80	105	7,956	6,754	6,523
Reciprocating Internal Combustion Engine, A02.	7	LEC	40	3	19,209	9,573	7,724
		SCR	80	6	129,200	108,036	103,974
Reciprocating Internal Combustion Engine, A03.	133	LEC	40	53	1,078	537	433
		SCR	80	106	7,900	6,677	6,449
Reciprocating Internal Combustion Engine, A04.	14	LEC	40	6	9,989	4,978	4,017
		SCR	80	11	67,500	56,494	54,381
Reciprocating Internal Combustion Engine, A05.	24	LEC	40	10	5,964	2,972	2,398
		SCR	80	19	40,600	33,990	32,729
Reciprocating Internal Combustion Engine, A06.	17	LEC	40	7	8,664	4,318	3,484
		SCR	80	13	58,600	49,085	47,253
Reciprocating Internal Combustion Engine, A07.	14	LEC	40	6	10,278	5,122	4,133
		SCR	80	11	69,400	58,102	55,928
Reciprocating Internal Combustion Engine, A08.	18	LEC	40	12	4,851	2,418	1,915
		SCR	80	24	33,100	27,769	26,743
Reciprocating Internal Combustion Engine, A09.	16	LEC	40	6	9,154	4,562	3,681
		SCR	80	13	61,900	51,821	49,885
Reciprocating Internal Combustion Engine, A10.	60	LEC	40	24	2,377	1,185	956
		SCR	80	48	16,600	13,940	13,437
Reciprocating Internal Combustion Engine, A11.	34	LEC	40	14	4,178	2,083	1,680
		SCR	80	27	28,600	24,011	23,127
Reciprocating Internal Combustion Engine, A12.	8	LEC	40	3	18,554	9,247	7,461
		SCR	80	6	124,800	104,367	100,443
Reciprocating Internal Combustion Engine, B01.	29	LEC	40	12	6,727	3,353	2,705
		SCR	80	23	39,100	32,227	30,914
Reciprocating Internal Combustion Engine, B02.	83	LEC	40	33	2,365	1,179	951
		SCR	80	66	14,200	11,755	11,293
Reciprocating Internal Combustion Engine, B03.	66	LEC	40	26	2,958	1,474	1,189
		SCR	80	53	17,600	14,543	13,965

TABLE 15—TEXAS'S COST ESTIMATES OF NO_X CONTROLS FOR EL PASO NATURAL GAS COMPANY CORNUDAS PLANT

Unit	NO_X baseline emissions (tons/yr)	Control	Control efficiency (%)	NO_X reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Gas Turbine, A1	69	LNB	40	28	$1,913	$954	$769
		SCR	80	55	27,700	21,972	20,879
Gas Turbine, A2	50	LNB	40	20	5,823	2,902	2,341
		SCR	80	40	37,742	29,958	28,464
Gas Turbine, A3	63	LNB	40	25	4,623	2,304	1,859
		SCR	80	51	30,292	24,112	22,926
Gas Turbine, B1	104	LNB	40	42	3,748	1,868	1,507
		SCR	80	83	22,878	17,982	17,042
Gas Turbine, C1	18	SCR	80	14	129,955	101,694	96,270

TABLE 15—TEXAS'S COST ESTIMATES OF NO_X CONTROLS FOR EL PASO NATURAL GAS COMPANY CORNUDAS PLANT—Continued

Unit	NO_X baseline emissions (tons/yr)	Control	Control efficiency (%)	NO_X reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Gas Turbine, C2	18	SCR	80	14	129,955	101,694	96,270

TABLE 16—TEXAS'S COST ESTIMATES OF NO_X CONTROLS FOR EL PASO NATURAL GAS COMPANY GUADALUPE COMPRESSOR STATION

Unit	NO_X baseline emissions (tons/yr)	Control	Control efficiency (%)	NO_X reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Gas Turbine, C–1	56	LNB	40	23	$13,897	$6,926	$5,588
		SCR	80	45	69,485	54,975	52,190

TABLE 17—TEXAS'S COST ESTIMATES OF NO_X CONTROLS FOR GCC PERMIAN ODESSA CEMENT PLANT

Unit	NO_X baseline emissions (tons/yr)	Control	Control efficiency (%)	NO_X reduction (tons/yr)	5-Year life cost-effectiveness ($/ton)	15-Year life cost-effectiveness ($/ton)	30-Year life cost-effectiveness ($/ton)
Cement Kiln No 2	427	LNB	40	171	$3,163	$1,576	$1,272

i. Texas Did Not Adequately Document the Technical Basis and Cost Information on Which It Based Its Cost of Compliance Analyses as Required by the Regional Haze Rule

Texas did not adequately document the technical basis and cost information on which it based its evaluation of the cost of compliance for all control measures considered as required by the Regional Haze Rule.[155] The SIP submittal discusses Texas's general approach for estimating the cost of the various control options considered, but only provides sum total estimates of the capital costs and annual operating and maintenance costs without providing individual line items or calculations for review. Texas received comments during the State's public comment period on the proposed Texas RH SIP for the second planning period stating that the proposed SIP did not include proper documentation of the cost estimates of the various control measures, including the actual spreadsheets showing the calculations that inform the results of the cost analyses as part of the TCEQ's four-factor analysis.[156] Despite these comments, Texas did not directly address why calculation spreadsheets and other necessary documentation of the cost analysis were omitted from the proposed SIP, nor did Texas make changes to the final SIP submittal or include adequate documentation of the cost analysis in the final SIP submittal in response to these comments. With respect to the capital and annual costs of scrubber upgrades, Texas provided one additional piece of information in its response stating that it relied on prior studies and work conducted on potential scrubbing system upgrades to estimate the capital and annual costs to inform total annualized costs.[157] However, the response does not explain what ''prior studies and work conducted on potential scrubbing system upgrades'' it relied on or how it relied on those studies to estimate the capital and annual cost of scrubber upgrades. This documentation is critical to ensuring that Texas's consideration of cost of potential control measures, as required by the RHR and the CAA,[158] was reasonable and based on sufficiently reliable information.[159]

The EPA has recommended that costs of compliance and the remaining useful life should be calculated consistent with the methods set forth in the EPA's Control Cost Manual in order to allow for comparisons between different sources within a State, and cost analyses in other states.[160] To that end, states relying on EPA's Control Cost Manual need only reference the manual as the documentation necessary to meet the requirements of the RHR to document the technical basis, including cost information, on which the State is relying.[161] When a State uses cost methods other than the EPA's Control Cost Manual, it is necessary for those differences to be reasonable and sufficiently documented to meet the requirements of the RHR to document the technical basis, including cost information, on which the State is relying.[162] In response to comments, Texas acknowledged that it deviated from EPA's Control Cost Manual in certain instances, but failed to provide adequate documentation and justification of its costs in light of its deviations.[163]

One important element of a cost analysis is the remaining useful life of

[155] 40 CFR 51.308(f)(2)(iii).

[156] 2021 Texas Regional Haze Plan, Response to Comments at 478–479 of 653.

[157] 2021 Texas Regional Haze Plan, Response to Comments at 479 of 653.

[158] *See* 40 CFR 51.308(f)(2)(i) (''The State must evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering the costs of compliance . . .''); CAA 169A(g)(1) (''in determining reasonable progress, there shall be taken into consideration the costs of compliance . . .'').

[159] As discussed in the following section, the EPA requested the additional supporting information from Texas. In response, Texas provided additional files and spreadsheets to EPA upon request. However, the public did not have access to these files during the state-level comment period and therefore did not have an opportunity to review or comment on the complete technical basis of Texas's cost analyses.

[160] 2019 Guidance at 31. As we have previously noted in relation to BART determinations, ''[w]ithout an 'apples-to-apples' comparison of costs, it is impossible to draw rational conclusions about the reasonableness of the costs of compliance for particular control options. Use of the [Control Cost Manual] methodology is intended to allow a fair comparison of pollution control costs between similar applications for regulatory purposes.'' 77 FR 72512, 72518.

[161] 2019 Guidance at 31.

[162] 40 CFR 51.308(f)(2)(iii); 2019 Guidance at 31.

[163] *See* 2021 Texas Regional Haze Plan, Response to Comments at 472 of 653.

the equipment. This is important because equipment life, while related to the ''remaining useful life'' factor of the four-factor analysis, also factors into the consideration of cost of compliance due to the annualization of cost in estimating the cost-effectiveness ($/ton reduced). The EPA's 2019 Guidance explains that, generally, states can consider the remaining useful life factor by considering the useful life of the control system.[164] Typically, the remaining useful life of the source itself will be longer than the useful life of the emission control system under consideration. Thus, annualized costs of compliance are typically based on the useful life of the control equipment rather than the life of the source, unless the source is under an enforceable requirement to cease operation or otherwise reduce its emissions (*i.e.,* switching from coal to natural gas).[165]

The Control Cost Manual generally assumes a remaining useful life of equipment of 30 years for scrubbers and SCR.[166] Texas, however, assumed a remaining useful equipment life of 15 years for all sources.[167] Texas explained that some of the sources it evaluated in the four-factor analysis could not reasonably be expected to operate an additional 30 years,[168] but that most could reasonably be expected to continue to operate longer than five years. Therefore, Texas determined that a remaining useful life of 15 years was a reasonable ''mid-point'' to use in the four-factor analysis. However, Texas did not provide any specific documentation to support its determination that all of the sources it selected could not reasonably expected to operate an additional 30 years nor did it point to any enforceable commitments to retire or otherwise reduce its emissions contained in the SIP. The selection of a 15-year useful life inflates the cost of controls because those costs are amortized over a shorter period of time, thereby increasing the calculated annualized cost and the cost-effectiveness ($/ton reduced). This impacted Texas's identification of cost-effective controls and ultimately, their assessment of aggregate annualized costs. For example, Texas considered SCR as a potential NO_X control for the Texarkana Mill.[169] Using a 15-year equipment life resulted in an annualized capital cost for SCR on Boiler No. 2 of $853,383 and a cost effectiveness of $5,254 ($/ton).[170] Using a 30-year equipment life resulted in an annualized capital cost of $688,550 and a cost effectiveness of $4,956 ($/ton).[171] Because Texas used a cost-effectiveness threshold of $5,000, Texas did not further consider SCR for Boiler No. 2 in determining what measures may be necessary to include in the long-term strategy in order to make reasonable progress.[172]

Another important element of the cost analysis is the interest rate used. According to the EPA's Control Cost Manual, if a company-specific interest rate is not available for use in evaluating the cost of controls in the four-factor analysis, the use of the current bank prime rate is the appropriate default.[173] The bank prime rate is reflective of the typical rate for borrowing among large firms. The bank prime rate was 3.25 percent for at least six months leading up to Texas's public comment period,[174] and remained so when Texas submitted the final SIP to the EPA in July 2021.[175] Texas instead used a 10 percent interest rate, assuming that industrial sources could not obtain the bank prime rate. However, Texas did not provide any documentation to support this general assertion. In addition, the use of the higher 10 percent interest rate serves to increase the total annualized cost.

Finally, based on Texas's response to comments, Texas included certain costs inconsistent with the ''overnight'' cost methodology used in the EPA's Control Cost Manual, which resulted in increased costs for the control options considered. However, it is unclear from the information included in Texas's SIP submission, how and for which sources Texas included these costs. In the absence of adequate documentation and justification to support the basis for its cost analysis, we find that Texas's cost analyses are not sufficiently reliable to support its control determinations.

Thus, we find that Texas did not adequately document the technical basis and cost information on which it based its evaluation of the cost of compliance of controls, which is a RHR requirement under 40 CFR 51.308(f)(2)(iii). Without this information, it is unclear how Texas's methodology results in a long-term strategy that includes all measures necessary for reasonable progress in the Second Planning Period.

ii. Texas's Cost Analysis for Scrubber Upgrades Was Unsupported and Unreasonable

Texas's cost analysis of SO_2 scrubber upgrades for EGUs was unreasonable because many assumptions made by Texas in estimating the cost of scrubber upgrades were inadequately justified and based on outlier information that led to unreliable and inflated cost estimates. As explained in the previous section, the 2021 Texas Regional Haze Plan did not document or adequately explain Texas's methodology for estimating the capital costs and operation and maintenance costs of scrubber upgrades, which is a requirement under 40 CFR 51.308(f)(2)(iii).[176] Rather, the 2021

[164] *See* 2019 Guidance at 33.

[165] *See* 2019 Guidance at 33.

[166] Equipment life can depend on the type of equipment. For example, the EPA's Control Cost Manual provides for an assumed 30 year equipment life for scrubbers, but a 20 year equipment life for SNCR. The Control Cost Manual and associated spreadsheets are available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution,* select portions of which are included in the docket for this action.

[167] 2021 Texas Regional Haze Plan, appendix B at B–14—B–15.

[168] We are aware that Pirkey and Oklaunion have ceased operations. However, the EPA is not aware that these permits have been voided. We are also aware that other sources such as Coleto Creek and Welsh have publicly stated an intention to retire or convert to natural gas. Coleto Creek has announced its anticipated retirement in 2027 and Welsh has announced that it will convert to natural gas by 2028. These announcements are not an enforceable commitment to retire the units by a date certain and Texas has not asked to make those retirements federally enforceable and permanent by including them in the SIP. Therefore, when considering the fourth statutory factor, these announcements cannot be used to shorten the remaining useful life of the sources. *See* Vistra Announces Plans to Add Up to 2,000 MW of Gas-Fueled Dispatchable Power in ERCOT available at *https://investor.vistracorp.com/2024-05-30-Vistra-Announces-Plans-to-Add-Up-to-2,000-MW-of-Gas-Fueled-Dispatchable-Power-in-ERCOT;* AEP Schedule of Closures available at *https://aepcommunitytransition.com/closures/.*

[169] 2021 Texas Regional Haze Plan, appendix B at B–28.

[170] 2021 Texas Regional Haze Plan, appendix B at B–28.

[171] 2021 Texas Regional Haze Plan, appendix B at B–28.

[172] 2021 Texas Regional Haze Plan, appendix B at B–28. The difference in emission reductions between SCR and low-NO_X burners is 277 tpy.

[173] The EPA Air Pollution Control Cost Manual (the Control Cost Manual, or Manual), (November 2017), section 1, Chapter 2 at 16. The Control Cost Manual is available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.*

[174] We acknowledge that the current bank prime rate is higher than the rate at the time Texas submitted its SIP, however, at no point has the bank prime rate reached 10 percent. A historical record of the bank prime rates is available at *https://fred.stlouisfed.org/series/PRIME.* Texas's public comment period on the proposed 2021 Texas Regional Haze Plan for the second planning period took place from October 9, 2020, to January 8, 2021.

[175] *See* Bank Prime Loan Rate Changes: Historical Dates of Changes and Rates available at *https://fred.stlouisfed.org/series/PRIME. See also* The EPA's Control Cost Manual, section 1, Chapter 2 titled ''Cost Estimation: Concepts and Methodology,'' at 16.

[176] A spreadsheet that documents Texas's cost analysis of scrubber upgrades was provided by the TCEQ to the EPA at our request during the State's public comment period on the proposed Texas RH SIP for the second planning period. However, this spreadsheet was not included in the proposed Texas RH SIP, nor in the final SIP submitted to the

Continued

Texas Regional Haze Plan merely provided an ''example'' which indicates that the average capital cost of wet scrubber upgrades is $37.84/kW and the average operating and maintenance cost is $3.09/kW-year for a 537 MW EGU.[177] The significance of the example provided in the 2021 Texas Regional Haze Plan is unclear. An examination of the total capital costs included in the 2021 Texas Regional Haze Plan reveals that Texas did not use an assumption of $37.84/kW to estimate capital costs of scrubber upgrades, and in fact used a cost assumption that was over three times higher than the referenced ''average'' value. To illustrate, Texas estimated the capital cost of scrubber upgrades at AEP Pirkey Unit 1 to be $99,921,030, as shown in table 9. This capital cost estimate is not the equivalent of $37.84/kW, but rather $138.59/kW. In examining the other scrubber upgrades, Texas applied the $138.59/kW to all scrubber upgrade estimates.[178] Thus, the example provided by Texas indicating that the average capital cost of wet scrubber upgrades is $37.84/kW is misleading and an inaccurate representation of Texas's methodology for estimating the capital cost of wet scrubber upgrades.[179]

Because Texas did not include adequate documentation of its cost analysis, the EPA requested additional supporting information and data from Texas regarding its technical analyses to aid in our review. In response to this request, the Texas provided additional files to the EPA, including Excel spreadsheets, that were not made available to the public during Texas's public comment period and were not included in the final SIP submitted to the EPA.[180] One of these files is an Excel spreadsheet that documents and provides additional information on Texas's methodology for estimating the capital costs and annual operating and maintenance costs of scrubber upgrades.[181] Reviewing the spreadsheet demonstrates Texas's cost methodology relied on certain cost assumptions based on outlier information.[182]

The files documenting the scrubber upgrades analysis confirm that Texas used an assumption of $139/kW to calculate the capital costs of scrubber upgrades. This $139/kW assumption is the highest capital cost $/kW value out of several scrubber upgrades cost estimates for EGUs compiled from a National Park Service (NPS) spreadsheet from 2010 found on the Western Regional Air Partnership (WRAP) legacy website and relied upon by Texas.[183] Furthermore, this $139/kW assumption is an outlier value, which corresponds to upgrades at the Coal Creek Power Plant in North Dakota.[184] The costs for upgrades at this facility included additional project elements other than upgrades to the existing scrubber, such as coal drying.[185] Texas did not explain why using cost assumptions from a project, which included additional coal pre-treatment project costs like coal drying, is appropriate or reasonable in estimating the capital costs of the scrubber upgrades it was considering. The next highest capital cost $/kW value included in the spreadsheet is an upgrade project that was estimated to cost $52.39/kW.[186] The average $/kW capital costs provided in the spreadsheet, even including the $139/kW outlier is approximately $38/kW, with costs as low as $4/kW for some units.[187] Scrubber upgrade costs are site-specific, depending on existing scrubber design and available upgrades.[188] Therefore, it is inappropriate to rely on cost assumptions that are based on outliers, especially absent any discussion of why the higher cost is more reflective of upgrades necessary at a particular source, because they are not representative of the anticipated cost of scrubber upgrades at these units. Had Texas instead relied on the average capital cost found in the spreadsheet, and presented as the example calculation in its SIP, the capital costs contained in the SIP would have been significantly lower.

To illustrate this point, the EPA recalculated the scrubber upgrade costs for Martin Lake, San Miguel, and Pirkey using the average capital cost[189] as well as the average operation and maintenance costs contained in Texas's Excel spreadsheet and identified in their example calculation in appendix B of the 2021 Texas Regional Haze Plan.[190] EPA focused on these three sources as these were the scrubber upgrades that Texas identified as meeting its cost-effectiveness threshold of $5,000/ton. These recalculated values are found in table 18.

EPA. Thus, the public did not have an opportunity to review or comment on the complete technical basis of Texas's cost analysis of scrubber upgrades. We discuss these deficiencies in Texas's cost analysis of scrubber upgrades in greater detail in the paragraphs that follow. This spreadsheet is included in the docket for this action (scrubber upgrades.xlsx).

[177] *See* 2021 Texas Regional Haze Plan, appendix B at B–13.

[178] The example provided by Texas for estimating annual operating and maintenance costs of scrubber upgrades is also misleading. For example, Texas's estimated annual operating and maintenance cost of scrubber upgrades for AEP Pirkey Unit 1 is $2,740,188, as shown in Table 9. This is the equivalent of $3.80/kW-year.

[179] The only other information Texas provides about its scrubber upgrade analysis is in appendix B of the 2021 Texas Regional Haze Plan. Specifically, Texas includes the following statement in discussing the scrubber upgrades analysis for AEP Pirkey Unit 1: The Western Regional Air Partnership (WRAP) data for potential scrubber upgrades and a WRAP spreadsheet from August 2010 containing data for EGUs with proposed Best Available Retrofit Technology SO_2 controls were relied on for information (also included in the docket for this action). The spreadsheet data indicated the greatest increase in scrubbing system efficiency an existing system could achieve, from baseline levels, was 95%. Therefore, the TCEQ evaluated a potential system upgrade from 79% to 95%. *See* 2021 Texas Regional Haze Plan, appendix B at B–4. However, it is unclear based on the 2021 Texas Regional Haze Plan itself whether the WRAP data and spreadsheet were in any way used to estimate the capital costs and annual operating and maintenance costs of wet scrubber upgrades. Furthermore, this statement was only included in Texas's discussion of the scrubber upgrades analysis for AEP Pirkey Unit 1 but not specifically mentioned in the discussion of scrubber upgrades for other EGUs.

[180] *See* ''scrubber upgrades.xlsx'' included in the docket for this action. *See also,* additional source specific cost spreadsheets from Texas available in the docket for this action.

[181] scrubber upgrades.xlsx.

[182] TCEQ also used the outlier value to estimate the cost of upgrading the scrubbers at the Holcim cement facility from 90% to 95% control efficiency. These costs are also likely an over estimation for the same reasons as explained later in this section.

[183] *See* ''scrubber upgrades.xlsx''; *see also* 2010 NPS EGUs With Proposed BART SO_2 Controls Spreadsheet available in the docket.

[184] 2010 NPS EGUs With Proposed BART SO_2 Controls Spreadsheet available in the docket.

[185] *See* Great River Energy Coal Creek BART Emission Control Cost Analysis. The report is available in the docket for this action.

[186] *See* ''scrubber upgrades.xlsx'' available in the docket for this action.

[187] *See* ''scrubber upgrades.xlsx'' available in the docket for this action.

[188] For example, costs to upgrade scrubber performance from 94–95% at San Miguel might only require increased reagent use, whereas scrubber upgrades at less efficient units may require more significant equipment upgrades or elimination of scrubber bypasses, as demonstrated by the range in costs in the NPS dataset.

[189] By providing this illustration, the EPA is not necessarily endorsing the use of the average capital cost to calculate the cost of scrubber upgrades at a source. Given the site-specific nature of scrubber upgrades, the use of the average capital cost of several scrubber upgrades may not accurately reflect the cost to upgrade any particular scrubber.

[190] *See* ''EPA modified RH–2021-Summary Emissions, Cost Table.xlsx'' and ''EPA modified-scrubber upgrades.xlsx'' spreadsheets. Available in the docket for this action.

TABLE 18—TCEQ VS. EPA RECALCULATED SCRUBBER UPGRADE COSTS

Company/site name	Unit	2018 EIA electric capacity/2016 EI capacity or engine rating	Capital costs		15 Year life total annual cost		Emissions removed (tpy)	15 year life cost effectiveness ($/ton)	
			TCEQ	Avg.	TCEQ	Avg.		TCEQ	Avg.
American Electric Power/ Pirkey Power Plant.	Unit 1	721 MW	$99,921,030	$27,279,969	$15,877,183	$5,817,383	3,874	$4,098	$1,502
NRG Energy/Limestone Elec. Gen. Station.	Unit 1	893 MW	123,757,947	33,787,812	19,664,805	7,205,163	3,212	6,123	2,244
	Unit 2	957 MW	132,627,498	36,209,335	21,074,153	7,721,546	3,259	6,467	2,370
Vistra Energy/Martin Lake Electrical Station.	Unit 1	793 MW	109,899,275	30,004,182	17,462,700	6,398,313	16,172	1,080	396
	Unit 2	793MW	109,899,275	30,004,182	17,462,700	6,398,313	14,101	1,238	454
	Unit 3	793MW	109,899,275	30,004,182	17,462,700	6,398,313	16,458	1,061	389
San Miguel Electric Cooperative/San Miguel Electric Plant.	Unit 1	410 MW	56,820,558	15,512,881	9,028,634	3,308,081	2,001	4,512	1,653

Based on this information, and utilizing Texas's selected 15-year remaining useful life assumption, the 15-year total annual costs for scrubber upgrades at these three facilities decrease from $77,293,916 to $28,320,403, a reduction in total annual costs of $48,973,513. If the outlier value was excluded in determining the average capital cost, the total annualized costs would be even lower. Thus, the reliance on this outlier value in estimating the capital costs significantly inflates the total annualized costs provided in the 2021 Texas Regional Haze Plan. Without an explanation as to why this was reasonable, this reliance is unjustified. Furthermore, had Texas used the average capital cost, the costs of upgrading the scrubbers at both units at Limestone would have been below its $5,000/ton cost-threshold. Based on Texas's analysis, upgrading the controls on both units at Limestone would result in a reduction in over 6,400 [191] tpy of SO_2. The inflation of total annualized costs is also important, as discussed later in the notice, because Texas relies on the combined total annualized costs of control measures in part to determine that no additional measures are necessary to include in its long-term strategy to make reasonable progress.[192]

We are proposing to find that Texas's cost analysis of SO_2 scrubber upgrades for EGUs does not meet the requirements under 40 CFR 51.308(f)(2)(iii) to document the technical basis, including costs, that the State is relying on to determine the emission reduction measures that are necessary to make reasonable progress. Furthermore, in estimating the cost of scrubber upgrades as part of its four-factor analysis, many assumptions made by Texas were not adequately justified, and thus unreasonable, as it resulted in inflated and unreliable cost estimates. Because of these flaws, we find that Texas did not reasonably consider the cost of compliance as required by the RHR and CAA.[193]

c. Time Necessary for Compliance

In its 2021 Regional Haze Plan, despite the time necessary for compliance being one of the four statutory factors a State must consider when determining what control measures are necessary for reasonable progress,[194] Texas stated in its submission that the time necessary for compliance was not a critical factor in the determination of applicable additional controls for Texas sources.[195] That being said, Texas determined that the time necessary for a source to design, build, and install SO_2 scrubbing technology would be approximately three years and that the time necessary to build and commence operation of DSI technology could be less given that scrubbing vessels would not need to be constructed.[196] Texas also assumed that the time to design, build, and install NO_X control technologies would be approximately three years. While we are proposing to disapprove Texas's long-term strategy for the reasons provided elsewhere in Section IV.E of this notice, we note that Texas's assumptions of the time necessary for compliance for the controls evaluated are reasonable.

d. Energy and Non-Air Quality Environmental Impacts of Compliance

Where quantifiable for a particular control option, energy impacts of compliance are reflected in the cost estimate and were considered by Texas under the cost of compliance factor.[197] For instance, electricity costs necessary to operate fans, pumps, and other ancillary equipment as well as waste disposal costs were factored into the cost of compliance calculations for dry and wet scrubbers, DSI systems, SCR systems, and SNCR systems.[198] Texas stated that control systems that require only modifications to alter fuel-air mixing and combustion temperatures are not expected to have additional electricity or steam demands or to generate wastewater or solid waste.[199] For reasons explained throughout section IV.E we are proposing to disapprove Texas's long-term strategy.

e. Remaining Useful Life

As we have discussed in detail in section IV.E.2.b. of this proposed rule, we disagree with Texas's generalized assumption of a 15-year equipment life. Without additional discussion explaining why the EGUs and non-EGUs evaluated in the four-factor analysis could not be expected to operate more than 15 years or a federally enforceable commitment to cease operations or otherwise reduce emissions at these units within 15 years, Texas's generalized assumption of a 15-year equipment life is not reasonable and results in the overestimation of the annualized capital costs and the cost-effectiveness of controls.

f. Texas's Control Determinations

After characterizing the four statutory factors, States must consider and weigh the factors to determine what control measures are necessary to include in its long-term strategy to make reasonable progress.[200] In determining what control measures were necessary to make reasonable progress, Texas weighed the costs of compliance factor and projected visibility benefits of potential controls. Specifically, Texas relied on both the total annualized costs of controls in

[191] *See* 2021 Texas Regional Haze Plan, appendix B, at B–20.

[192] We provide additional discussion regarding the cost of scrubber upgrades in the TSD for this action, provided in the docket.

[193] *See* CAA 169(g)(1); 40 CFR 51.308(f)(2).

[194] *See* CAA 169A(g)(1); 40 CFR 51.308(f)(2)(i).

[195] 2021 Texas Regional Haze Plan at 7–13.

[196] 2021 Texas Regional Haze Plan at 7–13.

[197] 2021 Texas Regional Haze Plan at 7–13.

[198] 2021 Texas Regional Haze Plan at 7–13.

[199] 2021 Texas Regional Haze Plan at 7–14.

[200] *See* CAA 169A(g)(1); CAA 169A(B)(2)(b).

considering the costs of compliance, which it calculated was over $200 million, and the ''less than perceptible visibility benefit'' it projected in determining that no additional control measures were necessary to include in its long-term strategy to make reasonable progress.[201]

Texas derived the total annualized cost by adding together the annualized costs of controls at each source that met its $5,000/ton cost effectiveness threshold. Table 19 presents a summary of the estimated total annualized cost of the controls that met Texas's $5,000/ton threshold.[202]

TABLE 19[203]—TEXAS'S POTENTIAL CONTROL STRATEGY SUMMARY

Pollutant	Total emissions reductions (tons/yr)	Estimated total annualized cost
NO_X	3,171	$9,335,087
SO_2	79,285	195,539,404
Total Costs		204,874,491

In conjunction with total annualized costs, Texas also considered the potential visibility benefits of controls by conducting three different photochemical modeling sensitivity runs representing different control scenarios. Similar to how it calculated the total annualized costs, Texas only included those control measures at sources for which the cost of the control measures met the $5,000/ton threshold for NO_X or SO_2.[204] While Texas's 2021 Regional Haze Plan did not specifically identify (in Chapter 7 or Chapter 8 of its SIP) which sources or control measures were actually included in the sensitivity modeling, the information the TCEQ included in PowerPoint presentations used for consultation indicates control measures for 11 out of the 18 sources selected for evaluation under the four factor analysis were included in the sensitivity modeling.[205] Each sensitivity scenario reduced NO_X and/or SO_2 emissions at specific EGU and non-EGU sources for the modeled 2028 scenario.[206] Scenario 1[207] involved the removal of emissions from the Oklaunion Power Station as its owners had announced its retirement in 2020. Scenario 2[208] included SO_2 reductions at all units with identified cost-effective SO_2 controls in addition to Scenario 1. Scenario 3[209] included NO_X reductions at all units with identified cost-effective NO_X controls in addition to Scenario 2. We note that the additional visibility improvements provided by the inclusion of NO_X controls in Scenario 3 provided little additional visibility benefit on the average across the 20 percent most impaired days, yet the associated costs of these controls resulted in several millions of dollars being included in the total annual costs Texas calculated in its 2021 Texas Regional Haze Plan.[210] The results of this modeling analysis were used to estimate the overall visibility benefit these controls would have on the 20 percent most impaired days at the Class I areas impacted by Texas's emissions. The projected visibility improvements at Class I areas impacted by Texas sources under Scenario 3 are presented in table 20.[211]

TABLE 20—TEXAS'S ESTIMATED HAZE INDEX IMPROVEMENTS FOR AFFECTED CLASS I AREAS[212]

Class I area	Haze index improvement (dv)
Big Bend	0.07
Caney Creek	0.56
Guadalupe Mountains	0.03
Salt Creek	0.07
Upper Buffalo	0.21
White Mountain	0.02
Wichita Mountains	0.23

Texas ultimately determined that any visibility benefit for each Class I area would be ''imperceptible.'' Thus, combining the ''imperceptible'' projected visibility benefit for each Class I area with the corresponding total annual costs associated with the controls included in the modeled control strategy, Texas concluded that no additional control measures were necessary to make reasonable progress. As discussed below, the EPA finds Texas's conclusion to be unjustified, unreasonable, and inconsistent with the CAA and the RHR.

i. Texas's Consideration of Costs To Support Its Determination That No Additional Measures Are Necessary To Make Reasonable Progress Was Unjustified and Unreasonable

Texas determined that the total annualized cost of controls of

[201] 2021 Texas Regional Haze Plan table 7–4 at 7–16 to 7–17.

[202] 2021 Texas Regional Haze Plan table 7–4 at 7–14.

[203] This table does not reflect NO_X costs and associated emission reductions from the Oklaunion facility. *See* 2021 Texas Regional Haze Plan at 7–15.

[204] 2021 Texas Regional Haze Plan at 7–14.

[205] 2021 Texas Regional Haze Plan, appendix A at 71–74 of 227. This appendix also provides a table that shows which units and control measures were included in its sensitivity modeling. While Texas's analysis found that certain control measures at Oklaunion Power Station were above its $5,000/ton threshold, Texas also included the shutdown of the facility in its sensitivity modeling rather than potential control measures. 2021 Texas Regional Haze Plan at 7–15.

[206] *See* 2021 Texas Regional Haze Plan, Section 8.5. More general information can be found in section 7.2.2.3.

[207] Texas refers to this Scenario as ZeroOKU.

[208] Texas refers to this Scenario as ZeroOKU&SO_2.

[209] Texas refers to this Scenario as ZeroOKU&SO_2&NO_X.

[210] *See* 2021 Texas Regional Haze Plan at 8–64.

[211] 2021 Texas Regional Haze Plan table 7–6 at 7–16.

[212] The visibility improvements presented in the table reflect Scenario 3.

approximately $205 million was too high, but provided no context or support as to why total annualized cost was an appropriate decision metric in consideration of the cost of compliance, what range of total annualized cost would be reasonable, and why $205 million was not reasonable. While the RHR does allow for the evaluation of sources on either a source-by-source basis or based on the evaluation of groups of sources, in almost any case, a State could, as Texas has here, aggregate the annualized control costs for a large number of sources such that the State could find the total cost to be ''too expensive;'' and therefore, determine that no additional controls are necessary to make reasonable progress. This is especially true in States like Texas given the vast number of sources in the State and the number of Class I areas impacted by the emissions from these sources. Thus, a reasonable source selection for a State like Texas would necessarily identify several sources for evaluation of potential control measures for which total annualized costs would end up being ''large.'' Therefore, it is unsurprising that Texas found that total annualized costs of controls were over $200 million; however, without a relative scale to compare against, this $200 million figure is meaningless and does not necessarily support Texas's determination that no control measures are necessary for inclusion in its long-term strategy to make reasonable progress. This concern is supported by EPA's 2019 Guidance which states that, ''EPA does not believe it is reasonable to solely use a threshold for the capital cost or annualized cost to determine that a measure is not necessary to make reasonable progress. Large capital costs considered in isolation may not provide complete information about the potential reasonableness of a measure . . .'' [213] Furthermore, if this approach were replicated in each successive planning period, no controls would ever be found to be cost-effective and necessary to make reasonable progress, which would result in no long-term strategy. Rather, all that can be determined from Texas's use of the total annualized cost is that it represents the sum total of the costs of controls for a group of sources that impact one or more Class I areas in Texas or nearby States. Therefore, Texas's use of total annualized cost was unjustified and unreasonable.

In addition to failing to justify how consideration of total annualized cost was reasonable, Texas also failed to explain and justify the apparent contradiction between considering controls to be cost effective on a source specific basis using a threshold of $5,000/ton, but then dismissing those same controls as too costly when presented as total annualized costs. The need to support and justify this apparent contradiction is critical considering that Texas selected its $5,000/ton cost effectiveness threshold to ''identif[y] the potential control measures for each source that could be applied in a cost-effective manner,'' [214] and thus eliminate those control measures which they deemed too costly. Texas's reliance on the total annual costs of all controls considered cannot outweigh or otherwise negate the fact these controls were all below Texas's selected cost-effectiveness threshold of $5,000/ton. Furthermore, we note that the controls that make up this total annualized cost have an average $/ton cost-effectiveness of less than $2,500/ton SO_2 reduced and less than $3,000/ton for NO_X reduced.

Additionally, while the EPA finds that Texas's use of total annualized costs was unjustified and unreasonable, even if such a metric were appropriate, Texas's total annualized cost of approximately $205 million included unreasonable costs associated with the scrubber upgrades it evaluated. As previously explained in section IV.E.2.b, Texas's calculation of the costs associated with upgrading the scrubbers at Martin Lake, Pirkey, and San Miguel used an unsupported outlier value in determining the costs, which resulted in an inflated cost estimation. Had Texas used the average costs rather than the outlier value, the total annualized cost of the scrubber upgrades would have decreased by approximately $49 million, and the total annualized cost of controls would have decreased from approximately $205 million to $156 million.[215] Thus, this one decision significantly and unreasonably inflates the total annualized cost. Even assuming the total annualized cost metric is a reasonable way of considering costs, because Texas failed to describe or justify why $205 million was too high, and what range of costs would be reasonable, we cannot determine whether Texas would have found this lower total annualized cost reasonable such that the measures are necessary for inclusion in its long-term strategy to make reasonable progress. Thus, the EPA finds that Texas failed to justify how its use of total annualized costs to dismiss controls was reasonable and consistent with the CAA and RHR requirement to include those measures necessary to make reasonable progress in its long-term strategy.

ii. Texas's Reliance on the Lack of Perceptible Visibility Benefits To Support Its Determination That No Additional Measures Are Necessary Was Unreasonable and Inconsistent With the CAA and the RHR

Texas's determination that visibility benefits are only meaningful if it results in a perceptible change in visibility was unjustified and unreasonable. As previously explained, after identifying which of the 18 sources selected for further analysis using the four statutory factors had potential control measures meeting the $5,000/ton cost-effectiveness threshold for NO_X or SO_2, those emission reductions associated with those control measures were then included in the photochemical modeling sensitivity runs conducted by the TCEQ. The projected visibility benefits are presented in table 20. Because the results of the modeling analysis showed that the visibility benefit of the modeled control strategy for each Class I area fell within a range that was ''imperceptible,'' (which Texas defines as less than 1.0 deciview), Texas found that this amount of visibility improvement was too small to support requiring any additional control measures for purposes of making reasonable progress during this planning period.

The CAA and RHR are clear that the four statutory factors must be considered when determining the enforceable emissions limitations, schedules of compliance, or other measures that are necessary for reasonable progress toward meeting the national goal.[216] As the EPA has previously explained, while visibility may be considered along with the four statutory factors, it must be done in a reasonable way.[217] For example, visibility modeling can be used to compare the visibility benefits of cost-effective controls selected through four-factor analysis to determine which controls produce the greatest visibility benefits compared to their costs, or prioritizing which among several sources should install controls during a planning period.[218] Nowhere in the statute or regulations is there a requirement that control measures produce perceptible visibility

[213] 2019 Guidance at 39.

[214] *See* 2021 Texas Regional Haze Plan at 7–14.

[215] See ''EPA modified-RH 2021-Summary Emissions, Cost Table.xlsx'' available in the docket for this action.

[216] *See* CAA 169A(g)(1); 40 CFR 51.308(f)(2).

[217] 2021 Clarifications Memo at 14; *see* 2019 Guidance at 36–37.

[218] 2021 Clarifications Memo at 12–13.

improvements to be considered necessary to make reasonable progress at a particular Class I area; therefore, consideration of visibility benefits cannot outweigh the results of the analysis based on the four factors explicitly prescribed in statute.[219] Furthermore, if a State uses a visibility benefit threshold to evaluate control measures, it must explain how its approach is consistent with the requirement to consider the statutory factors in making reasonable progress determinations. Texas did not explain how the use of perceptibility as a threshold to assess visibility benefits is consistent with the requirement to make reasonable progress.

Section 169A(a) of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' Nowhere in the CAA or the RHR is there a requirement to make a minimum amount of visibility improvement in determining that potential control measures are necessary to make reasonable progress. Rather, States are to make ''reasonable progress'' towards natural visibility conditions every planning period. What is necessary for reasonable progress, as described throughout this section and this notice, is determined by a consideration of the four statutory factors. To that end, the EPA has reiterated that visibility thresholds used for BART and other analyses in the first planning period (*e.g.,* 0.5 deciviews or 1 dv) are, in most cases, not appropriate thresholds for evaluating the impact of controls for reasonable progress in the second planning period and beyond.[220] This is because regional haze is visibility impairment that is caused by the emission of air pollutants from numerous anthropogenic sources located over a wide geographic area.[221] At any given Class I area, hundreds or even thousands of individual sources may contribute to regional haze.[222] This necessarily means that to meet Congress's goal of preventing any future, and addressing any existing impairment, States must address these numerous sources of manmade air pollution which cause visibility impairment at Class I areas. Given the iterative nature of the regional haze program, evaluation of control measures for relatively smaller sources (with commensurate smaller visibility benefits) will be needed to continue making reasonable progress towards the national goal. As such, states should consider the magnitude of modeled visibility impacts or benefits in the context of its own contribution to visibility impairment. That is, whether a particular visibility impact or change is ''meaningful'' should be assessed in the context of the individual state's contribution to visibility impairment. At several Class I areas that Texas evaluated in its 2021 Regional Haze Plan, sulfate was the largest cause of anthropogenic visibility impairment, with the largest contribution coming from Texas anthropogenic sources.[223] Texas's own modeling also showed that, for multiple Class I areas, relative to the home State in which the Class I area is located, Texas's contribution to sulfate concentrations at the Class I area was more than the home State itself. For example, Texas's sulfate contribution at Caney Creek is nine times the amount of Arkansas's contribution (Texas anthropogenic contribution to particulate sulfate is 40.81 percent compared to Arkansas's anthropogenic contribution of 4.4 percent).[224] [225] At Wichita Mountains, Texas's sulfate contribution is over four times Oklahoma's contribution.[226] Yet, by using a threshold of perceptibility, Texas found that despite these impacts, the visibility benefits were too small to warrant requiring any additional control measures to make progress towards reducing this contribution. Such an approach is unreasonable as the approach results in maintaining significant visibility impairment in contradiction to Congress's expressly stated goal of remedying manmade impairment.[227] This concern in part is why the EPA has explained that ''the existence of an impact above a perceptibility threshold is not a statutory or regulatory factor to be used when determining whether a source or sources contribute to visibility impairment or when determining measures needed for reasonable progress.'' [228] Thus, Texas's determination that the lack of perceptible visibility benefits weighed in favor of its determination that no additional measures were necessary was unreasonable and failed to result in a long-term strategy that encompassed all of the measures necessary to make reasonable progress in the second planning period.

Contrary to Texas's own conclusions, the EPA finds that the modeled TCEQ control scenarios *are* projected to achieve meaningful reductions in impairment. In table 21, based on Texas's own modeling and considering visibility impairment using light extinction units, the control scenarios provide for meaningful progress in reducing visibility impairment, particularly at Caney Creek. Considering just US anthropogenic impairment in 2028, Texas is responsible for 43 percent of the total U.S. anthropogenic impairment on the 20 percent most impaired days at Caney Creek. The modeled 3.18 Mm-1 reduction in impairment under Texas's Scenario 2 represents a 10.6 percent reduction of the total US anthropogenic impairment in 2028 and 25 percent reduction of the Texas contribution to anthropogenic impairment. In consideration of the statutory goal to remedy ''*any* existing impairment of visibility in mandatory Class I Federal area which impairment results from manmade air pollution,'' [229] it is not reasonable to dismiss a potential 10.6 percent reduction in the nationwide total anthropogenic impairment and a 25 percent reduction in the Texas contribution to impairment as insignificant, especially since Texas found all of the modeled controls to be below their chosen cost-effectiveness threshold of $5,000/ton.

[219] *See* CAA 169A(g)(1).

[220] Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans, at pg. 268; Final Rule 82 FR 3078 (Jan. 10, 2017). The document is available in the following docket EPA–HQ–OAR–2015–0531; 2019 Guidance, at pg. 38–39.

[221] 40 CFR 51.301.

[222] 82 FR 3078, 3093 (Jan. 10, 2017).

[223] *See* 2021 Texas Regional Haze Plan, appendix F, section 1.2.4.

[224] 2021 Texas Regional Haze Plan at 8–52 (''The results indicate that for the 13 Class I areas evaluated outside of Texas, the Texas influence for particulate sulfate is greater than the CIA home state influence for nine of the areas, with the largest influence ratio for Caney Creek in Arkansas, at 9.27, as highlighted in yellow in table 8–41. The Texas influence on particulate nitrate is larger for six sites, with a maximum ratio of 3.45 for Carlsbad Caverns in New Mexico, as highlighted in pink. Six sites have a larger Texas influence for both particulate sulfate and nitrate: Carlsbad Caverns, Bosque del Apache, Salt Creek, and White Mountain in New Mexico; and Caney Creek and Upper Buffalo in Arkansas.'').

[225] 2021 Texas Regional Haze Plan, appendix F, Figure 1–74 at F–75.

[226] 2021 Texas Regional Haze Plan table 8–41 at 8–53.

[227] *See* CAA 169A(a)(1).

[228] Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans, at 268; Final Rule 82 FR 3078 (Jan. 10, 2017). The document is available in the following docket EPA–HQ–OAR–2015–0531.

[229] 42 U.S.C. 7491(a)(1) (emphasis added).

TABLE 21 [230]—VISIBILITY BENEFIT OF TEXAS'S CONTROL SCENARIO 2

Class I area	IMPROVE monitor	2028 extinction (Mm-1)	Texas anthro (%)	Non-Texas U.S. anthro (%)	Total US anthro (Mm-1)	Total anthro from Texas (Mm-1)	Texas % of total US anthropogenic impairment	Scenario 2 extinction reduction (Mm-1)	Scenario 2 reduction of total US anthropogenic (%)	Scenario 2 reduction of Texas anthropogenic contribution (%)	Scenario 2 extinction reduction (dv)	Scenario 2 extinction reduction compared to Natural conditions (dv)
Caney Creek ...	CACR1	55.4	23	31	29.92	12.74	43	−3.18	*−10.60*	*−25.00*	−0.56	−1.32
Big Bend	BIBE1	41.2	10	5	6.18	4.12	67	−0.31	*−5.00*	*−7.50*	−0.07	−0.18
Upper Buffalo ..	UPBU1	53.4	13	38	27.23	6.94	25	−1.2	*−4.40*	*−17.30*	−0.21	−0.48
Wichita Mountains.	WIMO1	53.2	18	33	27.13	9.58	35	−1.19	*−4.40*	*−12.40*	−0.22	−0.61
Hercules-Glades.	HEGL1	57.2	9	48	32.60	5.15	16	−0.78	*−2.40*	*−15.20*	−0.13	−0.31
Salt Creek	SACR1	40.3	12	34	18.54	4.84	26	−0.27	−1.50	−5.60	−0.06	−0.16
Guadalupe Mountains.	GUMO1	34	11	11	7.48	3.74	50	−0.1	−1.30	−2.70	−0.03	−0.06

Texas's consideration of visibility benefit is also unreasonable because Texas only considered the potential visibility benefits relative to ''dirty background'' conditions. Because estimates of the visibility benefits of emission control measures help guide regulatory decisions, relying solely on a quantification of visibility benefits relative to ''dirty background'' [231] as Texas did in its 2021 Regional Haze Plan (*i.e.,* conditions with greater impairment than natural background visibility conditions) obscures the full potential benefits of control measures and makes it less likely that a measure, or measures, would appear reasonable from a visibility benefit perspective.[232] Thus, this approach to considering visibility benefit serves to *maintain* the current impairment at Class I areas, which is inconsistent with the statutory goal of the CAA § 169A(a)(1) to eliminate future, and remedy existing manmade visibility impairment. Texas's own modeling results show that had Texas considered the visibility improvement associated with the control scenarios it modeled relative to natural background, the visibility improvement would have been considerably larger. For example, under control Scenario 2, the visibility improvement at Caney Creek would be considerably larger (1.32 deciviews) than the values documented by Texas (0.56 deciview).[233] The right most column in table 21 shows Texas's modeled visibility benefits calculated relative to natural visibility conditions. Because Texas's consideration of projected visibility benefits was limited to a dirty background basis and did not consider the full potential benefits associated with each control scenario it evaluated, Texas's determination that the visibility benefits did not support requiring any additional control measures was unreasonable.

Recent annual emissions data from EPA's Clean Air Markets Program Data also contradict Texas's conclusion that no controls are needed due to the lack of perceptible visibility improvement. Across all states, Texas EGU SO_2 emissions ranked 1st and has ranked 1st over the past several years.[234] Within the group of sources analyzed by Texas, Martin Lake and Coleto Creek ranked 6th and 31st, respectively, in facility-wide SO_2 emissions across the United States.[235] The magnitude of SO_2 emissions from the sources Texas included in its sensitivity run, as well as all of Texas's EGUs statewide, is demonstrated in the model results showing Texas's large contribution to the total U.S anthropogenic visibility impairment. This, combined with the outcome of the four-factor analyses, emphasize that emission reductions from additional SO_2 controls on the sources Texas considered are cost-effective would result in meaningful progress towards remedying visibility impairment from manmade pollution at impacted Class I areas.

Therefore, the EPA finds that Texas's use of perceptibility as a visibility threshold to support its decision to dismiss controls was unreasonable, resulted in an unjustified long-term strategy for the second planning period, and is inconsistent with the CAA and the RHR.

g. EPA's Conclusions and Proposed Action on Texas's Four Factor Analysis

As explained in the preceding sections, due to numerous flaws in its evaluation of the four-factors and the resulting control determinations, Texas failed to submit to the EPA a long-term strategy that includes ''the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress'' as required by 40 CFR 51.308(f)(2).[236] Consequently, the EPA is proposing to find that the 2021 Texas Regional Haze Plan does not satisfy the requirements of 40 CFR 51.308(f)(2).

3. Additional Long-Term Strategy Requirements

Aside from the long-term strategy requirements already discussed, States must also meet the requirements specified in 40 CFR 51.308(f)(2)(ii)-(iv) when developing their long-term strategies for the second planning period. Under 40 CFR 51.308(f)(2)(ii) states are required to consult with other states that have emissions that are

[230] See ''EPA TX contributions to Class I areas.xlsx'' available in the docket for this action.

[231] *North Dakota* v. *EPA,* 730 F.3d 750, 764–766 (8th Cir. 2013) (''Although the State was free to employ its own visibility model and to consider visibility improvement in its reasonable progress determinations, it was not free to do so in a manner that was inconsistent with the CAA. Because the goal of § 169A is to attain natural visibility conditions in mandatory Class I Federal areas, see 42 U.S.C. 7491(a)(1), and EPA has demonstrated that the visibility model used by the State would serve instead to maintain current degraded conditions, we cannot say that EPA acted in a manner that was arbitrary, capricious, or an abuse of discretion by disapproving the State's reasonable progress determination based upon its cumulative source visibility modeling.'').

[232] *See* 2019 Guidance at 16, 36.

[233] Because improvement in visibility is a non-linear function of light extinction, focusing on visibility improvement in delta deciviews can mask the actual progress that can be made in reducing impairment by the implementation of controls unless visibility improvement is measured against clean background conditions. See the TSD in the docket for this action for additional discussion of background conditions and visibility modeling.

[234] See ''SO_2 annual emissions by state 2016–2022.xlsx'' spreadsheet available in the docket for this action and available on EPA's CAMPD website, *https://campd.epa.gov/data/custom-data-download.*

[235] See ''Texas annual emissions by facility 2022.xlsx'' spreadsheet available in the docket for this action, and available on EPA's CAMPD website *https://campd.epa.gov/data/custom-data-download.*

[236] *See also* CAA 169A(b)(2).

reasonably anticipated to contribute to visibility impairment in Class I areas to develop coordinated emission management strategies. Texas included documentation of its consultation with other states and the FLMs in appendix A of its 2021 Regional Haze Plan.

In addition to our analysis on Section 51.308(f)(2)(iii) above, this section also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the State has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data. Texas's 2021 Texas Regional Haze Plan included 2011, 2014, and 2017 statewide NEI emission data for NO_X, SO_2, PM, VOCs, and NH_3. For the base case CAMx modeling, Texas also relied on 2018 emissions from EPA's AMPD, and 2016 emissions data reported to the State of Texas Air Reporting System (STARS) database for non-EGU sources.

Finally, in developing their long-term strategies, States must consider five additional factors specified under 40 CFR 51.308(f)(2)(iv). The five additional factors are: emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; measures to mitigate the impacts of construction activities; source retirement and replacement schedules; basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. Chapter 7 of Texas's 2021 Regional Haze Plan includes a description of these additional factors.

Regardless, as explained in preceding sections, due to flaws and omissions in its source selection, four-factor analyses, and the resulting control determinations, we find that Texas failed to reasonably ''evaluate and determine the emission reduction measures that are necessary to make reasonable progress'' by considering the four statutory factors as required by CAA section 169A(b)(2)(A), CAA section 169A(g)(1), and 40 CFR 51.308(f)(2)(i). We also find that Texas failed to adequately document the technical basis that it relied upon in evaluating potential emissions reduction measures, as required by 40 CFR 51.308(f)(2)(iii). In so doing, the EPA finds that Texas failed to submit to the EPA a long-term strategy that includes ''the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress'' as required by 40 CFR 51.308(f)(2). Consequently, the EPA finds that the Texas's 2021 Regional Haze Plan does not satisfy the long-term strategy requirements of 40 CFR 51.308(f)(2). Therefore, we are proposing to disapprove these corresponding portions of Texas's SIP submission.

F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Texas is host to two Class I areas and is therefore subject to § 51.308(f)(3)(i) and, if appliable, to (ii). Section 51.308(f)(3)(i) requires a State in which a Class I area is located to establish RPGs—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under paragraph (f)(2) to be in states' long-term strategies, as well as implementation of other CAA requirements. The long-term strategies as reflected by the RPGs must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. Section 51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPG for the most impaired days represents a slower rate of visibility improvement than the uniform rate of progress calculated under 40 CFR 51.308(f)(1)(vi). Under § 51.308(f)(3)(ii)(A), if the State in which a mandatory Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the State must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that would be reasonable to include in its long-term strategy. Section 51.308(f)(3)(ii)(B) requires that if a State contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another* State, and the RPG for the most impaired days in that Class I area is above the URP, the upwind State must provide the same demonstration.

Texas established RPGs based on projected visibility improvements from emission reductions associated with the Federal CAA, the Texas Clean Air Act, Texas' ozone SIP revisions and rules, and agreements between the EPA and petrochemical refineries and carbon black manufacturing plants for nitrogen oxides (NO_X) and sulfur dioxide (SO_2) emissions reductions. As part of establishing the RPGs, the TCEQ evaluated the impact of emissions reductions from these adopted measures on visibility in Class I areas using photochemical modeling. Further, the TCEQ evaluated the impacts of additional controls beyond those already adopted using photochemical modeling in a sensitivity analysis. Based on the results of Texas's four-factor analysis and the sensitivity analysis, the TCEQ concluded that additional measures for visibility improvement at Texas Class I areas and Class I areas affected by Texas emissions are not reasonable for this planning period.

The TCEQ elected to perform CAMx modeling to develop its future year visibility projections to establish its reasonable progress goals and evaluate the impact of identified emissions reductions on visibility in Class I areas. The CAMx modeling was based on the EPA's Modeling Guidance and consistent with the modeling protocol included in appendix G of its SIP (Modeling Protocol). The photochemical modeling used to support the 2021 Texas Regional Haze Plan consisted of base case model runs, future year model runs, including source apportionment runs, and three sensitivity runs.[237] The TCEQ describes the development of its emission inventories for use in each modeling scenario in appendix E of its SIP (Emissions Modeling).

The TCEQ elected to use the adjusted Uniform Rate of Progress (URP) in its 2021 Regional Haze Plan SIP to evaluate its reasonable progress goals. The TCEQ presents the visibility for Class I areas on the 20% clearest days and 20% most impaired days for the 2014–2017 period, 2028 projected future year, and the 2028 adjusted glidepath and are shown in table 8–43 of its SIP and presented here in table 22.

[237] 2021 Texas Regional Haze Plan at 8–2.

TABLE 22—VISIBILITY FOR CLASS I AREAS ON 20% MOST IMPAIRED DAYS AND 20% CLEAREST DAYS

Class I area (IMPROVE ID, state)	2014-2017 20% clearest days (dv)	Future year (2028) 20% clearest days (dv)	2028 adjusted glidepath (dv)	Future year (2028) 20% most impaired days (dv)
Big Bend National Park (N.P.) (BIBE, TX)	5.2	4.9	14.4	14.2
Bosque del Apache Wilderness Area (W.A.) (BOAP, NM)	4.6	4.2	9.9	9.6
Breton Island W.A. (BRIS, LA)	11.8	11.3	19.8	18.3
Caney Creek W.A. (CACR, AR)	8.2	7.8	18.8	17.1
Great Sand Dunes W.A. (GRSA, CO)	2.9	2.6	8.2	7.3
Guadalupe Mountains N.P. (GUMO, TX)	4.5	4.1	12.8	12.2
Hercules-Glades W.A. (HEGL, MO)	9.8	9.1	19.6	17.4
Mingo W.A. (MING, MO)	11.2	10.6	20.2	18.6
Rocky Mountain N.P. (ROMO, CO)	1.3	1.1	9.2	7.3
Salt Creek W.A. (SACR, NM)	6.7	6.2	13.5	13.9
Upper Buffalo W.A. (UPBU, AR)	8.4	7.9	19.2	16.7
White Mountain W.A. (WHIT, NM)	2.6	2.2	10	9.5
Wheeler Peak W.A. (WHPE, NM)	0.3	0.1	6.5	5.3
Wichita Mountains W.A. (WIMO, OK)	8.4	7.7	17.4	16.7

Source: Texas 2021 Regional Haze SIP, Table 8–43.

Texas included baseline haze indices for Big Bend and Guadalupe Mountains in Chapter 8 of its 2021 Regional Haze Plan. Baseline visibility for the Big Bend Class I area is 5.78 dv for the 20% clearest days and 15.57 dv for the 20% most impaired days. Baseline visibility for the Guadalupe Mountains Class I area is 5.92 dv for the 20% clearest days and 14.60 dv for the 20% most impaired days. As Texas notes in its 2021 Texas Regional Haze Plan, and as shown in the data presented in table 22, the RPGs Texas established for both Big Bend and Guadalupe Mountains are below the adjusted glidepath.

Texas emissions impact visibility at one Class I area, Salt Creek Wilderness Area, in New Mexico, that is projected to be above the glidepath. Section 51.308(f)(3)(ii) requires states to demonstrate for Class I areas with a 2028 reasonable progress goal for the 20% most impaired days above the 2028 URP that there are no additional emission reduction measures for sources in the State that would be reasonable to include in the long-term strategy. The TCEQ states in its 2021 Texas Regional Haze Plan that the New Mexico Environment Department had not yet established a reasonable progress goal for Salt Creek Wilderness Area or developed its long-term strategy at the time Texas prepared its SIP; however Texas states that its analysis in the long-term strategy is robust, in accordance with 40 CFR 51.308(f)(3)(ii), and that it has provided a thorough evaluation of the Texas sources that impact Class I areas in and around Texas and consideration of whether any additional emission reduction measures are reasonable for the second planning period.[238]

As previously discussed in Section IV.E.1, using its source selection methodology, Texas did not select any sources of SO_2 for further evaluation at Salt Creek, despite Texas's PSAT modeling showing that Texas sources are responsible for almost three times the amount of influence due to particulate sulfate and more than one and half times the influence due to particulate nitrate as the home State of New Mexico.[239] Focusing on modeled U.S. anthropogenic impacts alone, Texas anthropogenic sources account for approximately 51.3% of the particulate sulfate concentrations at Salt Creek, with more than half of the Texas anthropogenic contribution coming from Texas EGUs.[240] Furthermore, the sensitivity modeling Texas conducted showed that potential SO_2 and NO_X reductions from the aggregate group of control measures considered would provide for an estimated 0.07 dv improvement in visibility at Salt Creek. This is despite the fact that only a few of the NO_X sources included in the sensitivity analyses were included based on their impact to Salt Creek and no SO_2 sources were selected based on their impact at Salt Creek. The 0.07 dv improvement is calculated from a reduction in extinction of 0.27 Mm^{-1} and represents a 1.5 percent reduction of total U.S. anthropogenic contribution and a 5.6 percent reduction of Texas's total anthropogenic contribution to visibility impairment at Salt Creek. While New Mexico had not established an RPG for Salt Creek at the time Texas submitted its SIP, contrary to its assertion, Texas's analysis did not meet the requirements of 51.308(f)(3)(ii)(B) to conduct a robust analysis with respect to Salt Creek as evidenced by the fact Texas did not evaluate sources of SO_2 despite PSAT modeling showing the substantial impact on the area from Texas.

Under 40 CFR 51.308(f)(3)(iv), the EPA must evaluate the demonstrations the State developed pursuant to 40 CFR 51.308(f)(2) to determine whether the State's reasonable progress goals for visibility improvement provide for reasonable progress towards natural visibility conditions. As previously explained in section IV.E., we are proposing to disapprove Texas's long-term strategy for failing to meet the requirements of 40 CFR 51.308(f)(2). Therefore, we also propose to disapprove Texas's reasonable progress goals under 40 CFR 51.308(f)(3) because compliance with that requirement is dependent on compliance with 40 CFR 51.308(f)(2).

G. Reasonably Attributable Visibility Impairment (RAVI)

The RHR contains a requirement at § 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment,''[241] also known as RAVI.

[238] 2021 Texas Regional Haze Plan at 8–59 to 8–60.

[239] 2021 Texas Regional Haze Plan at 8–52 and table 8–41 at 8–53.

[240] *See* 2021 Texas Regional Haze Plan, appendix F at F–63.

[241] The EPA's visibility protection regulations define ''reasonably attributable visibility

Continued

Under this provision, if the EPA or the FLM of an affected Class I area has advised a State that additional monitoring is needed to assess RAVI, the State must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment. The EPA has not advised Texas to that effect, and the FLMs for the Class I areas that Texas contributes to have not identified any RAVI from Texas sources.[242] For this reason, the EPA proposes to approve the portions of Texas's 2021 Regional Haze Plan relating to 40 CFR 51.308(f)(4).

H. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this subsection is for states with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network.

Texas discusses its monitoring strategy in Chapter 5 of its 2021 Regional Haze Plan. Haze species in Texas are measured and analyzed via the Interagency Monitoring of Protected Visual Environments (IMPROVE) network.[243] Table 23 of this preamble lists the IMPROVE stations representing visibility at Texas Class I areas. Due to the close proximity of the Class I areas, Carlsbad Caverns (New Mexico) and Guadalupe Mountains (Texas) share the same IMPROVE monitor.

TABLE 23—IMPROVE STATIONS AT FEDERAL CLASS I AREAS IN TEXAS

Monitor ID	Class I area	Sponsor	Years operated
BIBE1	Big Bend National Park	National Parks Service	1988–Present.
GUMO1	Guadalupe Mountains National Park	National Parks Service	1988–Present.

Section 51.308(f)(6)(i) requires SIPs to provide for the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the State are being achieved.

The IMPROVE program reviewed its aerosol monitoring sites in 2006 to set priorities for maintaining the sites in the event of federal budget cuts affecting the IMPROVE program.[244] This review determined that the IMPROVE aerosol samplers at Texas's two Class I areas represent conditions different from the conditions at the nearest Class I area IMPROVE monitors. Texas's two Class I IMPROVE monitors are not candidates for discontinuation since other IMPROVE monitors cannot represent conditions at Big Bend or Guadalupe Mountains.

Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the State. In its 2021 Texas Regional Haze Plan, Texas stated that future assessments of visibility impairment and progress in reducing visibility impairment at Texas's two Class I areas, and at Class I areas in other states that Texas's emissions may potentially affect, will use the revised IMPROVE algorithm and will use data as prescribed in the EPA's Regional Haze Rule (40 CFR part 51, subpart P—Visibility Protection). The assessment will follow, as appropriate, the EPA's guidance including the 2019 Guidance and the 2018 Visibility Tracking Guidance.

Section 51.308(f)(6)(iii) does not apply to Texas, as it has a Class I area.

Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State. As noted above, the monitoring strategy for Texas relies upon the continued availability of the IMPROVE network. The TCEQ does not directly collect or handle IMPROVE data. The TCEQ will continue to participate in the IMPROVE Visibility Information Exchange Web System (VIEWS). The TCEQ considers VIEWS to be a core part of the overall IMPROVE program. The TCEQ will report IMPROVE data from the two Class I areas in Texas to the EPA using the VIEWS web system.

If Texas collects any visibility monitoring data through the state's air quality monitoring networks, the TCEQ will report those data to the EPA as specified under the Performance Partnership Grant agreement negotiated with the EPA Region 6. All validated data and data analysis results from any TCEQ visibility-related special studies are public information. The TCEQ will continue its practice of sharing the data and information with the EPA. Texas supports the continued operation of the IMPROVE network through both State and Federal funding mechanisms.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. Texas provides for emissions inventories and estimates for future projected emissions by participating in the CenSARA RPO and complying with the EPA's Air Emissions Reporting Rule (AERR). In 40 CFR part 51, subpart A, the AERR requires states to submit updated emissions inventories for criteria pollutants to the EPA's Emissions Inventory System (EIS) every three years. The emission inventory data is used to develop the NEI, which provides for, among other things, a triennial state-wide inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment.

Chapter 6 of the 2021 Texas Regional Haze Plan includes a discussion of the NEI data, and Section 8.3 details specific emission inventories and emissions inputs developed for the regional haze photochemical modeling

impairment'' as ''visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.'' 40 CFR 51.301.

[242] 2021 Texas Regional Haze Plan at 7–17.

[243] *See* 2021 Texas Regional Haze Plan, Chapter 5 for more information about Texas's monitoring strategy.

[244] Spatial and Seasonal Patterns and Temporal Variability of Haze and its Constituents in the United States Report IV: November 2006 available at *https://vista.cira.colostate.edu/Improve/spatial-and-seasonal-patterns-and-temporal-variability-of-haze-and-its-constituents-in-the-united-states-report-iv-november-2006/*.

conducted by the TCEQ. The source categories of the emissions inventories included are: (1) point sources, (2) area sources, (3) non-road mobile sources, (4) drilling rigs, (5) commercial marine vessels and locomotives, (6) airports and (7) on-road mobile sources. Statewide pollutant summaries by source category for the years 2011, 2014, and 2017 are provided in tables 6–1, 6–2, and 6–3 of Texas 2021 Regional Haze Plan. Summaries are for the following pollutants: SO_2, NO_X, PM_{10}, $PM_{2.5}$, VOCs, CO, and NH_3. Texas also provided a summary of anthropogenic SO_2 and NO_X emissions for each source type for 2011, 2014, and 2017 and are presented in tables 6–4 and 6–5 of the 2021 Texas Regional Haze Plan.

Section 51.308(f)(6)(v) also requires states to include estimates of future projected emissions and include a commitment to update the inventory periodically. Texas estimated 2028 future year emissions by applying growth projections and accounting for known existing federal, State, and local controls. The development of Texas's 2028 modeling emissions for the 2021 Texas Regional Haze Plan includes some methods used in previous SIP modeling for ozone, such as the Federal Tier 3 Vehicle Emission and Fuel Standards program, the Mass Emissions Cap-and-Trade (MECT) Program in the Houston-Galveston-Brazoria area, the Highly Reactive VOC Emission Cap-and-Trade (HECT) Program in Harris County, the Midlothian Cement Kiln caps and related agreed orders in the Dallas-Fort Worth area, and the EPA's final Cross-State Air Pollution Rule (CSAPR) update. Summaries of the primary data sources for the development of the future case modeling emissions are provided in the 2021 Texas Regional Haze Plan, appendix E, table 1–4: Summary of Future Case Point Source Emission Data Sources, table 1–5: Summary of Future Case On-Road Mobile Source Emission Data Sources, and table 1–6: Summary of Future Case Non-Road Mobile, Off-Road, Area, Oil-and-Gas, and Biogenic Source Emission Data Sources. The gridded photochemical modeling input files for the 2016 and 2028 emissions were provided along with the full emission processing message log files during Texas's public comment period. For point sources, Texas evaluated large stationary sources of emissions, such as electric generating units (EGUs), smelters, industrial boilers, petroleum refineries, and manufacturing facilities. Point source emissions were developed for the January 1 through December 31, 2016, annual episode with a 2028 future year projection. The data sources for development of the point source modeling emissions are summarized in the 2021 Texas Regional Haze Plan, appendix E, table 2–1: Sources of Point Source Emissions Data.

The EPA proposes to find that Texas has met the requirements of 40 CFR 51.308(f)(6) as described above, including its continued participation in the IMPROVE network and the CenSARA RPO and its on-going compliance with the AERR, and that no further elements are necessary at this time for Texas to assess and report on visibility pursuant to 40 CFR 51.308(f)(6)(vi).

In sum, for all the reasons discussed in this section, the EPA is proposing to approve Texas's 2021 Regional Haze Plan as meeting the requirements of 40 CFR 51.308(f)(6).

I. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of states' regional haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I area within the State and each Class I area outside the State that may be affected by emissions from within that State. Sections 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, § 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the State have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

The 2021 Texas Regional Haze Plan describes the status of measures of the long-term strategy from the first implementation period to address the requirements found in 40 CFR 51.308(g)(1) and (2). Control measures to reduce emission within and outside the State are found in the 2021 Texas Regional Haze Plan, Chapter 7: Long-Term Strategy to Establish Reasonable Progress Goals, Section 7.4: Federal Programs that Reduce Stationary Source Emissions, Section 7.5: Federal Programs that Reduce Mobile Source Emissions, and Section 7.6: State Air Pollution Control Programs. Control measures in the State are included in Section 7.6: State Air Pollution Control Programs, which discusses both State stationary and mobile source emissions control measures; Section 7.6.2: Best Available Control Technology (BACT) Requirements, which discusses air permitting requirements for new and modified sources of air pollution; and finally Section 7.6.3: Additional Measures, which discusses other measures addressing air pollution from mobile sources, construction activities, and fires, and measures addressing energy efficiency. Emissions reductions are found in the 2021 Texas Regional Haze Plan, Chapter 6: Emissions Inventory, Section 6.8: NO_X and SO_2 Emissions Trends, table 6–4: Anthropogenic NO_X Emissions by Source Type, and table 6–5: Anthropogenic SO_2 Emissions by Source Type.

The EPA proposes to find that Texas has addressed the requirements of 40 CFR 51.308(g)(1) and (2) because the 2021 Texas Regional Haze Plan describes the measures included in the long-term strategy from the first implementation period, as well as the status of their implementation and the emission reductions achieved through such implementation.

Section 51.308(g)(3) requires that for each Class I area within the State, the State must assess the following visibility conditions and changes, with values for most impaired, least impaired and/or clearest days as applicable expressed in terms of five-year averages of these annual values. The 2021 Texas Regional Haze Plan includes summaries of visibility conditions in Chapter 4: Assessment of Baseline and Current

Conditions and Estimate of Natural Conditions in Class I Areas, Section 4.2: Baseline Visibility Conditions, Section 4.3: Natural Visibility Conditions. Changes in visibility conditions are displayed in Chapter 8: Reasonable Progress Goals, Section 8.4: Reasonable Progress Goal Status. The EPA therefore proposes to find that Texas has addressed the requirements of 40 CFR 51.308(g)(3).

Pursuant to § 51.308(g)(4), Texas evaluated emission trends for reasonable progress for the 2021 Texas Regional Haze Plan and presented those data in Chapter 6: Emissions Inventory, Section 6.7: Emissions Summaries, table 6–1: 2011 Statewide Pollutant Summary by Source Category, table 6–2: 2014 Statewide Pollutant Summary by Source Category, table 6–3: 2017 Statewide Pollutant Summary by Source Category, table 6–4: Anthropogenic NO_X Emissions by Source Type, table 6–5: Anthropogenic SO_2 Emissions by Source Type. The EPA is proposing to find that Texas has addressed the requirements of § 51.308(g)(4) by providing emissions information for NO_X, SO_2, PM_{10}, $PM_{2.5}$, VOCs, and NH_3 broken down by type of source.

Since the 2009 and 2014 Texas regional haze SIP revisions, reductions in anthropogenic emissions within and outside the State have occurred from the following: (1) ongoing rules and regulations for nonattainment areas in Texas (see the 2021 Texas Regional Haze Plan Chapter 7: Long-Term Strategy to Establish Reasonable Progress Goals, Section 7.6: State Air Pollution Control Programs); (2) closing several major coal-fired plants in Texas, which have permanently reduced emissions (see Chapter 7, Section 7.6.3.8: Potential Effects of Economically Driven Coal Burning Power Plant Closures); (3) continuing reductions in mobile emissions through the incentives like Texas Emissions Reduction Plan (TERP) (see Chapter 7, Section 7.6.3.1: Texas Emissions Reduction Plan); (4) ongoing energy efficiency state-wide, which has continued to increase (see Chapter 7, Section 7.6.3.3: Energy-Efficiency (EE) Programs and Renewable Energy (RE) Measures); and other items discussed in Chapter 7 of the 2021 Texas Regional Haze Plan. Texas uses the emissions trend data in the 2021 Texas Regional Haze Plan [245] to support the assessment that anthropogenic haze-causing pollutant emissions in Texas have decreased during the reporting period and that changes in emissions have not limited or impeded progress in reducing pollutant emissions and improving visibility. Texas's 2017 emission inventories for NO_X, SO_2, PM_{10}, $PM_{2.5}$, VOCs, and NH_3 were lower than their 2014 emission inventories for those same pollutants emissions.[246] The EPA is proposing to find that Texas has addressed the requirements of § 51.308(g)(5).

In sum, because Texas's 2021 Regional Haze Plan addresses the requirements of 40 CFR 51.308(g)(1) through (5) as required by 40 CFR 51.308(f)(5), the EPA is proposing to approve Texas's 2021 Texas Regional Haze Plan as meeting the requirements of 40 CFR 51.308(f)(5) for periodic progress reports.

J. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the Clean Air Act requires states to consult with FLMs before holding the public hearing on a proposed regional haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public. In addition, section 51.308(i)(2)'s FLM consultation provision requires a State to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs' can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough, Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the State level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with states: assessment of visibility impairment in any Class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

The TCEQ consulted with the FLMs about the impact of Texas's emissions on regional haze at the regional Class I areas through conference calls. The TCEQ gave a presentation in March 2020 and discussed impacts to Class I areas in the region. An additional meeting was held October 8, 2020, where NPS presented its evaluation of the Texas SIP. NPS requested Texas look at 15 additional sources that were not included in the TCEQ's four-factor analysis. NPS also requested the TCEQ consider impacts to three New Mexico Class I areas: Bandelier, Salt Creek, and Carlsbad Caverns. NPS also identified inconsistencies between the TCEQ's SIP and the CAA. Both the NPS and FS submitted comment letters during the TCEQ's public comment period.

Texas responded to the FLM comments and included the responses in appendix A of their 2021 Regional Haze Plan. Notices of the proposed SIP, availability and the public hearing were published on TCEQ's website and in the Texas Register, the Fort Worth Star Telegram, the Houston Chronicle, the Austin American-Statesman, and the El Paso Times. A virtual public hearing on the proposed SIP revision was held on December 8, 2020, and was available for participation via internet or phone. Written comments relevant to the proposal were accepted until the close of business January 8, 2021.

Additionally, Texas's 2021 Regional Haze Plan includes a commitment to revise and submit a regional haze SIP by July 31, 2028, and every ten years thereafter. The state's commitment includes submitting periodic progress reports in accordance with 40 CFR 51.308(f) and a commitment to evaluate progress towards the reasonable progress goal for each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State in accordance with § 51.308(g).

Regardless of the consultation described above, compliance with 40 CFR 51.308(i) is dependent on compliance with 40 CFR 51.308(f)(2)'s long-term strategy provisions and (f)(3)'s reasonable progress goals provisions. Therefore, because the EPA is proposing to disapprove Texas's long-term strategy under 51.308(f)(2) and the reasonable progress goals under 51.308(f)(3), the EPA is also proposing to disapprove the State's FLM consultation under 51.308(i). While Texas did take administrative steps to provide the FLMs the opportunity to review and provide feedback on the State's draft regional haze plan, the EPA cannot approve that consultation because it was based on a plan that does not meet the statutory and regulatory requirements of the CAA and the RHR, as described in this notice of proposed rulemaking. In addition, if the EPA finalizes our proposed partial approval and partial

[245] *See* 2021 Texas Regional Haze Plan, Section 6.8.

[246] Trends in anthropogenic NO_X and SO_2 emissions are presented in Figures 6–1 and 6–2 of the 2021 Texas Regional Haze Plan, respectively.

disapproval of the 2021 Texas Regional Haze Plan, the State (or the EPA in the case of a FIP) will be required to again complete the FLM consultation requirements under 40 CFR 51.308(i). Therefore, the EPA proposes to disapprove the FLM consultation component of the 2021 Texas Regional Haze Plan.

V. Proposed Action

For the reasons discussed in this notice, under CAA section 110(k)(3), the EPA is proposing approval of the portions of Texas's 2021 Regional Haze Plan relating to 40 CFR 51.308(f)(1): calculations of baseline, current, and natural visibility conditions, progress to date, and the uniform rate of progress; 40 CFR 51.308(f)(4): reasonably attributable visibility impairment; 40 CFR 51.308(f)(5): [247] progress report requirements; and 40 CFR 51.308(f)(6): monitoring strategy and other implementation plan requirements. The EPA is proposing disapproval of the remainder of Texas's 2021 Regional Haze Plan, which addresses 40 CFR 51.308(f)(2): long-term strategy; 40 CFR 51.308 (f)(3): reasonable progress goals; and 40 CFR 51.308(i): FLM consultation.

VI. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice (EJ) can be found in the section, below, titled ''VII. Statutory and Executive Order Reviews.'' For informational and transparency purposes only, the EPA is including additional analysis of environmental justice associated with this proposed action.

EPA conducted screening analyses using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[248] The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[249] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[250] To help mitigate this uncertainty, we have summarized EJSCREEN data within larger ''buffer'' areas covering multiple block groups and representing the average resident within the buffer areas surrounding the sources. We present EJSCREEN environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$), ozone, nitrogen dioxide, and diesel particulate matter concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[251] EJSCREEN also provides information on demographic indicators, including percent low-income, unemployment, communities of color, linguistic isolation, and education.

The EPA prepared EJSCREEN reports covering a buffer area of approximately 6-mile radius around each source identified in this proposed rulemaking. Table 24 presents a summary of results from the EPA's screening-level analysis for a few of the areas in Texas compared to the U.S. as a whole. The full, detailed EJSCREEN report for all areas is provided in the docket for this rulemaking.

TABLE 24—EJSCREEN ANALYSIS SUMMARY FOR SOURCES

[see detailed EJSCREEN report for all sources]

Variables	Values for buffer areas (radius) for each source and the U.S. (percentile within U.S. where indicated)				
	Limestone	Martin Lake	Oklaunion	San Miguel	U.S.
Pollution Burden Indicators:					
Particulate matter ($PM_{2.5}$), annual average	8.13 μg/m³ (49%ile)	8.8 μg/m³ (69%ile)	6.94 μg/m³ (17%ile)	8.38 μg/m³ (58%ile)	8.45 μg/m³ (—)
Ozone, annual average of the top ten 8-hour daily maximums	61 ppb (53%ile)	56.9 ppb (32%ile)	57.2 ppb (33%ile)	61.7 ppb (56%ile)	61.8 ppb (—)
Nitrogen dioxide, annual average	3.7 ppb (11%ile)	3.2 ppb (8%ile)	3.6 ppb (11%ile)	2.9 ppb (6%ile)	7.8 ppb (—)
Diesel particulate matter	0.0574 μg/m³ (11%ile)	0.0572 μg/m³ (11%ile)	0.0496 μg/m³ (8%ile)	0.0384 μg/m³ (4%ile)	0.191 μg/m³ (—)
Toxic releases to air score *	320 (39%ile)	9400 (92%ile)	32 (14%ile)	92 (23%ile)	4,600 (—)
Traffic proximity and volume score *	12,000 (5%ile)	9,900 (4%ile)	59,000 (13%ile)	28,000 (8%ile)	1,700,000 (—)
Lead paint (percentage pre-1960 housing)	0.061% (29%ile)	0.12% (38%ile)	0.51% (74%ile)	0.08% (32%ile)	0.3% (—)
Superfund proximity score *	0 (0%ile)	0.014 (56%ile)	0 (0%ile)	0 (0%ile)	0.39 (—)
RMP proximity score *	0.14 (39%ile)	0.18 (42%ile)	0.32 (53%ile)	0.084 (30%ile)	0.57 (—)

[247] 40 CFR 51.308(f)(5) requires that the second planning period SIP revision address the requirements listed in (g)(1) through (g)(5).

[248] The EJSCREEN tool is available at *https://www.epa.gov/ejscreen.*

[249] *See* U.S. Census Bureau Glossary available at *https://www.census.gov/programs-surveys/geography/about/glossary.html.*

[250] In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. More information is available at *https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.*

[251] *See* EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation for additional information on the data and methods used to create the indicators and indexes in EJSCREEN, which is available at *https://www.epa.gov/ejscreen/technical-information-and-data-downloads.*

TABLE 24—EJSCREEN ANALYSIS SUMMARY FOR SOURCES—Continued
[see detailed EJSCREEN report for all sources]

Variables	Values for buffer areas (radius) for each source and the U.S. (percentile within U.S. where indicated)				
	Limestone	Martin Lake	Oklaunion	San Miguel	U.S.
Hazardous waste proximity score *	0.058 (15%ile)	0.055 (15%ile)	0 (0%ile)	0 (0%ile)	3.5 (—)
Underground storage tank proximity score *	0.022 (29%ile)	0.18 (36%ile)	0.11 (34%ile)	0.000039 (26%ile)	3.6 (—)
Wastewater discharge score *	52 (50%ile)	50 (49%ile)	0.35 (18%ile)	14 (38%ile)	700,000 (—)
Drinking water noncompliance, points	2.7 (87%ile)	9.9 (92%ile)	2.2 (87%ile)	0.86 (77%ile)	2.2 (—)
Demographic Indicators:					
People of color population	21% (37%ile)	33% (51%ile)	43% (60%ile)	44% (61%ile)	40% (—)
Low-income population	33% (60%ile)	28% (52%ile)	41% (72%ile)	15% (29%ile)	30% (—)
Unemployment rate	3% (45%ile)	4% (55%ile)	5% (62%ile)	9% (79%ile)	6% (—)
Linguistically isolated population	1% (59%ile)	0% (56%ile)	4% (71%ile)	0% (57%ile)	5% (—)
Population with less than high school education	11% (60%ile)	8% (50%ile)	30% (91%ile)	29% (91%ile)	11% (—)
Population under 5 years of age	4% (47%ile)	9% (80%ile)	5% (54%ile)	0% (13%ile)	5% (—)
Population over 64 years of age	27% (83%ile)	17% (53%ile)	17% (55%ile)	35% (92%ile)	18% (—)

* The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers. The underground storage tank proximity indicator is the weighted count within a 1,500-foot block group. The toxic releases to air indicator is the modeled toxicity-weighted concentration. The wastewater discharge indicator is the modeled toxicity-weighted concentrations divided by distance in meters.

Exposure to PM and SO_2 is associated with significant public health effects. Short-term exposures to SO_2 can harm the human respiratory system and make breathing difficult. People with asthma, particularly children, are sensitive to these effects of SO_2.[252] Exposure to PM can affect both the lungs and heart and is associated with: premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing. People with heart or lung diseases or conditions, children, and older adults are the most likely to be affected by PM exposure.[253] This action, which proposes to partially approve and partially disapprove the Texas Regional Haze SIP submitted on July 20, 2021, will not directly result in a change to emissions or air quality if finalized. Further, there is no information in the record indicating that this proposed action, if finalized, would have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

[252] *See* Sulfer Dioxide Basics available at *https://www.epa.gov/SO2-pollution/sulfurdioxide-basics #effect.*

[253] *See* Health and Environmental Effects: Particulate Matter available at *https://www.epa.gov/pm-pollution/healthand-environmental-effects-particulate-matter-pm.*

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to partially approve and partially disapprove State law as meeting or not meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

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

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA (44 U.S.C. 3501 *et seq.*) because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is certified to not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will not impose any requirements on small entities beyond those imposed by State law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

In addition, this proposed rulemaking action, pertaining to Texas regional haze SIP submission for the second planning period, does not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it merely proposes to partially approve and partially disapprove a SIP revision as meeting federal requirements. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This action is not subject to the requirements of section 12(d) of the NTTAA (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

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. The 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.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, if finalized, this action is expected to have a neutral 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

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

Dated: September 27, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–23341 Filed 10–10–24; 8:45 am]

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Part VI

Commodity Futures Trading Commission

17 CFR Part 38

Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038–AF40

Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Final guidance.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') is issuing this guidance to outline factors for consideration by designated contract markets (''DCMs''), when addressing certain provisions of the Commodity Exchange Act (''CEA''), and CFTC regulations thereunder, that are relevant to the listing for trading of voluntary carbon credit (''VCC'') derivative contracts. The Commission recognizes that VCC derivatives are a comparatively new and evolving class of products, and believes that guidance that outlines factors for consideration by a DCM, in connection with the contract design and listing process, may help to advance the standardization of such products in a manner that promotes transparency and liquidity.

DATES: Issued on October 15, 2024.

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I. Background

A. The Regulatory Framework for DCMs

The CFTC's mission is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.[1] An independent agency of the U.S. Federal Government, the CFTC exercises the authorities granted to it under the CEA to promote market integrity, prevent price manipulation and other market disruptions, protect customer funds, and avoid systemic risk, while fostering responsible innovation and fair competition in the derivatives markets.[2]

DCMs are CFTC-regulated exchanges that provide participants in the derivatives markets with the ability to execute or trade derivative contracts with one another.[3] In order to obtain and maintain designation with the CFTC, DCMs must comply with statutory ''Core Principles'' that are set forth in the CEA,[4] as well as applicable CFTC rules and regulations.[5] The statutory Core Principles for DCMs reflect the important role that these exchanges play in promoting the integrity of derivatives markets. DCMs are self-regulatory organizations, and each DCM has Core Principle obligations to, among other things, establish and enforce rules for trading on the DCM;[6] provide a competitive, open and efficient market for trading;[7] and monitor trading activity.[8] For example, DCM Core Principle 4 requires a DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process, through market surveillance, compliance, and enforcement practices and procedures.[9] DCM Core Principle 5 requires a DCM to adopt for each contract that it lists for trading, as is necessary and appropriate, position limitations or position accountability for speculators, in order to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.[10] DCM Core Principle 12 requires a DCM to establish and enforce rules to protect markets and market participants from abusive

[1] CFTC Mission Statement, *available at: https://www.cftc.gov/About/AboutTheCommission.*

[2] *See* CEA section 3(b), 7 U.S.C. 5(b).

[3] *See* CEA section 1a(6), 7 U.S.C. 1a(6). (The term ''board of trade'' means any organized exchange or other trading facility); CEA section 1a(51)(A), 7 U.S.C. 1a(51)(A) (The term ''trading facility'' means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions— (i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or (ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching or execution algorithm); and CEA section 5(d)(1)(A), 7 U.S.C. 7(d)(1)(A) (To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—(i) any core principle described in this subsection; and (ii) any requirement that the Commission may impose by rule or regulation pursuant to CEA section 8a(5)).

[4] *See, generally,* CEA section 5(d), 7 U.S.C. 7(d). There are 23 statutory Core Principles for DCMs.

[5] CEA section 5(d)(1)(A), 7 U.S.C. 7(d)(1)(A).

[6] DCM Core Principle 2 requires, among other things, that a DCM establish, monitor, and enforce compliance with the rules of the DCM, including access requirements, the terms and conditions of any contracts to be traded on the DCM, and rules prohibiting abusive trade practices on the DCM. DCM Core Principle 2 also requires a DCM to have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the DCM. CEA section 5(d)(2), 7 U.S.C. 7(d)(2). *See also* 17 CFR 38.150 through 38.160. DCM Core Principle 13 requires that a DCM establish and enforce disciplinary procedures that authorize the DCM to discipline, suspend, or expel members or market participants that violate the DCM's rules. CEA section 5(d)(13), 7 U.S.C. 7(d)(13). *See also* 17 CFR 38.700 through 38.712.

[7] DCM Core Principle 9 requires, among other things, that a DCM provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the DCM. CEA section 5(d)(9), 7 U.S.C. 7(d)(9). *See also* 17 CFR 38.500.

[8] *See, e.g.,* DCM Core Principles 4, 5, and 12, discussed *infra.*

[9] CEA section 5(d)(4), 7 U.S.C. 7(d)(4). *See also* 17 CFR 38.250 through 38.258.

[10] CEA section 5(d)(5), 7 U.S.C. 7(d)(5). *See also* 17 CFR 38.300 through 38.301.

practices, and to promote fair and equitable trading on the DCM.[11]

Additionally, each DCM has a specific statutory obligation, under DCM Core Principle 3, to only list for trading derivative contracts that are not readily susceptible to manipulation.[12] As discussed in greater detail below, a DCM may elect to list a new derivative contract for trading either by certifying to the Commission that the contract complies with the CEA and CFTC regulations,[13] or by seeking Commission approval of the contract.[14] In either case, the DCM must submit the contract's terms and conditions, and other prescribed information relating to the contract, to the Commission prior to listing.[15]

For a number of the statutory Core Principles for DCMs, the Commission has adopted rules that establish the manner in which a DCM must comply with the Core Principle.[16] These implementing rules are set forth in part 38 of the Commission's regulations.[17] The Commission has also adopted, in appendix B to part 38,[18] guidance and acceptable practices for DCMs to consider with respect to certain of the Core Principles.[19]

With respect to the DCM Core Principle 3 requirement that a DCM only list for trading derivative contracts that are not readily susceptible to manipulation, the Commission has adopted guidance that is set forth in appendix C to part 38—Demonstration of Compliance That a Contract is Not Readily Susceptible to Manipulation (the ''Appendix C Guidance'').[20] The Appendix C Guidance outlines certain relevant considerations for a DCM when designing a derivative contract, and providing supporting documentation and data in connection with the submission of the derivative contract to the Commission.[21] The Commission takes the considerations outlined in the Appendix C Guidance into account when determining whether, with respect to the contract, the DCM is satisfying its DCM Core Principle 3 obligation only to list derivative contracts that are not readily susceptible to manipulation.

Among other things, the Appendix C Guidance outlines, for both physically-settled and cash-settled derivative contracts, certain considerations in connection with the design of the contract's rules and terms and conditions.[22] With respect to physically-settled derivative contracts, the Appendix C Guidance states, among other things, that the contract's terms and conditions should conform to the most common commercial practices and conditions in the cash market for the underlying commodity.[23] The Appendix C Guidance also states that the contract's terms and conditions should be designed to avoid impediments to the delivery of the underlying commodity, so as to promote convergence between the price of the contract and the cash market value of the underlying commodity at the expiration of trading in the contract.[24] The Appendix C Guidance outlines certain criteria for a DCM to consider addressing in the contract's terms and conditions,[25] including contract size, the period for making and taking delivery under the contract, delivery points, quality standards for the underlying commodity, and inspection/certification procedures for verifying compliance with those quality standards or any other related delivery requirements under the contract.[26]

The criteria outlined in the Appendix C Guidance that relate to the quality and other attributes of the underlying commodity that would be delivered under a physically-settled derivative contract upon the expiration of trading, inform the pricing of the derivative contract. Addressing these criteria clearly in the derivative contract's terms and conditions, in a manner that reflects the individual characteristics of the underlying commodity, helps to ensure that trading in the derivative contract is based on accurate information about the underlying commodity. This, in turn, helps to promote accurate pricing and helps to reduce the susceptibility of the derivative contract to manipulation. Further, when a derivative contract's terms and conditions help to ensure that, upon delivery, the quality and other attributes of the underlying commodity will be as expected by position holders, this helps to prevent price distortions and fosters confidence in the contract that can incentivize trading and enhance liquidity.

With respect to cash-settled derivative contracts, the Appendix C Guidance states that an acceptable specification of the cash settlement price would, among other things, include rules that fully describe the essential economic characteristics of the underlying commodity, as well as how the final settlement price is calculated.[27] The Appendix C Guidance states that the utility of a cash-settled contract for risk management and price discovery purposes would be significantly impaired if the cash settlement price is not a reliable or robust indicator of the value of the underlying commodity.[28] The Appendix C Guidance states that, accordingly, careful consideration should be given to the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator

[11] CEA section 5(d)(12), 7 U.S.C. 7(d)(12). *See also* 17 CFR 38.650 through 38.651.

[12] CEA section 5(d)(3), 7 U.S.C. 7(d)(3). *See also* 17 CFR 38.200 through 38.201.

[13] CEA section 5c(c)(1), 7 U.S.C. 7a–2(c)(1). *See also* 17 CFR 40.2.

[14] CEA sections 5c(c)(4) through (5), 7 U.S.C. 7a–2(c)(4) through (5). *See also* 17 CFR 40.3.

[15] *See, generally,* 17 CFR 40.2 and 40.3. Amendments to contract terms and conditions also must be submitted to the Commission in accordance with procedures set forth at CEA section 5c(c), 7 U.S.C. 7a–2(c), and part 40 of the Commission's regulations.

[16] Unless otherwise determined by the Commission by rule or regulation, a DCM has reasonable discretion in establishing the manner in which it complies with a Core Principle. CEA section 5(d)(1)(B), 7 U.S.C. 7(d)(1)(B).

[17] 17 CFR part 38.

[18] 17 CFR part 38, appendix B.

[19] Guidance provides contextual information regarding a Core Principle, including important concerns which the Commission believes should be considered in complying with the Core Principle. The guidance for a DCM Core Principle is illustrative only of the types of matters that a DCM may address, and is not intended to be used as a mandatory checklist. Acceptable practices are more detailed examples of how a DCM may satisfy particular requirements of a DCM Core Principle. Similar to guidance, acceptable practices are for illustrative purposes only, and do not establish a mandatory means of Core Principle compliance. 17 CFR part 38, appendix B.

[20] *See* 17 CFR part 38, appendix C. Guidance set forth in appendix B to part 38 states that a DCM may use the Appendix C Guidance as guidance in meeting DCM Core Principle 3 for both new product listings and existing listed contracts. 17 CFR part 38, appendix B, Core Principle 3 Guidance.

[21] *See* Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612 at 36632 (June 19, 2012). The Appendix C Guidance is also relevant to swap execution facilities (''SEFs''), another category of CFTC-regulated exchange that provides eligible contract participants with the ability to execute or trade derivative contracts that are swaps with one another. Like DCMs, SEFs are obligated by statute only to permit trading in contracts that are not readily susceptible to manipulation. *See* CEA section 5h(f)(3), 7 U.S.C. 7b–3(f)(3); 17 CFR 37.301.

[22] Physically-settled derivative contracts are contracts that may settle directly into the commodity underlying the contract. If the holder of a position in a physically-settled derivative contract still has an open position at the expiration of trading in the contract, then the position holder must, in accordance with the rules for delivery set forth in the contract, make or take delivery (as applicable) of the underlying commodity. By contrast, cash-settled derivative contracts are, at the expiration of trading in the contract, settled by way of a cash payment instead of physical delivery of the underlying commodity.

[23] Appendix C Guidance, paragraph (b)(1).

[24] *Id.*

[25] Appendix C Guidance, paragraph (b)(2)(1) (nothing that for physical delivery contracts, an acceptable specification of terms and conditions would include, but may not be limited to, rules that address, as appropriate, the following criteria).

[26] Appendix C Guidance, paragraph (b)(2).

[27] Appendix C Guidance, paragraph (c)(1).

[28] Appendix C Guidance, paragraph (c)(2).

of cash market values.[29] Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price.[30]

B. Voluntary Carbon Markets

1. Overview of Voluntary Carbon Markets

As discussed further below, this final Commission guidance addresses an emerging class of climate-related derivative contracts listed for trading by DCMs, where the underlying commodity is a VCC.[31]

In addition to direct greenhouse gas (''GHG'') emissions reduction initiatives, market-based mechanisms, such as carbon markets,[32] have developed to support emissions reduction efforts. A carbon market generally refers to an economic mechanism to support the buying and selling of environmental commodities [33] that represent GHG emission reductions or removals from the atmosphere. Carbon markets are intended to harness market forces to incentivize carbon mitigation activities. Carbon markets generally fall into two categories: (i) mandatory (or compliance) markets, and (ii) voluntary carbon markets.

Mandatory markets, such as cap-and-trade programs, emissions trading systems and allowance trading systems, are established and regulated by national, regional, or international governmental bodies.[34] Entities subject to the requirements of a mandatory market generally must demonstrate compliance by directly reducing their emissions from their own operations or activities, or by purchasing eligible compliance credits representing emission reductions or removals achieved by others.

Voluntary carbon markets are not established by any government body. They enable market participants to purchase, on a voluntary basis, carbon credits that upon retirement represent reductions or removals of GHG emissions. A voluntary carbon credit, or ''VCC,'' is a tradeable intangible instrument that is issued by a carbon crediting program (''crediting program'').[35] The general industry standard is for a VCC to represent a GHG emissions reduction to, or removal from, the atmosphere equivalent to one metric ton of carbon dioxide.[36]

A participant in the voluntary carbon markets may purchase a VCC, representing an emissions reduction or removal by another party, to supplement emissions reductions or removals achieved from the participant's own operations or activities. Liquid and transparent markets in high-integrity VCCs may serve as a tool to facilitate emissions reduction efforts.[37]

The process by which VCCs are issued deserves careful consideration, as that process informs VCC quality and, by extension, the overall integrity and effective functioning of voluntary carbon markets. Generally, parties that play a role in the issuance of a VCC include: (1) the developer of a mitigation project or activity that is intended to reduce or remove GHG emissions from the atmosphere (''project developer''); (2) a crediting program that, among other things, issues VCCs for mitigation projects or activities that satisfy the crediting program's standards; [38] and (3) an independent third party that verifies and validates the mitigation project or activity.

A project developer must first select the crediting program with which it seeks to certify its mitigation project or activity. The crediting program will certify the project or activity if it satisfies the crediting program's standards for issuing VCCs. A crediting program generally engages an independent third party to review project or activity documentation, including, among other things, to verify the accuracy of the estimated amount of emission reductions or removals that are expected to be associated with the project or activity, based on the project's or activity's baseline scenario [39] and the crediting program's methodology or protocol for quantifying reduction or removal levels. The estimated emission reductions or removals serve as the basis for the determination of the number of VCCs to be issued for the project or activity.

Once the crediting program determines that the mitigation project or activity satisfies the crediting program's standards for issuing VCCs, the project or activity will be certified. The crediting program typically operates or makes use of a registry, which serves as a central repository for tracking certified mitigation projects or activities and their associated VCCs. Once registered, VCCs associated with a certified mitigation project or activity may be

[29] *Id.*

[30] *Id.*

[31] This guidance uses the term ''voluntary carbon credits'' rather than ''verified carbon credits,'' since the guidance is focused on the quality and other attributes of the intangible commodity underlying a *derivative contract.* The Commission recognizes that market participants in the *cash or secondary market* for voluntary carbon credits may choose to use a set of standardized terms for the trading and retirement of ''verified carbon credits,'' as defined by the International Swaps and Derivatives Association (''ISDA''), in the market participants' physically-settled *spot, forward or option* transactions. *See* 2022 ISDA Verified Carbon Credit Transactions Definitions (''VCC Definitions'') Frequently Asked Questions, *available at: 2022–ISDA-Verified-Carbon-Credit-Transactions-Definitions-FAQs-061323.pdf.*

[32] While the term ''carbon'' is generally intended to also include other GHGs, such as methane, nitrous oxide, sulfur hexafluoride, hydro fluorocarbons and perfluorocarbons, most emissions trading involves emissions trading of carbon dioxide.

[33] An agreement, contract or transaction in an environmental commodity may qualify for the forward exclusion from the ''swap'' definition set forth in section 1a(47) of the CEA, 7 U.S.C. 1a(47), if the agreement, contract or transaction is intended to be physically-settled. For further discussion of the Commission's interpretation of whether agreements, contracts, or transactions in environmental commodities fall within the forward exclusion from the swap definition, *see* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 FR 48208 (August 13, 2012).

[34] *See,* for example, the United Nation's Clean Development Mechanism (''CDM''), the California Compliance Offset Program, the Regional Greenhouse Gas Initiative (''RGGI''), the Alberta Emission Offset System (''AEOS''), and the EU Emissions Trading System (''ETS'').

[35] *See, e.g.,* The Integrity Council for the Voluntary Carbon Market Carbon Core Principles, Section 5 Definitions, *available at: https://icvcm.org/wp-content/uploads/2023/07/CCP-Section-5-R2-FINAL-26Jul23.pdf.*

[36] This is calculated as the difference in GHG emission reductions or removals from a baseline scenario, to the emission reductions or removals occurring under the carbon mitigation project or activity, with any adjustments for leakage. *See* The Integrity Council for the Voluntary Carbon Market Carbon Core Principles, Section 5 Definitions, *available at: https://icvcm.org/wp-content/uploads/2023/07/CCP-Section-5-R2-FINAL-26Jul23.pdf.*

[37] The Board of the International Organization of Securities Commissions (''IOSCO'') published, in November 2022, a Voluntary Carbon Markets consultation for public comment. The IOSCO consultation paper sought feedback on a potential approach that regulatory authorities and market participants could take to foster sound and well-functioning voluntary carbon market structure and, as a consequence, scale up these markets to allow them to achieve their environmental objectives. *See,* Voluntary Carbon Markets, Discussion Paper, CR/06/22, November 2022, *available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD718.pdf.* In December 2023, IOSCO published its Voluntary Carbon Markets Consultation Report, CR/06/23, December 2023 (outlining a proposed set of good practices to promote the integrity and orderly functioning of voluntary carbon markets) *available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD749pdf. See also,* Voluntary Carbon Markets Joint Policy Statement and Principles (''Joint Policy Statement on Voluntary Carbon Markets''), U.S. Department of the Treasury, May 2024, *available at: https://home.treasury.gov/system/files/136/VCM-Joint-Policy-Statement-and-Principles.pdf.*

[38] Currently, the four main crediting programs in the voluntary carbon markets are the American Carbon Registry, the Climate Action Reserve, the Gold Standard and the Verified Carbon Standard.

[39] A baseline scenario is the predicted or assumed outcome in the absence of the incentives created by carbon credits, holding all other factors constant. *See, e.g.,* The Integrity Council for the Voluntary Carbon Market, Core Carbon Principles Section 5: Definitions; January 2024, Version 2, at 104.

bought and sold to end users (businesses or individuals) or to intermediaries such as brokers or aggregators that provide liquidity to voluntary carbon market participants.[40]

2. Initiatives To Promote Transparency, Integrity and Standardization in the Voluntary Carbon Markets

As the voluntary carbon markets have continued to develop and mature, private sector and multilateral initiatives have sought to address certain issues—relevant to both the supply side (generation of VCCs from carbon mitigation projects or activities), and the demand side (businesses or individuals purchasing VCCs)—impacting the speed at which transparent, robustly traded markets for high-integrity VCCs are scaled.

On the supply side, a key focus has been on the quality of VCCs, and particularly, whether they accurately represent the nature and level of GHG emission reductions or removals that they are intended to represent. Given the current absence of a standardized methodology or protocol to quantify emissions reduction or removal levels, there is a possibility that methodologies or protocols of differing degrees of robustness may calculate different reduction or removal impacts for two projects that are identical in type and size (or even for the same project). This could result in different amounts of carbon credits being issued for each project, despite their actual reduction or removal impact being the same. It may also create incentives for project developers to seek to apply the quantification protocol or methodology, or to seek to certify with the crediting program, that would result in the issuance of the most credits. Among other things, these possibilities create challenges for accurately pricing VCCs. Further, it can be difficult to discern the extent to which the price of any particular VCC reflects the price of one metric ton of carbon dioxide equivalent reduced or removed from the atmosphere, and the extent to which the price of the VCC reflects understandings or concerns relating to the mitigation project or activity for which the VCC was issued, or other aspects of the process for issuing the VCC.[41]

Challenges with respect to accurately ascertaining VCC quality, and associated pricing challenges,[42] can erode confidence in voluntary carbon markets. Furthermore, opaque or inadequate calculation methodologies or protocols, which can obscure or mischaracterize the carbon impact of a mitigation project or activity, can undermine both the integrity and purpose of voluntary carbon markets.

On the demand side, concerns have been raised that, in connection with meeting their carbon mitigation goals, businesses or individuals may be utilizing low integrity VCCs which do not accurately reflect the nature or level of GHG emission reductions or removals that are associated with the projects or activities for which the VCCs have been issued.[43] This can raise questions not only about the business's or individual's progress towards their carbon mitigation goals, but also about whether any claims related to those goals are misleading.[44] Market participants that are purchasing VCCs to help meet their carbon mitigation goals may be focused largely or primarily on price, and also may not have ready access to all of the information that they need to make informed evaluations, and comparisons, of VCC quality. All of this may incentivize, intentionally or not, the purchase of lower quality VCCs. This may be facilitated by the opaque pricing of VCCs.

Private sector and multilateral efforts have spearheaded the development of various initiatives to address the above challenges, and to promote transparency, integrity and standardization in the voluntary carbon markets. To support and promote VCC quality, these private sector and multilateral initiatives have focused on developing standards for high-integrity VCCs.[45] Among other things, these standards are intended to help provide assurance that the VCCs that have been issued for a carbon mitigation project or activity accurately reflect the actual GHG emissions reduction or removal levels associated with that project or activity. These standards also generally highlight the importance of effective crediting program processes, procedures, and governance arrangements, in ensuring that a crediting program is issuing high-integrity VCCs.

Standards that assist market participants in making informed evaluations, and comparisons, of VCC quality may promote accurate pricing and enhance confidence that the voluntary carbon markets can serve as a tool to assist in emissions reduction efforts. Such standards can thereby play a valuable role in supporting market transparency and liquidity, and the scaling of high-integrity voluntary carbon markets.

Such standards may also support initiatives being developed to address concerns about the accuracy of claims made by purchasers of VCCs regarding the role that VCCs play in the purchasers' progress toward carbon mitigation goals.[46] Such standards could serve as a foundation for criteria that purchasers of VCCs could

[40] Funding by investors for a mitigation project or activity could begin as early as the planning stage. Early investors may enter into agreements with a project developer for funding in exchange for discounted VCCs, if and when issued.

[41] Factors that may affect the price of VCCs issued for any particular mitigation project or activity may include the type of the project or activity, the geographic location of the project or activity, and the methodology or protocol used to measure the levels of emission reductions or removals associated with the project or activity. Types of carbon mitigation projects or activities for which VCCs are issued include renewable energy, industrial gas capture, energy efficiency, forestry initiatives (avoiding deforestation), regenerative agriculture, wind power, and biogas. The location of a mitigation project or activity may, for example, impact the cost of implementing and/or operating the project or activity. Mitigation projects and activities for which VCCs are issued are located in countries worldwide. *See* Berkeley Voluntary Registry Offsets Database, *available at: https://gspp.berkeley.edu/research-and-impact/centers/cepp/projects/berkeley-carbon-trading-project/offsets-database.*

[42] Observed trading of VCCs is not as readily transparent as for other financial instruments. Spot markets for VCCs are still largely bespoke, with buyers purchasing directly from project developers or via intermediaries. Some exchanges for trading VCCs have been established and are evolving. For example, the AirCarbon Exchange (*https://acx.net/acx-singapore/*), located in Singapore; Carbon Trade Exchange (*https://ctxglobal.com/*), located in the United Kingdom; and Xpansiv CBL (*https://xpansiv.com/cbl/*), located in the United States.

[43] *See, e.g.,* Forbes, Carbon Neutral Claims Under Investigation In Greenwashing Probe (June 16, 2023), *available at: https://www.forbes.com/sites/amynguyen/2023/06/16/carbon-neutral-claims-under-investigation-in-greenwashing-probe/?sh=2a6170466431.*

[44] *See, e.g.,* Federal Trade Commission, *Guides for the Use of Environmental Marketing Claims,* Regulatory Review Notice and Request for Public Comment, 87 FR 77766 (December 20, 2022) (Federal Trade Commission request for public comment on updating its Green Guides to include claims made regarding carbon offsets).

[45] *See, e.g.,* The Integrity Council for the Voluntary Carbon Market's Core Carbon Principles (July 2023), *available at: https://icvcm.org/wp-content/uploads/2023/07/CCP-Book-R2-FINAL-26Jul23.pdf;* the International Civil Aviation Organization's Carbon Offsetting and Reduction Scheme for International Aviation (''CORSIA'') (2023), *available at: https://www.icao.int/environmental-protection/CORSIA/Pages/default.aspx;* the G7 Principles of High Integrity Carbon Markets (2023), *available at: https://www.meti.go.jp/information/g7hirosima/energy/pdf/Annex004.pdf. See also,* Joint Policy Statement on Voluntary Carbon Markets, *available at: https://home.treasury.gov/system/files/136/VCM-Joint-Policy-Statement-and-Principles.pdf.*

[46] *See, e.g.,* the World Wildlife Fund (''WWF''), Environmental Defense Fund (''EDF'') and Oeko-Institut's Carbon Credit Quality Initiative (*https://carboncreditquality.org/*); the Tropical Forest Credit Integrity Guide for Companies: Differentiating Tropical Forest Carbon Credit by Impact, Quality, and Scale (*https://tfciguide.org/*); and the Voluntary Carbon Markets Integrity Initiative's Claims Code of Practice (*https://vcmintegrity.org/vcmi-claims-code-of-practice/*).

voluntarily adhere to, in order to demonstrate their commitment to using high-integrity VCCs to support their carbon mitigation goals, and to being transparent in their progress towards those goals.

C. The Commission and Voluntary Carbon Markets

1. Derivative Contracts on Environmental Commodities, Including VCCs

Derivative contracts on environmental commodities have been trading on CFTC-regulated exchanges for decades. Derivative contracts on mandatory emissions program instruments have been trading since 2005, with GHG emissions-related instruments first listed for trading in 2007.[47] There are currently over 150 derivative contracts on mandatory emissions program instruments listed for trading on DCMs.[48] As of August 2024, twenty-nine derivative contracts on voluntary carbon market products have been listed for trading by DCMs.[49] Three of those contracts currently have open interest.[50]

Physically-settled derivative contracts on VCCs base their price on the spot price of VCCs. If the holder of a position in a physically-settled VCC derivative contract still has an open position at the expiration of trading in the contract, then the position holder must, in accordance with the rules for delivery set forth in the contract, make or take delivery (as applicable) of VCCs that meet the contract's rules for delivery eligibility.[51]

2. CFTC Initiatives Relating to Voluntary Carbon Markets

i. First Voluntary Carbon Markets Convening

In June 2022, Chairman Behnam held the first-ever Voluntary Carbon Markets Convening to discuss issues related to the supply of and demand for high-quality carbon credits, including product standardization and the data necessary to support the integrity of carbon credits' GHG emissions removal and reduction claims.[52] A further goal of the convening was to gather information from a wide variety of participants in the voluntary carbon markets to better understand the potential role of the official sector in these markets, particularly in connection with the emergence of CFTC-regulated derivatives referencing VCCs. The convening included participants from carbon credit standard setting bodies, a crediting program, private sector integrity initiatives, spot platforms, DCMs, intermediaries, end-users, public interest groups, and others.

ii. Commission Request for Information

In June 2022, the Commission issued for public comment a Request for Information (''RFI on Climate-Related Financial Risk'')[53] in order to better inform the Commission on how, consistent with its statutory authority, to address climate-related financial risk as pertinent to the derivatives markets and underlying commodities markets.[54]

The responsive comments that the Commission received included feedback on specific questions relating to product innovation and voluntary carbon markets.[55] Several commenters expressed support for the Commission to take steps that could support transparency and confidence in the

[47] The Chicago Climate Futures Exchange (''CCFE'') listed a Sulfur Financial Instruments Current Vintage Delivery futures contract in 2005. In 2006, the New York Mercantile Exchange (''NYMEX'') listed a nitrogen oxide (''NO_X'') Emissions Allowance futures contract. In 2007, CCFE listed the first Carbon Financial Instrument futures contract and other emission contracts. In 2008, NYMEX listed the first RGGI futures contract. In 2011, Green Exchange listed its European Union Allowance futures contract. In 2012, NYMEX listed its California Carbon Allowance futures contract. To date, there have been over 1,500 futures and options contracts on mandatory emissions program instruments listed for trading on various DCMs. The vast majority of these contracts are no longer listed for trading.

[48] Examples of derivatives contracts on mandatory emissions program instruments, such as renewable energy credits (''RECs'') and renewable fuel standards (''RFS''), that currently have open interest include: the ICE Futures US (''ICE US'') PJM Tri Qualified Renewable Energy Certificate Class I futures contract; the ICE US Texas Compliance Renewable Energy Certificate from CRS Listed Facilities Front Half Specific futures contract; the ICE US New Jersey Compliance Renewable Energy Certificate Class II futures contract; the Chicago Mercantile Exchange (''CME'') Ethanol T2 FOB Rotterdam Including Duty (Platts) futures contract; the ICE US Biofuel Outright—D4 RINS (OPIS) futures contract; the ICE US RGGI Vintage 2024 futures contract; and the ICE US California Carbon Allowance Current Auction futures contract.

[49] NYMEX lists the following physically-settled futures contracts on voluntary carbon market products: (1) the CBL Global Emissions Offset (GEO) futures contract; (2) the CBL Nature-Based Global Emissions Offset (N–GEO) futures contract; (3) the CBL Core Global Emissions Offset (C–GEO) futures contract; (4) the CBL Nature-Based Global Emissions Offset Trailing futures contract; and (5) the CBL Core Global Emissions Offset Trailing futures contract. Nodal Exchange (''Nodal'') lists the following physically-settled futures and options contracts on voluntary carbon market products: (1) Verified Emission Reduction—Nature-Based Vintage 2017 futures and options contracts; (2) Verified Emission Reduction—Nature-Based Vintage 2018 futures and options contracts; (3) Verified Emission Reduction—Nature-Based Vintage 2019 futures and options contracts; (4) Verified Emission Reduction—Nature-Based Vintage 2020 futures and options contracts; (5) Verified Emission Reduction—Nature-Based Vintage 2021 futures and options contracts; (6) Verified Emission Reduction—Nature-Based Vintage 2022 futures and options contracts; (7) Verified Emission Reduction—Nature-Based Vintage 2023 futures and options contracts; (8) Verified Emission Reduction—Nature-Based Vintage 2024 futures and options contracts; (9) Verified Emission Reduction—Nature-Based Vintage 2025 futures and options contracts; (10) Verified Emission Reduction—Nature-Based futures and options contracts; (11) Verified Emission Reduction—CORSIA-Eligible futures and options contracts; (12) Carbon Removal futures contract; and (13) Global Emission Reduction futures contract.

[50] The NYMEX CBL GEO futures contract; the NYMEX CBL N–GEO futures contract; and the NYMEX CBL C–GEO futures contract are currently the only futures contacts listed for trading on DCMs with open interest and trading volume. Information is *available at: https://www.cmegroup.com/markets/energy/emissions/cbl-global-emissions-offset.volume.html.*

[51] For example, NYMEX's CBL Global Environmental Offset futures contracts, and Nodal's Verified Emission Reduction futures and options contracts, are physically-settled contracts. The NYMEX futures contracts permit VCCs to be delivered from the Verified Carbon Standard (''VCS'') Verra Registry, and the registries of the American Carbon Registry (''ACR''), and the Climate Action Reserve (''CAR''). The Nodal futures and options contracts permit VCCs to be delivered from VCS's Verra Registry and from the Gold Standard Impact Registry, as well as from the ACR registry for certain contracts.

[52] For the official announcement of the convening and related materials, *see* CFTC Announces Voluntary Carbon Markets Convening, *available at: https://www.cftc.gov/PressRoom/Events/opaeventcftccarbonmarketconvene060222.*

[53] Request for Information on Climate-Related Financial Risk, 87 FR 34856 (June 8, 2022) (''RFI on Climate-Related Financial Risk'').

[54] In addition to soliciting public feedback on all aspects of climate-related financial risk as it may pertain to the derivatives markets, underlying commodities markets, registered entities, registrants, and other related market participants, the RFI on Climate-Related Financial Risk requested feedback on specific questions relating to: (1) Data, (2) Scenario Analysis and Stress Testing, (3) Risk Management, (4) Disclosure, (5) Product Innovation, (6) Voluntary Carbon Markets, (7) Digital Assets, (8) Financially Vulnerable Communities, (9) Public-Private Partnerships/Engagement, and (10) Capacity Coordination. The RFI on Climate-Related Financial Risk stated that the Commission may use information provided in response to the RFI on Climate-Related Financial Risk to inform potential future actions including, but not limited to, the issuance of new or amended guidance, interpretations, policy statements, or regulations, or other potential Commission action. *Id.*

[55] Twenty-five commenters on the RFI on Climate-Related Financial Risk responded to questions regarding product innovation and 44 commenters on the RFI on Climate-Related Financial Risk responded to questions regarding the voluntary carbon markets.

voluntary carbon markets, particularly through recognition or support of private sector and multilateral initiatives to promote standardization and integrity.[56] In connection with product innovation, certain commenters expressed the view that the Commission's current statutory framework and regulations are sufficient to regulate voluntary carbon market derivatives products.[57] While there were comments expressing different views on the reach of the Commission's jurisdiction to regulate voluntary carbon markets,[58] many commenters supported the Commission utilizing its spot market anti-fraud and anti-manipulation authority in the voluntary carbon market space.[59]

iii. Second Voluntary Carbon Markets Convening

In July 2023, Chairman Behnam held the Second Voluntary Carbon Markets Convening. The purpose of this convening was to discuss recent private sector initiatives for high quality carbon credits; current trends and developments in the cash and derivatives markets for carbon credits; public sector initiatives related to carbon markets; and market participants' perspectives on how the CFTC can promote integrity for high quality carbon credit derivatives.[60]

D. Proposed Guidance Regarding the Listing of VCC Derivative Contracts

On December 4, 2023, the Commission issued proposed guidance outlining factors for consideration by DCMs when addressing certain provisions of the CEA, and CFTC regulations thereunder, that are relevant to the listing for trading of VCC derivative contracts (the ''Proposed Guidance'').[61] In developing the Proposed Guidance, the Commission considered those public comments on the RFI on Climate-Related Financial Risk that addressed product innovation and voluntary carbon markets. The Commission stated in the Proposed Guidance that, taking into account those public comments, it believed that guidance outlining factors for a DCM to consider in connection with the design and listing of VCC derivative contracts would further the mission of the CFTC, ''and may help to advance the standardization of VCC derivative contracts in a manner that fosters transparency and liquidity, accurate pricing, and market integrity.'' [62]

With a focus, primarily, on the design and listing of physically-settled VCC derivative contracts, the Proposed Guidance addressed certain Core Principle compliance considerations, as well as certain requirements relating to the submission of new contracts, and contract amendments, to the Commission. More specifically, the Proposed Guidance addressed certain considerations with respect to Core Principles 3 and 4 for DCMs, and the contract submission provisions set forth in CEA section 5c(c) and part 40 of the Commission regulations.

The Proposed Guidance addressed, first, the DCM Core Principle 3 requirement that a DCM only list for trading derivative contracts that are not readily susceptible to manipulation.[63] As discussed above, the Appendix C Guidance outlines certain relevant considerations for a DCM when developing a contract's terms and conditions, and providing supporting documentation and data in connection with the submission of the contract to the Commission. The Commission takes these considerations into account when determining whether, with respect to the contract, the DCM is satisfying its DCM Core Principle 3 obligations.

In connection with a physically-settled derivative contract, the Appendix C Guidance states that the terms and conditions of the contract ''should describe or define all of the economically significant characteristics or attributes of the commodity underlying the contract.'' [64] In the Proposed Guidance, the Commission noted that, among other things, failure to specify the economically significant attributes of the underlying commodity may cause confusion among market participants, who may expect a commodity of different quality, or with other features, to underlie the contract. This may render the precise nature of the commodity that the contract is pricing ambiguous, and make the contract susceptible to manipulation or price distortion.[65]

The Appendix C Guidance further states that, for any particular contract, the specific attributes of the underlying commodity that should be described or defined in the contract's terms and conditions ''depend upon the individual characteristics of the commodity.'' [66] The Commission stated in the Proposed Guidance that, in its view, the very fact that standardization and accountability mechanisms for VCCs are still developing is, itself, ''an individual characteristic of the commodity'' that a DCM should take into account when designing a VCC derivative contract and addressing the underlying commodity—the VCC—in the contract's terms and conditions.[67] The Commission additionally recognized in the Proposed Guidance that, while standardization and accountability mechanisms for VCCs are currently still being

[56] *See, e.g.,* International Swaps and Derivatives Association (''ISDA'') response to the RFI on Climate-Related Financial Risk, at 6; American Petroleum Institute (''API'') response to the RFI on Climate-Related Financial Risk, at 4; Center for American Progress response to the RFI on Climate-Related Financial Risk, at 10; Environmental Defense Fund (''EDF'') response to the RFI on Climate-Related Financial Risk, at 12; Futures Industry Association (''FIA'') response to the RFI on Climate-Related Financial Risk, at 9; Intercontinental Exchange, Inc. (''ICE'') response to the RFI on Climate-Related Financial Risk, at 4.

[57] *See, e.g.,* CME Group (''CME'') response to the RFI on Climate-Related Financial Risk, at 10, FIA response to the RFI on Climate-Related Financial Risk, at 3; ISDA response to the RFI on Climate-Related Financial Risk, at 7.

[58] *See, e.g.,* Heritage Foundation response to the RFI on Climate-Related Financial Risk, at 7; API response to the RFI on Climate-Related Financial Risk, at 2–4; Commercial Energy Working Group (''CEWG'') response to the RFI on Climate-Related Financial Risk, at 2–3.

[59] *See, e.g.,* API response to the RFI on Climate-Related Financial Risk, at 3; ISDA response to the RFI on Climate-Related Financial Risk, at 6; Verra response to the RFI on Climate-Related Financial Risk, at 2. With respect to the Commission's spot market anti-fraud and anti-manipulation authority, as well as its spot market authority with respect to false reporting, *see, e.g.,* CEA section 6(c)(1), 7 U.S.C. 9(1), which among other things prohibits any person from using or employing, or attempting to use or employ, in connection with a contract for sale of any commodity in interstate commerce, any manipulative or deceptive device or contrivance, in contravention of rules and regulations promulgated by the Commission; CEA section 9(a)(2), 7 U.S.C. 13(a)(2), which among other things makes it a felony for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce; and implementing Commission rules at part 180 of the CFTC's regulations, 17 CFR part 180. In June 2023, the CFTC's Whistleblower Office issued an alert notifying the public about how to identify and report potential CEA violations connected to fraud or manipulation in the carbon markets. *See* CFTC Whistleblower Alert, *available at: https://www.whistleblower.gov/sites/whistleblower/files/2023-06/06.20.23%20Carbon%20Markets%20WBO%20Alert.pdf.* Also in June 2023, the CFTC's Division of Enforcement announced the creation of an Environmental Fraud Task Force to combat environmental fraud and misconduct. Specifically, the Task Force's mission is to address fraud and other misconduct in both the derivatives markets and the relevant spot markets (*e.g.,* voluntary carbon markets) and to examine, among other things, fraud with respect to the purported environmental benefits of purchased carbon credits. *See* CFTC Release Number 8736–23 (''CFTC Division of Enforcement Creates Two New Task Forces''), *available at: https://www.cftc.gov/PressRoom/PressReleases/8736-23.*

[60] For the official announcement of the convening and related materials, *see* CFTC Announces Second Voluntary Carbon Markets Convening on July 19, *available at: https://www.cftc.gov/PressRoom/Events/opaeventvoluntarycarbonmarkets071923.*

[61] Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Request for Comment, 88 FR 89410 (Dec. 27, 2023).

[62] *Id.* at 89416.

[63] CEA section 5(d)(3), 7 U.S.C. 7(d)(3).

[64] Appendix C Guidance, paragraph (b)(2)(i)(A).

[65] 88 FR 89410 at 89416.

[66] Appendix C Guidance, paragraph (b)(2)(i)(A).

[67] 88 FR 89410 at 89416.

developed, there are certain characteristics that have been identified broadly—across both mandatory and voluntary carbon markets—as helping to inform the integrity of carbon credits.[68] The Commission identified what it preliminarily believed these characteristics to be—referring to them, for purposes of the Proposed Guidance, as ''VCC commodity characteristics''—and stated that it believed that a DCM should take these VCC commodity characteristics into consideration when designing a physically-settled VCC derivative contract, and addressing in the contract's terms and conditions the underlying VCC.[69]

The Proposed Guidance stated that, as a general matter, the Commission believed that a DCM should consider the VCC commodity characteristics when selecting one or more crediting programs from which eligible VCCs, meeting the contract's specifications, may be delivered at the contract's expiration.[70] More specifically, the Commission stated that it preliminarily believed that a DCM should, at a minimum, consider the VCC commodity characteristics when addressing the following criteria in connection with contract design:

- Quality standards
- Delivery points and facilities
- Inspection provisions

These are among the criteria identified in the Appendix C Guidance as criteria relating to the underlying commodity that a DCM should consider addressing in the terms and conditions of a physically-settled derivative contract.[71] As discussed above, addressing these criteria clearly in the contract's terms and conditions, in a manner that reflects the underlying commodity's individual characteristics, helps to ensure that trading in the contract is based on accurate information about the underlying commodity. This, in turn, helps to promote accurate contract pricing and reduce the susceptibility of the contract to manipulation. Moreover, when a contract's terms and conditions help to ensure that, upon delivery, the quality and other attributes of the underlying commodity will be as expected by position holders, this helps to prevent price distortions and fosters confidence in the contract that can incentivize trading and enhance liquidity.

The Commission stated in the Proposed Guidance that, in connection with derivative contract design, it preliminarily believed that a DCM should consider the following VCC commodity characteristics when addressing quality standards for underlying VCCs: (a) transparency, (b) additionality, (c) permanence and accounting for the risk of reversal, and (d) robust quantification.[72] When addressing delivery procedures for underlying VCCs, the Commission stated that it preliminarily believed that a DCM should consider the following VCC commodity characteristics: (a) governance, (b) tracking, and (c) no double counting.[73] When addressing inspection or certification procedures for verifying compliance with quality requirements or any other related delivery requirements under the contract for underlying VCCs, the Commission stated that it preliminarily believed that a DCM should consider the validation and verification procedures of the crediting program.[74]

In addition to the above-described considerations in connection with DCM Core Principle 3, the Proposed Guidance also addressed considerations in connection with the requirement, under DCM Core Principle 4, for a DCM to prevent manipulation, price distortion, and disruptions of the physical delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures. The Commission stated that it preliminarily believed that the monitoring by a DCM of the terms and conditions of a VCC derivative contract, as contemplated under DCM Core Principle 4 and Commission regulations thereunder, should include continual monitoring of the appropriateness of the contract's terms and conditions that includes, among other things, monitoring to ensure that the delivery instrument—that is, the underlying VCC—conforms or, where appropriate, updates to reflect the latest certification standard(s) applicable for that VCC.[75]

Finally, the Proposed Guidance highlighted certain requirements in connection with the submission of a VCC derivative contract to the Commission pursuant to CEA section 5c(c)(5)(C) and part 40 of the Commission's regulations, and the Commission's expectation that information submitted to it by a DCM—including supporting documentation, evidence and data—to describe how the contract complies with the CEA and applicable Commission regulations, will be complete and thorough.[76]

The Proposed Guidance was subject to a 75-day public comment period. In addition to requesting comment on all aspects of the Proposed Guidance, the Commission requested comment on 17 specific questions relating to the listing of VCC derivative contracts. The public comment period closed on February 16, 2024. The Commission received approximately 90 comments on the Proposed Guidance, including the specific questions posed by the Commission. After thorough agency review of the comments received, the Commission has determined to finalize the Proposed Guidance with certain clarifications and revisions, as discussed below.

II. Comments on the Proposed Guidance

A. Overview

Comments on the Proposed Guidance were submitted by a variety of interested parties, including derivatives exchanges, industry and trade associations, public interest organizations, climate advocacy groups, carbon credit rating agencies and standard setting bodies. Many commenters expressed their general support for the Proposed Guidance. For example, S&P Global Commodity Insights (''S&P Global'') stated that the Proposed Guidance correctly noted that outlining factors for a DCM to consider in connection with the design and listing of VCC derivatives may help the standardization of such products in a manner that promotes transparency and liquidity.[77] Better Markets stated that ''the Proposed Guideline is a good step in establishing a fair, transparent, and efficient market for voluntary carbon credits.''[78] The Food, Agriculture Climate Alliance (''FACA'') stated that the ''CFTC can play a role in promoting integrity and building confidence in high-quality carbon credits.''[79]

A number of commenters were supportive of the VCC commodity characteristics identified in the Proposed Guidance, or confirmed that they are characteristics that have been identified broadly as helping to inform

[68] *Id.*

[69] *Id.*

[70] For additional clarity, the final guidance states that a DCM should consider the VCC commodity characteristics when selecting one or more crediting programs from which eligible VCCs, meeting the contract's specifications, may be delivered at the contract's ''settlement,'' rather than expiration.

[71] Appendix C Guidance, paragraph (b)(2)(1) (noting that for physical delivery contracts, an acceptable specification of terms and conditions would include, but may not be limited to, rules that address, as appropriate, the following criteria).

[72] 88 FR 89410 at 89417.

[73] *Id.* at 89418 and 89419.

[74] *Id.* at 89419.

[75] *Id.* at 89420.

[76] *Id.*

[77] S&P Global at 2.

[78] Better Markets at 3.

[79] FACA at 2.

the integrity of carbon credits.[80] Certain commenters suggested additional characteristics that the Commission should recognize as helping to inform carbon credit integrity, or clarifications or revisions to the descriptions of the VCC commodity characteristics preliminarily identified by the Commission.[81]

Some commenters raised concerns related to the integrity of the voluntary carbon markets more generally, discussing issues addressed at a high level in Section I.B.2 hereto. Some commenters encouraged the Commission to prescribe the specific attributes that a VCC must possess in order to be eligible to serve as the underlying for a VCC derivative contract.[82] Other commenters encouraged the Commission to ensure that the guidance was clearly tailored to reflect DCM obligations and expertise.[83] A number of commenters recommended that the Commission acknowledge industry-recognized standards for high-integrity VCCs as tools that DCMs could look to, or rely upon, when considering the VCC commodity characteristics in light of a particular crediting program or particular VCCs.[84]

B. Specific Comments

1. Scope and Application of Guidance

Feedback from certain commenters indicated that their understanding was that the Commission's guidance would establish new obligations for DCMs.[85] The Commission emphasizes that its guidance does not establish new obligations for DCMs. The Commission's guidance is not intended to modify or supersede existing statutory or regulatory obligations, or existing Commission guidance that addresses the listing of derivative contracts by CFTC-regulated exchanges, including the Appendix C Guidance. Rather, in recognition that VCC derivative contracts are a comparatively new and evolving class of products[86] which have certain unique attributes, as do voluntary carbon markets themselves, the Commission's guidance is intended to assist DCMs in addressing existing obligations, when designing and listing such VCC derivatives. For example, the guidance takes into account that standardization and accountability mechanisms for VCCs are currently still developing, and outlines how that may inform a DCM's contract design and listing considerations. A DCM's obligations remain those that are set forth in the CEA and the Commission's regulations, including (but not limited to) those statutory and regulatory requirements that are addressed in the Commission's guidance, such as the obligation under DCM Core Principle 3 for a DCM only to list for trading contracts that are not readily susceptible to manipulation.

Some commenters asserted that the existing contract listing framework for DCMs is both sufficient and appropriate for addressing the listing of VCC derivative contracts. For example, Nodal stated that it was not necessary for the Commission to adopt the Proposed Guidance because ''the existing DCM regulatory framework . . . already provides the appropriate requirements, guidance, and flexibility to manage the listing of VCC derivatives.'' [87] Intercontinental Exchange (''ICE'') and CME similarly stated that the existing contract listing framework is effective, and already enables DCMs to develop contract terms and conditions that account for relevant market factors, and that are appropriately designed to the characteristics of the underlying asset.[88] Both ICE and Nodal noted that the Appendix C Guidance does not address a specific underlying asset class, with ICE adding that the Appendix C Guidance ''does not mandate a set of criteria or attributes for any particular asset class.'' [89] In this regard, the Commission reiterates that its guidance with respect to the listing of VCC derivative contracts is not intended to establish new obligations for DCMs, or modify or supersede existing statutory or regulatory requirements or the Appendix C Guidance. Rather, at this juncture in the evolution of VCC derivatives as a product class, and taking into account certain unique attributes of VCC derivatives and the voluntary carbon markets more generally,[90] the Commission does believe that there is a benefit to outlining certain factors for consideration by a DCM in connection with the listing of VCC derivative contracts for trading. The guidance is intended as a tool for DCMs, to facilitate contract design, by helping to clarify how certain aspects of the existing contract listing framework may apply in the context of this particular class of products. The Commission believes that this can help to ensure that, upon delivery, the quality and other attributes of VCCs underlying a derivative contract will be as expected by position holders. The Commission believes that this, in turn, can support accurate pricing, help reduce the susceptibility of the contract to manipulation, and foster confidence in the contract that can enhance liquidity.

As discussed in more detail below, certain commenters expressed concern that the Proposed Guidance, if adopted, could obligate a DCM to independently confirm the sufficiency of a crediting program's policies and procedures for ensuring high-integrity VCCs—a responsibility which, these commenters asserted, extended beyond what was expected of DCMs under the existing contract listing framework and for which DCMs may not have the requisite expertise.[91] For example, Nodal stated that while the existing contract listing framework contemplates consideration by a DCM of whether the commodities underlying a derivative contract are subject to quality standards, ''DCMs are not required to possess the expertise necessary to opine on the sufficiency of these standards.'' [92] BPC stated that, given their role within financial markets, DCMs ''may not today have the in-house scientific or technical expertise needed to comprehensively evaluate'' [93] carbon crediting programs. Likewise, Verra stated that performing an evaluation of VCC quality ''requires substantial specialized technical expertise that DCMs may not adequately possess or be reasonably expected to acquire, given their specific roles. . . .'' [94] Verra observed that it was not realistic to expect a DCM, whose core competency is derivatives

[80] *See, e.g.,* Anew Climate at 3; Bipartisan Policy Center (''BPC'') at 2; Woodwell Climate Research Center (''Woodwell'') at 1; WWF at 1.

[81] *See, e.g.,* Americans for Financial Reform Education Fund (''AFREF'') at 9; The American Forest & Paper Association (''AF&PA'') at 6; BeZero Inc. (''BeZero'') at 5; Clean Air Task Force (''CATF'') at 12–13; Carbon Direct Inc. (''Carbon Direct'') at 2; California Climate Exchange at 1; Clean Energy Policy Institute (''CEPI'') at 3; Kita Earth Ltd. (''Kita'') at 1; Institute for Policy Integrity at NYU School of Law (''NYU Policy Integrity'') at 6–7; Sylvera at 2.

[82] *See, e.g.,* Business Alliance to Scale Climate Solutions (''BASCS'') at 1; EDF at 9; The Nature Conservancy (''TNC'') at 1; WWF at 1.

[83] *See, e.g.,* Better Markets at 13; CEWG at 3.

[84] *See, e.g.,* Center for Climate and Energy Solutions (''C2ES'') at 2; International Emissions Trading Association (''IETA'') at 2; ISDA at 2; Puro.earth Oy (''Puro'') at 2; Verra at 7.

[85] *See, e.g.,* CME at 2; ICE at 4; Nodal at 2–5.

[86] In 2022, ISDA published a whitepaper providing background on the cash and derivatives markets for voluntary carbon credits. *See* Voluntary Carbon Markets: Analysis of Regulatory Oversight in the US. (2022), *available at: https://www.isda.org/2022/06/02/voluntary-carbon-markets-analysis-of-regulatory-oversight-in-the-us/.*

[87] Nodal at 2.

[88] *See* CME at 4; ICE at 5.

[89] ICE at 5; Nodal at 4.

[90] *See supra,* Sections I.B.1 and I.B.2.

[91] *See, e.g.,* Ceres at 2–3; CME at 7; ICE at 10; IETA at 1; Nodal at 2; Public Citizen at 13; Terra Global Capital, LLC (''Terra'') at 6; Verra at 6; Xpansiv Limited (''Xpansiv'') at 4.

[92] Nodal at 2.

[93] BPC at 3.

[94] Verra at 2.

markets, to develop the same level of expertise in the complexities of VCC issuance and certification as those that are directly involved in the voluntary carbon market infrastructure, such as standard setting bodies, crediting programs, and spot market participants.

Other commenters similarly identified standard setting bodies, crediting programs, and/or market participants, as best positioned to establish, or assess adherence with, VCC integrity standards.[95] Some of these commenters suggested that a DCM's primary focus should be on whether the crediting program for underlying VCCs is making information about its policies and procedures, and the projects or activities that it credits, publicly available, to assist derivative market participants in making their own informed evaluations, and comparisons, of VCC quality. For example, CME expressed its belief that it is ''preferable for the crediting program to publish its methodology . . . and for the market participants to render their own judgment.'' [96] ICE stated that, while it is important for market participants to have sufficient information to make an informed decision about the quality of VCCs that may underlie a DCM contract, ''such information is best created by the crediting program and reviewed in the context of other information published by the program.'' [97] CME asserted that the ''lion's share'' of the criteria identified by the Commission as informing the integrity of a VCC is publicly available: ''As such, participants in the VCC derivatives markets are free to transact, or not, based on their assessment of the data points that matter to them.'' [98]

A number of commenters recommended an acknowledgment, in the Commission's guidance, that industry-recognized standards for high-integrity VCCs are tools that may assist DCMs in their consideration, with respect to a particular crediting program, of the VCC commodity characteristics identified by the Commission in the guidance.[99] For example, ICE noted that certain crediting program operators and their methodologies have been approved under standards set by private sector initiatives that have been subject to open consultation.[100] ICE also noted the ongoing initiatives by the International Organization of Securities Commissions (''IOSCO'') to develop a set of good practices to promote the integrity and orderly functioning of voluntary carbon markets.[101] ICE recommended that the Commission permit DCMs to reasonably rely on assurances by a crediting program or registry that adheres to, and is audited against, threshold standards for high-quality carbon credits established by ''international organizations such as IOSCO, The Integrity Council for the Voluntary Carbon Market (''ICVCM''), and International Civil Aviation Organization (''ICAO''), or similar standard setting bodies.'' [102] Verra similarly recommended that the Commission permit DCMs ''to rely on VCC certification and compliance set forth under relevant nongovernmental and governmental initiatives.'' [103] Some commenters recommended that the Commission go so far as to require DCMs only to list VCC derivatives contracts whose underlying VCCs are approved or certified by an industry-recognized standards program for high-integrity VCCs.[104]

In responding to the above-described comments the Commission first addresses the suggestion that a DCM's primary focus, when listing for trading a VCC derivative contract, should be on whether the crediting program for underlying VCCs is making information about the program publicly available. As discussed below, the Commission supports a DCM's consideration of whether the crediting program for underlying VCCs is making detailed information about its policies and procedures, and the projects or activities that it credits, publicly available in a searchable and comparable manner.[105] The Commission believes that making such information publicly available can assist market participants in evaluating the substance and sufficiency of crediting program policies and procedures, and making informed evaluations and comparisons of VCC quality.

That said, DCMs do have statutory and regulatory obligations that are relevant to the design and listing for trading of derivative contracts, including an obligation under DCM Core Principle 3 to only list contracts that are not readily susceptible to manipulation. As discussed herein, the Appendix C Guidance outlines certain relevant considerations for DCMs in this regard, and the considerations that are outlined in the Appendix C Guidance are not limited to whether information regarding the commodity underlying a derivative contract is publicly available. For example, the Appendix C Guidance outlines certain criteria for a DCM to consider addressing in a derivative contract's terms and conditions, including quality standards for the underlying commodity, delivery points and facilities, and inspection/certification procedures for verifying compliance with quality standards or related delivery requirements under the contract. This guidance discusses certain characteristics that have been identified broadly as helping to inform the integrity of carbon credits, and addresses how consideration of these characteristics may inform the manner in which a DCM addresses quality standards, delivery points and facilities, and inspection/certification procedures—again, criteria already identified in the Appendix C Guidance—in connection with the design of a VCC derivative contract. The Commission further believes that consideration of these characteristics will help a DCM ensure that it understands economically significant attributes of the commodity—the VCC—underlying the contract.

Notwithstanding the foregoing, and as more fully discussed below, the Commission has made certain revisions to this guidance to further ensure that the guidance appropriately reflects DCM obligations and expertise. Moreover, the Commission acknowledges the specialized, technical nature of crediting program policies, procedures, and technologies, as well as the fact that certain private sector and multilateral initiatives have engaged in extensive undertakings, involving public consultation, to develop standards for high-integrity VCCs against which such policies, procedures and methodologies can be assessed. The Commission is therefore clarifying its view that, as a general matter, industry-recognized standards for high-integrity VCCs can serve as tools for DCMs in connection with their consideration of the VCC commodity characteristics outlined in this guidance.

2. A DCM Shall Only List Derivative Contracts That Are Not Readily Susceptible to Manipulation—VCC Commodity Characteristics

i. General

A number of commenters expressed their support for the VCC commodity

[95] *See, e.g.,* Ceres at 2–3; CME at 7; IETA at 1–2; Terra at 6; Xpansiv at 4.

[96] CME at 7.

[97] ICE at 6.

[98] CME at 8.

[99] *See, e.g.,* C2ES at 2; ICE at 7; IETA at 2; Puro at 5; Verra at 7.

[100] ICE at 7.

[101] ICE at 8.

[102] ICE at 7.

[103] Verra at 7.

[104] *See, e.g.,* Duke Financial Economics Center at 9; Puro at 1; Terra at 2.

[105] *See* discussion of the VCC commodity characteristic of ''Transparency,'' in section II.B.2.iii.1, *infra.*

characteristics identified in the Proposed Guidance.[106] For example, API stated that it ''supports the CFTC's reference to the broad core principles of additionality, permanence, robust quantification of emissions reductions and removals, no double counting, effective governance, tracking, transparency, and robust independent third-party validation and verification in the Guidance.'' [107] Similarly, a number of commenters confirmed that the VCC commodity characteristics identified in the Proposed Guidance were recognized broadly as helping to inform the integrity of carbon credits.[108] For example, BPC expressed agreement that the Proposed Guidance ''identifies appropriate VCC commodity characteristics that have also been part of the [voluntary carbon markets] literature and policy discourse for many years.'' [109]

ii. Social and Environmental Factors

A number of commenters addressed the specific questions posed by the Commission in the Proposed Guidance, regarding whether, in addition to the VCC commodity characteristics preliminarily identified by the Commission, there were other characteristics informing the integrity of carbon credits that were relevant to the listing of VCC derivative contracts—or whether there were VCC commodity characteristics that were identified in the Proposed Guidance that were *not* relevant to the listing of VCC derivative contracts. In response to these questions, several commenters responded that the Commission should recognize the social and environmental impacts of a mitigation project or activity, beyond the project or activity's GHG reduction or removal benefits, as characteristics that inform the integrity of the carbon credits issued with respect to such project or activity.[110] For example, Carbon Direct stated that it considered avoidance of negative impact on economic, social, and environmental systems, maximization of benefits to local communities and ecosystems, and environmental justice (equitable distribution of environmental benefits and harms resulting from GHG removal projects) as characteristics that are ''essential to evaluating the quality of a VCC.'' [111] WWF recommended that the Commission recognize a VCC commodity characteristic that explicitly addresses project safeguards,[112] stating that such safeguards ''are common attributes of high integrity development projects and should be included so that communities and surrounding ecology are not negatively impacted. . . .'' [113] TNC and ICVCM suggested that the Commission should further align its guidance with ICVCM's Core Carbon Principles by also including considerations with respect to social and environmental safeguards, as well as net zero alignment.[114] BASCS and EDF also encouraged the Commission to consider guidance in this area that aligned with the ICVCM's Core Carbon Principles.[115]

Similarly, the majority of commenters responding to a specific question on this matter in the Proposed Guidance expressed support for the consideration by a DCM, when designing a VCC derivative contract, of whether the crediting program for underlying VCCs has implemented measures to help ensure that credited mitigation projects or activities: (i) meet or exceed best practices on social and environmental safeguards and (ii) would avoid locking in levels of GHG emissions, technologies or carbon intensive practices that are incompatible with the objective of achieving net zero GHG emissions by 2050.[116]

Several commenters stated that there was an association between the social and/or environmental impacts of a mitigation project or activity, and the price of the related VCCs. EDF asserted that ''social safeguards . . . are economically significant attributes of the carbon credits. Sustainable development benefits and safeguards materially influence contract pricing, directly impact the extent to which the credit will be delivered and influence the political durability of those credits.'' [117] TNC asserted that the social and environmental safeguards associated with a mitigation project or activity can significantly influence contract pricing, as projects infringing on the rights of local communities or adversely damaging ecosystems will be shunned by market stakeholders.'' [118] ICVCM stated that ''verifiable social and environmental attributes beyond mitigation and credit revenues are generally perceived by buyers as increasing the quality of credits, driving higher market prices.'' [119]

Several commenters suggested that DCMs look to standards for high-integrity VCCs developed by private sector or multilateral initiatives, and adherence by a crediting program to such standards, when considering the crediting program's measures with respect to social and environmental safeguards and/or net zero alignment. For example, TNC recommended that a DCM consider ''whether a crediting program has procedures that follow the recommendations of CORSIA's safeguard requirements,'' and whether the crediting program requires projects or activities to generate net positive social and environmental outcomes.[120]

As noted above, TNC, as well as ICVCM, BASCS, and EDF, referenced the ICVCM's Core Carbon Principles as a standard to inform consideration of social and environmental safeguards and net zero alignment. Charm Industrial (''Charm'') and CRA, meanwhile suggested that a DCM consider whether a crediting program ensures that a mitigation project or activity complies with applicable U.S. regulations and legal requirements,[121] and Forest Peoples Programme Amerindian Peoples Association Rainforest Foundation US (''Forest Peoples'') stated that a DCM should consider whether a crediting program has social safeguard requirements that align with the rights of indigenous persons under international law, such as the UN human rights treaties and the UN Declaration on the Rights of Indigenous Peoples.[122]

A few commenters expressed concerns associated with the consideration, by a DCM, of a crediting program's measures with respect to social and environmental safeguards and/or net zero alignment. Iconoclast Industries, LLC (''Iconoclast'') stated that consideration of a crediting program's measures with respect to net zero alignment would ''make this a zero-sum game. Incremental steps should be acceptable and . . . the market will continue facilitating the evolution towards'' the 2050 goal.[123] Terra similarly raised concerns regarding a DCM's consideration of whether a crediting program has measures with

[106] *See, e.g.,* API at 2; Woodwell at 1; WWF at 1.

[107] API at 2.

[108] *See, e.g.,* Carbon Direct at 2; Carbon Removal Alliance (''CRA'') at 2.

[109] BPC at 2.

[110] *See, e.g.,* aDryada at 1; BASCS at 1; BCarbon Inc (''BCarbon'') at 3; Carbon Direct at 2; EDF at 9; ICVCM at 6; Terra at 7; TNC at 1; WWF at 1.

[111] Carbon Direct at 2.

[112] Project safeguards are policies, standards and operational procedures designed to identify, avoid and mitigate adverse environmental and social impacts that may arise in connection with a carbon mitigation project or activity.

[113] WWF at 1.

[114] ICVCM at 6; TNC at 1.

[115] BASCS at 5–6; EDF at 9.

[116] *See, e.g.,* AFF at 4–5; BASCS at 5–6; C2ES at 9; Flow Carbon at 5–6; TNC at 4; WWF at 1.

[117] EDF at 9.

[118] TNC at 3.

[119] ICVCM at 10.

[120] TNC at 3.

[121] *See* Charm at 5; CRA at 3.

[122] Forest Peoples at 5.

[123] Iconoclast at 5.

respect to net zero alignment, and commented that ''the perfect has been the enemy of the good over many years.'' [124]

As discussed above, a number of commenters on the Proposed Guidance stated that a crediting program's measures with respect to social and environmental safeguards may have a bearing on how participants in the voluntary carbon markets evaluate the quality—and by extension the price—of the VCCs that are issued by the crediting program.[125] Also as discussed above, addressing in a derivative contract's terms and conditions the quality of the underlying commodity that would be delivered upon physical settlement, can help to promote accurate pricing and reduce the susceptibility of the contract to manipulation.[126]

After consideration of the comments received, the Commission agrees that a crediting program's measures with respect to social and environmental safeguards may be relevant to how market participants evaluate VCC quality. Accordingly, a DCM may determine that it is appropriate, when addressing quality standards in connection with derivative contract design, to consider whether the crediting program for underlying VCCs has implemented measures to help ensure that credited mitigation projects or activities (i) meet or exceed best practices on social and environmental safeguards, and (ii) would avoid locking in levels of GHG emissions, technologies or carbon intensive practices that are incompatible with the objective of achieving net zero GHG emissions by 2050. The Commission has determined to finalize its guidance accordingly. The Commission emphasizes, however, that it does not expect that a DCM will necessarily be evaluating the specifics of the crediting program's measures with respect to social and environmental safeguards and net zero alignment, and this guidance does not prescribe any such measures. The Commission is simply noting that, because such measures may be relevant to how market participants evaluate VCC quality, a DCM may decide to consider whether a crediting program has implemented such measures when addressing quality standards in connection with the design of a VCC derivative contract. The Commission believes that, as a general matter, industry-recognized standards for high-integrity VCCs, and whether a particular crediting program has been approved or certified as adhering to an industry-recognized standard setting program, can serve as tools for a DCM, in connection with its consideration of the crediting program's measures with respect to social and environmental safeguards and net zero alignment.

iii. Quality

a. Transparency

Commenters broadly agreed that DCMs should provide, in a VCC derivative contract's terms and conditions, information about the VCCs that are eligible for delivery under the contract, including information that readily specifies the crediting program(s) from which VCCs that are eligible for delivery under the contract may be issued.[127] Ceres, ICE, and IETA agreed that the crediting programs for eligible VCCs should be identified in the contract's terms and conditions.[128] Better Markets supported the inclusion of ''comprehensive information about the eligible VCCs for delivery,'' and stated that such transparency would ensure that ''contract pricing represents the quality of the underlying VCCs.'' [129]

Commenters also broadly agreed that DCMs should consider whether a crediting program for underlying VCCs is making information regarding the crediting program's policies and procedures, and the projects or activities that it credits, publicly available.[130] For example, Anew Climate stated that ''a crucial component of high-quality VCCs is that the crediting program that issues those VCCs be transparent and make sufficient information about its projects and project activities publicly available.'' [131]

Certain commenters addressed the specific questions posed by the Commission in the Proposed Guidance, regarding whether there are criteria, factors or information that a DCM should take into account when considering and/or addressing in a VCC derivative contract's terms and conditions whether a crediting program is providing sufficient access to information about the projects or activities that it credits, and whether there is sufficient transparency about credited projects or activities.[132] CarbonPlan stated that DCMs should consider whether ''data about VCCs are shared under terms that support both public access and reuse.'' [133] Isometric HQ Limited (''Isometric'') stated that crediting programs ''should be required to provide the highest degree of transparency possible (only excluding, where relevant, confidential information) in relation to all credits that they issue.'' [134] ICE meanwhile, took the position that ''market participants, and not DCMs, are best placed to assess whether the information made available by a crediting program is sufficient and detailed in respect of the crediting program's policies and procedures and the projects or activities that it credits.'' [135]

Some commenters suggested that DCMs look to standards for high-integrity VCCs developed by private sector or multilateral initiatives, when considering a crediting program's transparency measures.[136] For example, C2ES and ICVCM referenced ICVCM's standards with respect to transparency, particularly the requirement under the ICVCM Core Carbon Principle Assessment Framework that a crediting program ''make all information about the projects and its project rules public.'' [137] Berkeley and Sylvera, meanwhile, referred to California Assembly Bill 1305, the ''Voluntary Market Disclosures Business Regulation Act,'' which requires a business entity that is marketing or selling VCCs within the state to publicly disclose, among other things, specific details regarding the mitigation project in respect of which the VCCs are generated, as well as ''[t]he pertinent data and calculation methods needed to independently reproduce and verify the number of emissions reduction or removal credits issued'' for the project.[138] Flow Carbon similarly suggested that publicly available project information should be sufficient to allow a buyer or third party to verify the accuracy of the claimed emission reductions.[139]

[124] Terra at 7.

[125] While certain commenters disagreed that a DCM should consider such matters in connection with derivative contract design, their comments did not contradict those commenters who stated that market participants may recognize such matters as informing VCC quality.

[126] *See* section I.A, *supra.*

[127] *See, e.g.,* ANSI National Accreditation Board (''ANAB'') at 5; Better Markets at 8; CarbonPlan at 6–7; CATF at 8; Ceres at 3; CEWG at 11; Climeworks Corporation (''Climeworks'') at 3; Flow Carbon Inc. (''Flow Carbon'') at 3; IETA at 2; New York State Society of Certified Public Accountants (''NYSSCPA'') at 3; Xpansiv at 9.

[128] Ceres at 3; ICE at 6; IETA at 2.

[129] Better Markets at 8.

[130] *See, e.g.,* Anew Climate at 4; Flow Carbon at 3; Sylvera at 3–4.

[131] Anew Climate at 4.

[132] *See, e.g.,* Anew Climate at 4; CarbonPlan at 6–7; CATF at 8; Ceres at 3; Isometric at 3; Xpansiv at 9.

[133] CarbonPlan at 6–7.

[134] Isometric at 3.

[135] ICE at 6.

[136] *See, e.g.,* ANAB at 5; Berkeley Carbon Trading Project (''Berkeley'') at 5; C2ES at 5; EDF at 6; ICVCM at 7; Sylvera at 3–4.

[137] C2ES at 5; ICVCM at 7.

[138] Berkeley at 5; Sylvera at 3–4.

[139] Flow Carbon at 3.

Some commenters recommended that DCMs should provide project- or activity-level information in the terms and conditions of a VCC derivative contract.[140] For example, CATF stated that access to information at the level of the individual project or activity is necessary because of the flexibility that is given to project developers regarding the quantification of credits. CATF thus recommended that the terms and conditions for a VCC derivative contract provide buyers with access to specific information about how a crediting program's protocols are implemented for a given project or activity, including ''baseline scenario assumptions and quantification metrics. . . , verification reports, annual reports, risk rating and justification, and the location of projects.'' [141] ICE, meanwhile, stated that while a VCC derivative contract ''will have to identify clearly what is and is not deliverable under it . . . details as to the specific types of projects or activities for which [a crediting program] issues credits are made publicly available by the crediting programs on their websites and through their registries,'' where they can be reviewed and assessed by market participants.[142]

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance with respect to transparency as proposed, with certain revisions. The Commission continues to believe that a DCM should provide, in the terms and conditions of a VCC derivative contract, information about the VCCs that are eligible for delivery under the contract.[143] While the information that is provided about eligible VCCs need not be ''comprehensive''—for example, the terms and conditions would not necessarily have to identify each specific mitigation project or activity in respect of which VCCs that are eligible for delivery under the contract may be issued—the Commission agrees that the terms and conditions should make clear to market participants what is, and what is not, deliverable under the contract, including by providing information that readily specifies the crediting program, or programs, from which eligible VCCs may be issued.[144] To the extent that eligible VCCs are associated with a specific category of mitigation project or activity—such as nature-based projects or activities—this also should be readily evident from the contract terms and conditions.[145]

Additionally, and after consideration of the comments received, the Commission continues to believe that, as part of the contract design process, a DCM should consider whether the crediting program for VCCs that are eligible for delivery under a derivative contract is making detailed information about the crediting program's policies and procedures, and the projects or activities that it credits, publicly available in a searchable and comparable manner.[146] Where such information is made available by a crediting program, it can assist market participants in making informed evaluations, and comparisons, of the quality of the VCCs that underlie derivative contracts, which can help to support accurate pricing.

With respect to comments recommending that the terms and conditions of a VCC derivative contract should provide project- or activity-specific information, the Commission reiterates that this guidance focuses on considerations for a DCM at the *crediting program* level. As detailed more fully herein, the Commission believes that the policies and procedures that a crediting program has in place, along with its governance framework, inform the quality and other attributes of the VCCs that the crediting program issues. The Commission does not expect that a DCM will necessarily be considering the specific mitigation projects or activities for which eligible VCCs may be issued; the Commission expects that the DCM's focus will be on its consideration of the crediting program itself. Nor, as discussed above, does the Commission expect that information regarding the specific mitigation projects or activities for which eligible VCCs may be issued would necessarily be included in the terms and conditions of a VCC derivative contract. The Commission's view in this regard is predicated, however, on its view that the contract's terms and conditions should include information that readily specifies the crediting program or programs from which eligible VCCs may be issued, so that market participants can evaluate the substance and sufficiency of project- and activity-level information that such crediting programs make publicly available.

Likewise, while the Commission continues to believe that a DCM should consider a crediting program's policies and procedures for making program information (including mitigation project and activity information) publicly available, the Commission is persuaded by comments stating that information regarding such policies and procedures is not the type of information that typically would be included in a derivative contract's terms and conditions and has determined to revise its guidance accordingly.

Finally, after taking into account comments received on the Proposed Guidance, the Commission clarifies its view that, as a general matter, industry-recognized standards for high-integrity VCCs, and whether a particular crediting program has been approved or certified as adhering to an industry-recognized standards setting program, can serve as tools for a DCM, in connection with its consideration of the crediting program's transparency measures.

b. Additionality

In the Proposed Guidance, the Commission noted that additionality is viewed by many as a necessary element of a high quality VCC, and stated that it preliminarily believed that, as part of its contract design market research, a DCM should consider whether a crediting program can demonstrate that it has procedures in place to assess or test for additionality.[147] The Commission preliminarily recognized VCCs as additional where they are credited for projects or activities that would not have been developed and implemented in the absence of the added monetary incentive created by the revenue from carbon credits. The Commission specifically requested comment on whether this was the appropriate way to characterize additionality for purposes of its guidance, and also specifically requested comment on whether there were particular criteria or factors that a DCM should take into account when considering whether the procedures that a crediting program has in place provide a reasonable assurance that GHG emission reductions or removals will be credited only if they are additional.[148]

Commenters on the Proposed Guidance generally supported a DCM's consideration, as part of the contract design process, of whether a crediting program for underlying VCCs can demonstrate that it has in place

[140] *See, e.g.,* CATF at 8; Ceres at 3; Isometric at 3; Terra at 4.

[141] CATF at 8.

[142] ICE at 6.

[143] *See* 88 FR 89410 at 89417. *See also* 17 CFR 40.1(j)(1)(i) (defining the ''terms and conditions'' of, *inter alia,* a futures contract to include quality and other standards that define the commodity or instrument underlying the contract).

[144] *Id.*

[145] *Id.*

[146] 88 FR 89410 at 89417.

[147] *Id.*

[148] *Id.*

procedures to assess or test for additionality.[149] Better Markets and Carbon Direct characterized additionality as a ''cornerstone'' of quality mitigation projects and their resulting carbon credits.[150]

However, some commenters raised concerns about recognizing additionality as a characteristic of a high-integrity VCC, due to challenges in evaluating and/or verifying this characteristic.[151] The Center for International Environmental Law (''CIEL'') stated that ''[t]he evaluation of whether or not a project is additional, or of whether a marginal ton of removed carbon dioxide is additional, will rarely be straightforward.'' [152] Public Citizen similarly took the position that additionality ''is simply not possible to guarantee, ensure, or measure.'' [153]

With respect to whether there are particular criteria or factors that a DCM should take into account when considering a crediting program's procedures to assess or test for additionality, some commenters suggested that DCMs look to standards for high-integrity VCCs developed by private sector or multilateral initiatives.[154] For example, Carbonplace suggested that DCMs should consider CORSIA standards, or third-party assessments of crediting programs by carbon credit ratings providers or under standards such as the ICVCM's Core Carbon Principles.[155]

Meanwhile, ICE stated that, although it was reasonable for a DCM to consider whether a crediting program can demonstrate that it has procedures in place to assesses or test for additionality, ICE disagreed that DCMs should be required to assess whether those procedures are of sufficient rigor to provide a reasonable assurance that GHG emission reductions or removals are credited only if they are additional: ''This responsibility should be borne by the crediting program operators.'' [156] CME likewise asserted that, while as a factual matter a DCM could confirm that procedures are in place to assess for additionality, ''it should not be expected to opine on the accuracy, robustness, or appropriateness of such procedures.'' [157] Similarly, Nodal recommended that, if the Commission chose to finalize the Proposed Guidance, then the Commission should omit the reference to a DCM's consideration of whether a crediting program's procedures are ''sufficiently rigorous and reliable'' to provide a reasonable assurance that GHG emission reductions or removals are credited only if they are additional.'' [158]

Several commenters supported how the Commission characterized additionality in the Proposed Guidance.[159] CATF stated that ''there is broad consensus for defining additionality as demonstrating that the project or activity would not have taken place without the monetary incentive of a carbon credit, especially for voluntary carbon credits.'' [160] Similarly, Xpansiv stated that the characterization of additionality in the Proposed Guidance was ''in line with the market consensus.'' [161]

As noted above, the Commission specifically requested comment in the Proposed Guidance on whether another characterization of additionality would be more appropriate, such as characterizing additionality as the reduction or removal of GHG emissions resulting from projects or activities that are not already required by law, regulation, or any other legally binding mandate applicable in the project's or activity's jurisdiction.[162] Some commenters supported characterizing additionality with reference to this ''regulatory test'' for ''legal'' additionality, *as well as* with reference to ''financial'' additionality.[163] For example, AFREF stated that ''the Commission should add this regulatory test to its characterization of additionality.'' [164] Meanwhile, Charm stated its view that legal additionality was implicit in the Commission's proposed characterization of additionality, but should be explicitly stated ''to ensure all projects meet both thresholds.'' [165]

Several commenters did not support recognizing additionality based on the ''regulatory test.'' [166] Affiliated Scientists stated that the regulatory test ''is a necessary, but wholly insufficient element of a robust definition of additionality.'' [167] CATF stated that ''even where regulatory requirements focus on the legal minimum to determine additionality . . . demonstration of additionality requires a comparison to a conservative business-as usual scenario'' to provide a ''comparison to a counterfactual without the revenue provided from the credit.'' [168]

Meanwhile, Ecosystem Services Market Consortium (''ESMC'') stated that projects with additionality features ''should be characterized as implemented in response to market incentives, and the definition should not extend beyond this market-incentives framework to incorporate emission reductions resulting from projects or activities that go above-and-beyond the letter of the law.'' [169]

Some commenters suggested other alternatives to the Commission's proposed characterization of additionality.[170] Ceres suggested that DCMs should consider a range of approaches for testing additionality and did not believe that the ''financial'' additionality described in the Proposed Guidance should be the only measure of additionality.[171] Among other approaches, Ceres cited performance standards and barrier analysis.[172] BeZero similarly believed that ''the additionality of a carbon project cannot and should not be assessed through a single lens—*e.g.,* carbon accounting, financial or legal. Rather, a holistic analysis considering a range of factors is necessary.'' [173] BCarbon expressed concern that ''[w]e see the continued conservation of thriving ecosystems as

[149] *See, e.g.,* Scientists affiliated with: Wilkes Center for Climate Science & Policy, University of Utah; University of California, Santa Barbara; University of California, Irvine (''Affiliated Scientists'') at 1–2; American Forest Foundation (''AFF'') at 3; Anew Climate at 4; BASCS at 3; Berkeley at 5; Better Markets at 9; C2ES at 5–6; Carbon Direct at 3; Carbonplace UK Ltd. (''Carbonplace'') at 3; CEPI at 5; Ceres at 3–4; EcoBalance Global LLC (''Ecobalance'') at 2; Flow Carbon at 3–4; ICVCM at 7; Isometric at 3; Kita at 3; Nodal at 5; Sky Harvest at 10; Sylvera at 4; Terra at 5; Xpansiv at 9–10.

[150] Better Markets at 9; Carbon Direct at 3.

[151] *See, e.g.,* BCarbon at 2; CIEL at 17; Context Labs at 2; Harvard Business School, University of Oxford Blavatnik School of Government, Law School, Stanford Doerr School of Sustainability, and the E-liability Institute (''Harvard *et al*'') at 14; Iconoclast at 4–6; Nori at 8; Public Citizen at 14; Simon Counsell at 3.

[152] CIEL at 17.

[153] Public Citizen at 14.

[154] *See, e.g.,* AFF at 3; Anew Climate at 4; BASCS at 3; Carbonplace at 3; CarbonPlan at 8; CEPI at 5; ICVCM at 7; Terra at 5; Sylvera at 4.

[155] Carbonplace at 3.

[156] ICE at 7.

[157] CME at 6.

[158] Nodal at 5.

[159] *See, e.g.,* AFF at 3; Affiliated Scientists at 1–2; Berkeley at 5; Carbon Direct at 3–4; CATF at 9; C2ES at 6; ICVCM at 7; Xpansiv at 10.

[160] CATF at 9.

[161] Xpansiv at 10.

[162] 88 FR 89410 at 89421.

[163] *See, e.g.,* AFF at 3; AFREF at 10; Berkeley at 5; Carbon Direct at 4; CarbonPlan at 8; Charm at 3; CRA at 3–4; Natural Resources Defense Council at 8; NYSSCPA at 4; NYU Policy Integrity at 1, 5–6; Public Citizen at 14; Sky Harvest at 10; WWF at 1.

[164] AFREF at 10.

[165] Charm at 3.

[166] *See, e.g.,* Affiliated Scientists at 1–2; CATF at 10; Institute for Agriculture and Trade Policy (''IATP'') at 21.

[167] Affiliated Scientists at 1–2.

[168] CATF at 10.

[169] ESMC at 8.

[170] *See, e.g.,* BCarbon at 2; BeZero at 6; CATF at 10; Ceres at 3–4; Climeworks at 4; IATP at 21; Kita at 3; Sylvera at 4; TNC at 2.

[171] Ceres at 3–4.

[172] Ceres at 4.

[173] BeZero at 6.

essential to mitigation of climate change, yet the current form of additionality provides no mechanism for these activities to be financially valued.'' [174] CATF, meanwhile, emphasized the need to take into account that the accepted meaning of the term additionality is likely to evolve.[175] Similarly, Xpansiv stated that the characterization of additionality in the Commission's guidance should not be ''overly prescriptive to ensure DCMs are able to follow evolving VCC market developments, including revised or broadened definitions of key criteria.'' [176] In that regard, CME noted that while there may be broad consensus that additionality is an important element of a high quality VCC, ''the question of how additionality is defined and calculated is a complex and nuanced issue and does not appear to have reached industry consensus.'' [177] According to CME, neither the Commission nor DCMs should dictate the definition.[178]

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance with respect to additionality as proposed, with certain revisions. While the Commission appreciates that there may be some complexity involved in characterizing, and measuring, additionality, the comments on the Proposed Guidance support the Commission's observation that additionality is broadly understood to be a ''cornerstone'' characteristic of a high quality VCC. If holders of positions in a VCC derivative contract understand and intend for VCCs that are eligible for delivery under the contract to be additional, but in fact they may not be, then the pricing of the derivative contract may not accurately reflect the quality of the VCCs that may be delivered under the contract. Thus, the Commission continues to believe that, as part of the contract design process, a DCM should consider whether a crediting program has procedures to assess or test for additionality—and whether those procedures provide a reasonable assurance that GHG emission reductions or removals are credited only if they are additional.

The comments on the Proposed Guidance indicate, however, that there is variation across the voluntary carbon markets in how, precisely, additionality is characterized. For example, while some commenters on the Proposed Guidance supported the Commission's preliminary discussion of financial additionality, a number of commenters recommended other approaches, including performance standards, and approaches that addressed both financial additionality and legal additionality. The Commission further recognizes that as the voluntary carbon markets continue to develop, industry consensus on how to characterize additionality may evolve.

Accordingly, the Commission has determined not to provide in its guidance a definition of additionality. Taking into account comments received on the Proposed Guidance, the Commission is clarifying its view that, as a general matter, industry-recognized standards for high-integrity VCCs can serve as tools for a DCM, *both* in connection with its consideration of a particular crediting program's characterization of additionality, and in connection with the DCM's consideration of whether the crediting program's procedures to assess or test for additionality provide reasonable assurance that GHG emission reductions or removals will be credited only if they are additional, as so characterized.

Further, the Commission is persuaded by comments stating that specific information regarding a crediting program's procedures for assessing or testing for additionality is not the type of information that typically would be included in a derivative contract's terms and conditions, and has determined to revise its guidance accordingly.

c. Permanence and Accounting for the Risk of Reversal

A number of commenters on the Proposed Guidance supported a DCM's consideration, as part of the contract design process, of whether a crediting program for VCCs that are eligible for delivery under the contract has measures in place to address and account for the risk of reversal.[179] However, certain commenters expressed concern about a DCM's capacity and responsibility to assess the sufficiency of the crediting program's measures in this regard. For example, Nodal recommended that, if the Commission finalized its guidance, the Commission should omit reference to a DCM's consideration of whether the crediting program's measures provide reasonable assurance that, in the event of a reversal, an underlying VCC will be replaced by a VCC of comparably high quality that meets the contemplated specifications of the contract,[180] arguing that the Commission would otherwise be asking DCMs ''to evaluate the sufficiency of VCC quality standards, which are normally addressed by the underlying markets.'' [181] BCarbon, meanwhile, stated that it would be helpful for the Commission to elaborate on what constitutes a ''similar'' VCC for purposes of replacement.[182]

The Commission specifically requested comment on whether there were criteria or factors that a DCM should take into account when considering a crediting program's measures to address reversal risk, particularly where the underlying VCCs are sourced from nature-based products or activities such as agriculture, forestry or other land use initiatives.[183] Some commenters suggested that a DCM consider a crediting program's definition of ''permanence,'' as applied to mitigation projects or activities for which the crediting program issues VCCs, and the crediting program's transparency regarding that definition.[184]

A number of commenters explicitly supported consideration of whether a crediting program has a buffer ''pool'' or ''reserve'' in place to address the risk of reversal.[185] Some commenters recommended that DCMs should consider the quality of the VCCs in a crediting program's buffer reserve.[186] For example, Isometric suggested, one possibility would be to ensure that credits in the buffer reserve are derived from high-durability projects which themselves have a low risk of reversal, ''in order to partially mitigate cascading risk events that could overwhelm the buffer [reserves'] ability to compensate for reversals.'' [187] Other commenters similarly suggested that DCMs consider whether a crediting program has mechanisms in place to account for the continuing sufficiency of the buffer

[174] BCarbon at 2.

[175] CATF at 10.

[176] Xpansiv at 10.

[177] CME at 6.

[178] *Id.*

[179] *See, e.g.,* aDryada at 1; Anew Climate at 6; Better Markets at 9; BCarbon at 2–3; Carbonplace at 4; Carbon Market Watch at 5; Ceres at 4–5; CEPI at 5; Emergent at 2; ESMC at 5; Isometric at 5; Kita at 3; NYSSCPA at 5; NYU Policy Integrity at 1; Sylvera at 5; Terra at 6; TNC at 2; WWF at 1; Xpansiv at 11.

[180] Nodal at 5.

[181] *Id.*

[182] BCarbon at 2.

[183] 88 FR 89410 at 89421.

[184] *See, e.g.,* aDryada at 1; Anew Climate at 5; Carbon Market Watch at 5; CRA at 4; C2ES at 6; NYSSCPA at 5; Sylvera at 5; TNC at 2.

[185] *See, e.g.,* Ceres at 4; WWF at 1; Xpansiv at 10.

[186] *See, e.g.,* Affiliated Scientists at 2; BCarbon at 2; CEPI at 5; Emergent at 2; Isometric at 4; Kita at 3.

[187] Isometric at 4.

reserve.[188] For example, Affiliated Scientists stated that ''DCMs should only accept carbon credits from crediting programs that have updated (and will continue to update as the science evolves) their buffer pools to reflect the latest science on disturbance risk to make such buffer pools sufficiently capitalized.'' [189] Meanwhile, BCarbon stated that it was worth noting that buffer pools are not the only measure that exists for mitigation of reversal risk.[190]

Some commenters suggested that DCMs look to standards for high-integrity VCCs developed by private sector or multilateral initiatives, and adherence by a crediting program to such standards, when considering the crediting program's measures to address and account for the risk of reversal.[191] For example, Sylvera noted that ''industry initiatives such as IC–VCM have already developed quality frameworks that consider factors such as reversal risk,'' and encouraged Commission alignment with these frameworks.[192]

Some commenters noted specific issues or factors for consideration when VCCs underlying a derivative contract are sourced from nature-based mitigation projects or activities, with many highlighting the heightened risk of reversal associated with such projects or activities.[193] To provide more transparency regarding this risk, CATF recommended providing location-specific data that adjusts with risk assessments over time.[194] Public Citizen stated that ''[d]ue to significant risk of reversal in the case of nature-based projects or activities, the DCM should either prohibit the listing of derivative contracts based on the same, or only list those whose underlying projects maintain a buffer pool equal to 100% of the carbon credit value.'' [195]

The Commission also specifically requested comment on how a DCM should account for a reversal, should one occur with respect to a VCC that is eligible for delivery under a derivative contract, and whether there are specific terms and conditions, or other rules that a DCM should consider including in a VCC derivative contract to account for reversal risk.[196] Generally, commenters supported DCMs looking to the crediting program's measures for addressing a reversal.[197] For example, Anew Climate stated that DCMs should rely on the requirements and procedures of the respective crediting program: ''The DCM should consider how the crediting program addresses avoidable and unavoidable reversals when they do occur and requirements related to buffer pool contributions.'' [198]

Some commenters suggested that DCMs should design contracts in a manner that differentiates VCCs based on assessments of reversal risk.[199] For example, Isometric stated that VCCs based on projects with higher risk of reversal should be identifiable and distinct from those VCCs based on projects with low or negligible risks of reversals: ''This will enable more effective price discovery and better functioning markets.'' [200] Meanwhile, IATP stated that ''[i]f we assume that reversals will become more frequent and severe'' due to an increase in extreme weather events, then ''DCMs should begin to account for the impact of reversals on VCC estimated deliverable supply and on the possibility of market disruption if uncompensated reversals become widespread.'' [201]

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance with respect to permanence and accounting for reversal risk as proposed, with certain revisions. After considering the comments, the Commission continues to believe that, in connection with the design of a VCC derivative contract, a DCM should consider whether the crediting program for underlying VCCs has measures in place to address and account for the risk of reversal.[202] Market participants that are utilizing physically-settled VCC derivative contracts to help meet their carbon mitigation goals have an interest in ensuring that, upon physical settlement, the underlying VCCs will actually reduce or remove the amount of emissions that they were intended to reduce or remove. Accordingly, the Commission believes that the risk of reversal—and the manner in which it is accounted for by a crediting program—is tied to the quality of the underlying VCCs and, by extension, to the pricing of the derivative contract.

The Commission believes that comments on the Proposed Guidance support the Commission's view that a DCM should consider whether a crediting program for underlying VCCs has a buffer reserve or other measures in place to address reversal risk [203]—as well as the Commission's view that relevant considerations with respect to a crediting program's buffer reserve could include whether the crediting program regularly reviews the methodology by which the size of its buffer reserve is calculated, and whether there is a mechanism in place to audit the continuing sufficiency of the buffer reserve. In response to comments received, the Commission clarifies that a crediting program may, now or in the future, have measures other than, or in addition to, a buffer reserve to address the risk of credited emissions reductions or removals being reversed; this guidance contemplates that a DCM should consider whether a crediting program has a buffer reserve and/or other measures in place to address such risk.[204]

The Commission is also clarifying the statement, in the Proposed Guidance, that a DCM should consider whether a crediting program's buffer reserve or other measures provide reasonable assurance that, in the event of a reversal, the VCCs intended to underlie a derivative contract will be replaced by VCCs of comparably high quality that meet the contemplated specifications of the contract. The Commission understands that VCCs in a buffer reserve are generally *drawn down and cancelled* to compensate for reversals associated with a project or activity, rather than being *drawn upon to replace* VCCs issued for such project or activity, and has determined to clarify its guidance accordingly.

Furthermore, in response to comments received, the Commission is

[188] *See, e.g.,* Affiliated Scientists at 2; Carbonplace at 4; CarbonPlan at 9; Charm at 4; Terra at 5; Sky Harvest at 11.

[189] Affiliated Scientists at 2.

[190] BCarbon at 2.

[191] *See, e.g.,* Anew Climate at 5; CATF at 11; Carbonplace at 4; CEPI at 6; Charm at 4; C2ES at 6; Ducks Unlimited, Inc. (''Ducks'') at 3; Emergent at 2; Flow Carbon at 4; Sylvera at 5; Terra at 6.

[192] Sylvera at 5.

[193] *See, e.g.,* CATF at 11; ESMC at 5; Public Citizen at 15; Simon Counsell at 4.

[194] CATF at 11. The CATF recommends adaptive risk ratings because climate change has the potential to impact carbon credits in certain localities.

[195] Public Citizen at 15.

[196] 88 FR 89410 at 89421.

[197] *See, e.g.,* aDryada at 1; Anew Climate at 6; BCarbon at 2–3; Better Markets at 9; Carbonplace at 4; Carbon Market Watch at 5; CEPI at 5; Ceres at 4–5; ESMC at 5; Emergent at 2; Isometric at 5; Kita at 3; NYSSCPA at 5; NYU Policy Integrity at 1; Sylvera at 5; Terra at 6; TNC at 2; WWF at 1; Xpansiv at 11.

[198] Anew Climate at 5.

[199] *See, e.g.,* BCarbon at 2; IATP at 22; Isometric at 4; Terra at 6.

[200] Isometric at 4.

[201] IATP at 22.

[202] *See* 88 FR 89410 at 89417.

[203] *See id.* at 89418.

[204] The Commission understands that each crediting program, and the registry that it operates or uses, may handle reversals in its own way. Measures to address reversals that do not involve the cancellation of credits in a buffer reserve may include limiting future sales of credits, cancelling unsold credits, or having affected projects procure credits from other projects to offset the reversal, among other measures.

clarifying its view that, as a general matter, industry-recognized standards for high-integrity VCCs, and whether a particular crediting program has been approved or certified as adhering to an industry-recognized standards setting program, can serve as tools for a DCM, in connection with its consideration of a crediting program's measures to address and account for the risk of reversal.

While the Commission acknowledges comments stating that there is a heightened risk of reversal associated with nature-based mitigation projects and activities—including comments suggesting that VCCs issued for such projects or activities should not be permitted to underlie a derivative contract, or that derivative contracts should be designed in a manner that differentiates VCCs based on assessments of reversal risk—the Commission emphasizes that the purpose of this guidance is not for the Commission to make recommendations, or proscriptions, regarding the specific types of VCC derivative contracts that a DCM should list for trading. Rather, the guidance is intended to outline factors for the DCM, itself, to consider in connection with its contract design and listing activities, in order to help ensure that the DCM is complying with its statutory and regulatory obligations. The comments with respect to nature-based mitigation projects and activities do, however, underscore the Commission's view that a VCC derivative contract's terms and conditions should clearly identify what is deliverable under the contract—including by making it clear if eligible VCCs are associated with a specific category of mitigation projects or activities, such as nature-based products or activities. Transparency in this regard will help to make sure that market participants understand what VCCs can be expected to deliver under the contract, and to make an assessment of the VCCs' quality, which will help to support accurate pricing.

The Commission is persuaded by comments stating that specific information regarding a crediting program's measures for estimating, monitoring, and addressing the risk of reversal is not the type of information that typically would be included in a derivative contract's terms and conditions, and has determined to revise its guidance accordingly.

d. Robust Quantification

Commenters on the Proposed Guidance broadly agreed that the quantification methodologies or protocols used by a crediting program for calculating GHG reduction or removal levels help to inform the quality of VCCs issued by the crediting program.[205] In the Proposed Guidance, the Commission stated that it preliminarily believed that, as part of its contract design market research, a DCM should consider the methodology or protocol used by a crediting program to calculate emission reduction or removals for VCCs underlying a derivative contract, and whether the crediting program can demonstrate that such methodology or protocol is robust, conservative, and transparent.[206] The Commission specifically requested comment on whether there were particular criteria or factors that a DCM should take into account when considering, and/or addressing in a VCC derivative contract's terms or conditions, whether a crediting program applies a robust, conservative and transparent methodology or protocol.[207] A number of commenters suggested criteria or factors.[208]

CEPI and Ducks recommended that DCMs consider whether there are independent review procedures for a crediting program's quantification methodologies, such as a public consultation or peer review process.[209] CEPI additionally recommended that DCMs consider whether a crediting program relies on scientific evidence to develop its quantification methodologies, and whether there are ''mechanisms for the periodic review and/or revision of the methodologies.'' [210] Similarly, TNC stated that any quantification methodology should use baselines that are periodically reviewed.[211] CIEL stated that, in order to enable transparency, a crediting program ''must make its methodology, and how it has been applied to individual projects, available to public scrutiny.'' [212] Sylvera noted that robust quantification is only verifiable by third parties if there are sufficient disclosures by the project developers to allow third parties to check the accounting.[213] NYU Policy Integrity and TNC believed that DCMs should consider ''leakage risk'' in quantification methodologies.[214] Ceres cautioned against overly focusing on conservative accounting, which might lead to an underestimation of emission reductions or removals, and recommended balancing conservativeness with the ultimate goal of accuracy.[215]

Other commenters, meanwhile, raised concerns similar to those noted in Section I.B.2, regarding the lack of standardization across the voluntary carbon markets with respect to quantification methodologies and protocols, and how this may create issues with over-crediting and reliability.[216] CEPI recommended that a crediting program have procedures in place to suspend or withdraw the use of a quantification methodology where there is sufficient evidence that the emission removals or reductions have been overstated.[217]

Some commenters did recommend quantification standards,[218] such as the International Organization for Standardization (''ISO'') 14060 standards for quantifying, monitoring, reporting and validating GHG emissions,[219] or the GHG Protocol.[220] Certain commenters recommended that DCMs look to standards for high-integrity VCCs developed by private sector or multilateral initiatives, such as the robust quantification standards under the ICVCM's Core Carbon Principles (''CCP'') and CCP Assessment Framework, and adherence by a crediting program to such standards.[221]

Other commenters expressed concern with the view that a DCM should consider whether a crediting program's quantification methodology or protocol is robust, conservative and transparent.[222] ICE stated that expecting a DCM to engage in such an assessment would lead to unnecessary duplication of extensive, public consultation processes to which crediting program methodologies already are subject.[223]

[205] *See, e.g.,* Anew Climate at 6; BCarbon at 2–3; Carbon Market Watch at 1; Carbonplace at 4; CEPI at 6; Ceres at 4–5; CIEL at 11; Context Labs at 2; Iconoclast at 5; Isometric at 5; NYSSCPA at 5; NYU Policy Integrity at 1; Puro at 7–8; Terra at 6; Sylvera at 5; Xpansiv at 11.

[206] 88 FR 89410 at 89418.

[207] *Id.* at 89421.

[208] *See, e.g.,* Centre for Competition Policy at 4; CEPI at 6; Ceres at 3; Charm at 4; CIEL at 11; Context Labs at 2; Ducks at 4; Flow Carbon at 4; NYU Policy Integrity at 6; Sylvera at 3–4; TNC at 3.

[209] *See* CEPI at 6; Ducks at 4.

[210] CEPI at 6.

[211] TNC at 3.

[212] CIEL at 11.

[213] Sylvera at 3–4.

[214] *See* NYU Policy Integrity at 6; TNC at 3.

[215] Ceres at 3.

[216] *See, e.g.,* CATF at 13; Center for American Progress at 4; Public Citizen at 13.

[217] CEPI at 6.

[218] *See, e.g.,* Carbonplace at 4; NYSSCPA at 5; Sylvera at 5; Terra at 6.

[219] *See, e.g.,* Carbonplace at 4. Carbonplace suggested that at a minimum, DCMs focus on standards which are supported by ISO certification.

[220] *See* NYSSCPA at 5.

[221] *See, e.g.,* BASCS at 4; Ceres at 4–5; C2ES at 6; Ducks at 4; ICVCM at 8; Sylvera at 5.

[222] *See, e.g.,* Center for American Progress at 4; Ceres at 2–3; CME at 7; ICE at 7; Nodal at 5; Public Citizen at 13; Verra at 6.

[223] ICE at 7.

Verra expressed concern that carrying out such an assessment would require a DCM to obtain specialized technical expertise about topics that are beyond its core competency in overseeing derivatives markets.[224] Likewise, CME stated that it would be impractical for DCMs to develop the expertise to make such an assessment of a crediting program's quantification methodology or protocol, and stated that it was also possible, ''if not likely,'' that various DCMs and market participants could have different views as to what level of robustness, conservatism and transparency is sufficient.[225] CME believed that ''it is preferable for the crediting program to publish its methodology . . . and for market participants to render their own judgment.'' [226] Ceres similarly stated that DCMs should not conduct additional due diligence and should rely on crediting programs to demonstrate they have processes/procedures to achieve high quality credits.[227] Nodal recommended that, if the Commission finalized its guidance, the Commission omit reference to a DCM's consideration of whether the crediting program's quantification methodology or protocol is ''robust, conservative and transparent'', arguing that the Commission would otherwise be asking DCMs ''to evaluate the sufficiency of VCC quality standards, which are normally addressed by the underlying markets.'' [228]

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance with respect to robust quantification as proposed, with certain revisions. As recognized in the Proposed Guidance, and highlighted by some commenters, there are not currently standardized methodologies or protocols that are used across the voluntary carbon markets to quantify emission reduction or removal levels. Given the current absence of such standardized methodologies or protocols, the Commission continues to believe that robustness, conservativeness and transparency are factors that inform the extent to which a quantification methodology or protocol applied by a crediting program helps to ensure that the number of VCCs that are issued for a mitigation project or activity accurately reflects the emission reduction or removal levels associated with that project or activity.[229] Market participants that are utilizing physically-settled VCC derivative contracts to help meet their carbon mitigation goals have an interest in ensuring that, upon physical settlement, the underlying VCCs will actually reduce or remove the amount of emissions that they were intended to reduce or remove. Accordingly, the Commission believes that the robustness, conservativeness and transparency of the quantification methodology or protocol that is applied with respect to the underlying VCCs can inform their quality—and, by extension, the pricing of the derivative contract.

Furthermore, the Commission continues to believe that where the quantification methodology or protocol used to calculate the amount of VCCs for a particular project is robust, conservative, and transparent, the DCM should have a more reliable basis from which to form a deliverable supply estimate for exchange-set position limits purposes.[230]

Given the relevance with respect to VCC quality, as well as deliverable supply estimates, although the Commission acknowledges that a DCM may not have the specialized, technical expertise to determine whether a crediting program *has demonstrated* that the quantification methodology or protocol that it uses to calculate GHG emission reduction or removal levels for VCCs underlying a derivative contract is robust, conservative, and transparent, the Commission does believe that the DCM should consider whether there is *reasonable assurance* that the methodology or protocol used by the crediting program is robust, conservative and transparent.[231] In this regard, the Commission acknowledges and supports commenters' suggestions that factors that may inform the robustness, conservativeness, and transparency of a quantification methodology or protocol could include whether the methodology or protocol has been developed with reference to scientific evidence, whether the methodology or protocol has been subject to independent review procedures, and whether there are mechanisms for the periodic review and/or revision of the methodology or protocol. In response to ICE's comment suggesting that all crediting program methodologies are subject to extensive, public consultation procedures, the Commission notes that review and consultation procedures may be crediting-program specific and the implementation by any particular crediting program of extensive public consultation procedures should not be taken as a given.

Furthermore, and particularly in light of the comments received that highlighted the technical and specialized nature of a crediting program's quantification methodologies or protocols, the Commission is clarifying its view that, as a general matter, industry-recognized standards for high-integrity VCCs, and whether a particular crediting program has been approved or certified as adhering to an industry-recognized standard setting program, can serve as tools for a DCM, in connection with its consideration of a crediting program's quantification methodologies or protocols, including consideration of whether there is reasonable assurance that the methodology or protocol used to calculate emission reductions or removals for VCCs underlying a derivative contract is robust, conservative and transparent.

The Commission is persuaded by comments stating that specific information about the quantification methodology or protocol used by a crediting program to calculate GHG emissions reductions or removals is not the type of information that typically would be included in a derivative contract's terms and conditions, and has determined to revise its guidance accordingly.

iv. Delivery Points and Facilities

a. Governance

Generally, commenters agreed that, as part of the contract design process for a VCC derivative contract, a DCM should consider whether the crediting program for underlying VCCs has a governance framework that supports the program's independence, transparency and accountability.[232] Better Markets, for example, stated that ''DCMs should rigorously evaluate the governance

[224] Verra at 6.

[225] CME at 7.

[226] *Id.*

[227] Ceres at 2–3.

[228] Nodal at 5.

[229] *See* 88 FR 89410 at 89418. The Commission agrees that, ultimately, the accuracy of estimations is a key objective—one that informs confidence that the voluntary carbon markets can serve as a tool to assist in emissions reduction efforts, as well as accurate pricing by market participants.

[230] *Id.*

[231] In the Proposed Guidance, the Commission generally referred to a crediting program's methodology or protocol used for calculating the level of GHG reductions or removals associated with a mitigation project or activity. The Commission recognizes that crediting programs typically have multiple quantification methodologies or protocols, and has made certain revisions to its guidance to account for this.

[232] *See, e.g.,* AFREF at 6; ANAB at 5; Anew Climate at 6; BASCS at 4; Better Markets at 11; CATF at 13–14; C2ES at 7; Forest Peoples at 5; ICVCM at 8; Isometric at 5; NYSSCPA at 5; Simon Counsell at 4–5; Sylvera at 6; Terra at 6; WWF at 1; Xpansiv at 11.

frameworks . . . employed by the crediting programs of the underlying VCCs.'' [233]

In the Proposed Guidance, the Commission stated that, with respect to a crediting program's governance framework, it preliminarily believed that a DCM should consider, among other things, a crediting program's decision-making procedures, reporting and disclosure procedures, public and stakeholder engagement processes, and risk management policies, as well as whether information regarding those procedures and policies is made publicly available.[234] The Commission specifically requested comment on whether there were other criteria or factors that a DCM should take into account when considering, and/or addressing in a VCC derivative contract's terms or conditions, whether a crediting program's governance framework effectively supports transparency and accountability.[235]

Several commenters responded to highlight conflicts of interest considerations.[236] For example, Anew Climate recommended that DCMs consider whether a crediting program has policies in place to identify and mitigate potential conflicts of interest between various stakeholders.[237] ICVCM and C2ES similarly recommended that consideration of a crediting program's governance framework include consideration of the program's conflict of interest policy.[238] Likewise, Simon Counsell believed that a crediting program's governance framework should address conflicts of interest, and also should include independent review processes and an appeal process.[239] Anew Climate similarly stated that DCMs should consider ''whether a grievance process and procedures by which to address those grievances are in place.'' [240] With respect to transparency, Xpansiv recommended that DCMs specifically consider a crediting program's transparency and responsiveness in connection with significant changes to project or credit status.[241]

Some commenters suggested that DCMs look to standards for high-integrity VCCs developed by private sector or multilateral initiatives, such as the governance standards under CORSIA, the International Carbon Reduction and Offset Alliance (''ICROA'') and the ICVCM's Core Carbon Principles, and adherence by a crediting program to such standards.[242]

ICE believed that a DCM should not be responsible for determining the adequacy of a crediting program's governance, and that a DCM should instead be permitted to rely on recognized standard setting bodies, ''to establish threshold standards for high-quality carbon credits which the crediting programs should adhere to and be audited against.'' [243] CME was similarly of the view that a DCM should not determine the effectiveness of a crediting program's independence, transparency, and accountability, because ''DCMs are not experts in registry governance structures, and it is impractical to expect DCMs to develop such expertise.'' [244]

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance with respect to governance as proposed, with certain revisions. Given the importance of a crediting program's governance framework in ensuring the overall quality of the VCCs issued by the program, as well as the potential importance of a crediting program's registry in facilitating delivery under a physically-settled VCC derivative contract, the Commission continues to believe that, as part of the contract design process, a DCM should consider the governance framework of the crediting program for underlying VCCs.[245] More specifically, and after considering the comments received, the Commission believes that a DCM should consider whether the crediting program's governance framework supports the crediting program's independence, transparency, and accountability. With respect to particular criteria or factors that may inform such independence, transparency, and accountability, and in acknowledgment that a number of commenters highlighted these points, the Commission is revising its guidance to expressly recognize conflict of interest measures as a factor which may inform a crediting program's independence, and appeals mechanisms as a factor which may inform a crediting program's accountability.

Furthermore, in response to comments received, the Commission is clarifying its view that, as a general matter, industry-recognized standards for high-integrity VCCs, and whether a particular crediting program has been approved or certified as adhering to an industry-recognized standards setting program, can serve as tools for a DCM, in connection with its consideration of a crediting program's governance framework, including whether the governance framework supports the crediting program's independence, transparency, and accountability.

Finally, the Commission is persuaded by comments stating that specific information regarding a crediting program's governance framework is not the type of information that typically would be included in a derivative contract's terms and conditions,[246] and has determined to revise its guidance accordingly.

b. Tracking

In the Proposed Guidance, the Commission stated that it preliminarily believed that a DCM should consider whether a crediting program for underlying VCCs can demonstrate that it has processes and procedures in place to help ensure clarity and certainty with respect to the issuance, transfer, and retirement of VCCs.[247] The Commission stated that the DCM should consider whether the crediting program operates or makes use of a registry that has measures in place to effectively track issuance, transfer, and retirement; to identify who owns or retires a VCC; and to make sure that each VCC is uniquely and securely identified and associated with a single emission reduction or removal of one metric ton of carbon dioxide equivalent.[248] The Commission stated that, where the registry will serve as the delivery point for a physically-settled VCC derivative contract, it may be appropriate for the DCM to include as a condition of the contract that the registry have such measures to address tracking in place.[249]

In its comments on the Proposed Guidance, ISDA highlighted that, because registries currently serve as delivery points for futures contracts, ''[i]t is important to ensure registries have consistent and transparent rules on how VCCs are verified, counted and transferred. Failure to correctly track and safeguard carbon credits, or a gap in standards in the creation of a carbon credit itself, could lead to fraudulent

[233] Better Markets at 11.

[234] 88 FR 89410 at 89419.

[235] *Id.* at 89421.

[236] *See, e.g.,* Anew Climate at 6; C2ES at 7; ICVCM at 8; Isometric at 5; Simon Counsell at 4–5; Sky Harvest at 13.

[237] Anew Climate at 6.

[238] *See* C2ES at 7; ICVCM at 8.

[239] Simon Counsell at 4–5.

[240] Anew Climate at 6.

[241] Xpansiv at 11.

[242] *See e.g.,* Sylvera at 6; Terra at 6.

[243] ICE at 7.

[244] CME at 7.

[245] 88 FR 89410 at 89419.

[246] *See e.g.,* CME at 7; ICE at 7.

[247] 88 FR 89410 at 89419.

[248] *Id.*

[249] *Id.*

practices, such as greenwashing and double counting.'' [250] ISDA went on to say that it believes the ''CFTC has a regulatory interest in ensuring that VCC registries (that act as delivery points for carbon futures contracts) adopt appropriate procedures for tracking the buying and selling of credits in the context of VCC futures and other bilateral markets.'' [251]

ICE stated that ''[i]t is important to distinguish between the role of carbon crediting programs and registries,'' noting that the two roles are often ''conflated.'' [252] ICE stated that ''the physical delivery of VCCs is effectuated by transferring the VCC from the seller to the buyer in the registry operated by the crediting program.'' [253] ICE stated that, because ''market participants value the delivery mechanism as an important risk management function offered by DCMs and DCOs,'' it believed that a ''DCM should seek confirmation from a crediting program utilizing a registry that it has appropriate measures in place to effectively track the issuance, transfer and retirement of VCCs.'' [254]

The Commission received several responses to its request for comment regarding whether there were other factors, in addition to those identified in the Proposed Guidance, that a DCM should take into account when considering, and/or addressing in a VCC derivative contract's terms and conditions, whether a crediting program's registry has processes and procedures in place to help ensure clarity and certainty with respect to the issuance, transfer and retirement of VCCs.[255]

Like ISDA, some commenters highlighted the importance of transparent registry rules regarding VCC tracking and retirement.[256] For example, Anew Climate responded that ''DCMs should assess whether the crediting program has published transparent operating procedures for its registry activities, explaining how these processes work, as well as terms of use that govern participation in the program.'' [257] Other commenters supported specific accounting frameworks for tracking to help ensure accuracy.[258]

NYSSCPA supported tracking VCCs by assigning them a ''unique serial number'' and having the crediting program, or registry, track the VCC throughout its life cycle, including changes in ownership following delivery and the VCC's retirement.[259] ICVCM similarly stated that unique identifiers ''can dramatically improve transparency and reduce risk of double counting.'' [260]

Sylvera, BASCS, ICVCM, and C2ES responded in support of ICVCM's standards with respect to tracking and double counting.[261] The ICVCM CCP Assessment Framework requires crediting programs to have registry provisions that prevent double registration of mitigation activities, double use of a carbon credit after it has been cancelled or retired for a specific use, and measures to prevent double claiming with mandatory domestic mitigation programs or incentivization schemes (*e.g.,* Renewable Energy Certificates).[262]

A few commenters expressed concern with the view that a DCM should consider the effectiveness of a crediting program's tracking measures.[263] Terra stated that this should be handled by the crediting program.[264] Nodal recommended that, if the Commission finalized the Proposed Guidance, the Commission should omit reference to a DCM's consideration of whether a crediting program operates or makes use of a registry that has measures in place to ''effectively'' track VCCs, arguing that the Commission would otherwise be asking DCMs ''to evaluate the sufficiency of VCC quality standards, which are normally addressed by the underlying markets.'' [265]

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance with respect to tracking as proposed, with certain revisions. As discussed in the Proposed Guidance, market participants that are utilizing physically-settled VCC derivative contracts to help meet carbon mitigation goals have an interest in ensuring that, upon physical settlement, the underlying VCCs will actually reduce or remove the emissions that they were intended to reduce or remove. It is therefore important for each credited VCC to be uniquely associated with a single emission reduction or removal of one metric ton of carbon dioxide. Processes and procedures to help ensure clarity and certainty with respect to the issuance, transfer and retirement of VCCs can help support this. Conversely, if there is not a reasonable assurance that the VCCs underlying a derivative contract are each unique, then, among other things, this could distort or obscure the accuracy of the derivative contract's pricing. The fact that the current voluntary carbon market structure typically relies on the registries used or operated by crediting programs to effectuate the physical delivery of VCCs underlying a derivative contract further supports the Commission's view that a DCM should consider whether there is reasonable assurance of the effectiveness of the tracking measures that a crediting program has in place.

In response to comments received, the Commission is clarifying its view that, as a general matter, industry-recognized standards for high-integrity VCCs, and whether a particular crediting program has been approved or certified as adhering to an industry-recognized standard setting program, can serve as tools for a DCM, in connection with its consideration of the crediting program's tracking measures.

Finally, the Commission notes that the Proposed Guidance indicated that it may be appropriate, in certain circumstances, to include in a physically-settled VCC derivative contract certain conditions relating to the tracking measures that the registry used or operated by the crediting program for underlying VCCs has in place. While, based on the specific facts and circumstances in issue, a DCM may determine that inclusion of such conditions in a particular contract is appropriate, the Commission is persuaded by the broader comments that it received regarding the type of information that typically would, and would not, be included in a derivative contract's terms and conditions,[266] and has determined to revise its guidance accordingly.

c. No Double-Counting

In the Proposed Guidance, the Commission stated that it preliminarily

[250] ISDA at 3.

[251] *Id.*

[252] ICE at 8.

[253] *Id.*

[254] *Id.*

[255] *See, e.g.,* Anew Climate at 7; BASCS at 4; C2ES at 7; Carbon Direct at 7; Carbonplace at 5; CEPI at 6; Differentiated Gas Coordinating Council (''DGCC'') at 6; Ecobalance at 2; Flow Carbon at 5; Harvard *et al* at 18; Iconoclast at 5; ICVCM at 10; ISDA at 3; Nodal at 6; Nori at 5; NYSSCPA at 10; Public Citizen at 16; Sky Harvest at 14; Sylvera at 6; Terra at 6; Xpansiv at 12.

[256] *See, e.g.,* Anew Climate at 7; Carbon Direct at 7; DGCC at 6; Flow Carbon at 5; Harvard *et al* at 18; ISDA at 3; Nori at 5; Sky Harvest at 14.

[257] Anew Climate at 7.

[258] *See, e.g.,* Carbon Direct at 7; Harvard *et al* at 18; Stanford Doerr School of Sustainability Stanford Law School (''Stanford Doerr'') at 1.

[259] NYSSCPA at 10.

[260] ICVCM at 10.

[261] *See, e.g.,* BASCS at 4; C2ES at 7; ICVCM at 10; Sylvera at 6.

[262] ICVCM at 10.

[263] *See e.g.,* ICE at 8; Nodal at 5–6; Terra at 6.

[264] Terra at 6.

[265] Nodal at 5–6.

[266] *See, e.g.,* CME at 7; ICE at 7.

believed that a DCM should consider whether the crediting program for underlying VCCs can demonstrate that it has effective measures in place that provide reasonable assurance that credited emission reductions or removals are not double-counted: ''That is, that the VCCs representing the credited emission reductions or removals are issued to only one registry and cannot be used after retirement or cancellation.'' [267] Carbon Market Watch highlighted that the risk of double counting can manifest itself in many ways. For example, a given emission reduction may be claimed by multiple actors, such as various financers of the mitigation project or activity (*e.g.,* a bank that issues a loan to the project or activity, as well as a company that purchases VCCs from the project or activity). [268]

aDryada stated that it believes there is confusion in the voluntary carbon markets regarding the understanding of the term ''double counting'' (*i.e.,* whether the term refers to double issuance, double use, or double claim).[269] The AFF suggested a clarification to the Commission's ''no double-counting'' characterization, to recognize that there is no double counting where emission reductions or removals from a mitigation project or activity are counted only once toward achieving mitigation targets or goals.[270]

The Commission specifically requested comment on whether there are particular criteria or factors that a DCM should take into account when considering, and/or addressing in a VCC derivative contract's terms and conditions, whether it can be demonstrated that the registry operated or utilized by a crediting program has in place measures that provide reasonable assurance that credited emission reductions or removals are not double counted.[271] CarbonPlan suggested that a DCM should consider whether a crediting program discloses ''the precise location and boundaries of projects that generate VCCs.'' [272] Bloomberg Philanthropies, ICVCM, and C2ES highlighted that the use of unique identifiers can reduce the risk of double counting.[273] Other commenters supported specific accounting frameworks for tracking to help ensure accuracy.[274] Some commenters provided information regarding blockchain technology or digital assets. In general, these commenters supported the use of blockchain or similar technology for VCC-related recordkeeping to help avoid double counting.[275]

A few commenters expressed concern with the view that a DCM should consider the effectiveness of a crediting program's measures with respect to double counting.[276] Terra stated that this should be handled by the crediting program.[277] Nodal recommended that, if the Commission finalized the Proposed Guidance, the Commission should omit reference to a DCM's consideration of whether the crediting program can demonstrate that it has ''effective measures'' in place with respect to double counting,[278] arguing that the Commission would otherwise be asking DCMs ''to evaluate the sufficiency of VCC quality standards, which are normally addressed by the underlying markets.'' [279]

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance with respect to double counting as proposed, with certain revisions. The Commission understands that the term ''double counting'' may be interpreted differently within the voluntary carbon markets, depending, for example, on the context. The Commission clarifies that, since this guidance is focused on considerations for DCMs in connection with the listing for trading of physically-settled VCC derivative contracts, the Commission is primarily concerned with double issuance—*i.e.,* the issuance of the same VCC more than once.

After considering the comments received, the Commission believes that a DCM should consider whether a crediting program for underlying VCCs has measures in place that provide reasonable assurance that credited emission reductions or removals are not double counted. As discussed above in connection with tracking, it is important for each credited VCC to be uniquely associated with a single emission reduction or removal of one metric ton of carbon dioxide equivalent to help ensure that VCCs effectively further carbon mitigation goals, and, relatedly, to help avoid the distortion or opaqueness of a VCC derivative contract's pricing. The Commission therefore believes that it is important for a DCM to consider whether a crediting program has measures in place, including measures with respect to double counting, that provide reasonable assurance that the VCCs issued by the crediting program are unique.

In response to comments received, the Commission is clarifying that, as a general matter, industry-recognized standards for high-integrity VCCs, and whether a particular crediting program has been approved or certified as adhering to an industry-recognized standard setting program, can serve as tools for a DCM, in connection with its consideration of the crediting program's measures to prevent double counting.

v. Inspection Provisions—Third-Party Validation and Verification

Certain commenters on the Proposed Guidance highlighted the role that effective crediting program validation and verification procedures play in supporting VCC quality, and supported the Commission's recognition of the benefits of validation and verification by a reputable, disinterested party or body. Better Markets stated that the validation and verification processes ''are vital for confirming that credited mitigation projects or activities adhere to the [crediting] program's rules and standards, ensuring that the emission reductions or removals claimed are genuine and verifiable.'' [280] Better Markets further stated that ''the involvement of reputable, independent third-parties in the validation and verification of projects or activities is crucial. Such independent oversight provides assurance that the GHG emissions reductions or removals are accurately achieved, thereby enhancing the quality of the underlying VCCs.'' [281] WWF, meanwhile, stated that a third-party verification process ''should be a requirement to improve the integrity of the credit and ultimately the integrity of the voluntary carbon market.'' [282] Better Markets stated that ''best practices in third-party validation and verification should ensure diverse and impartial review by preventing exclusive reliance on a single validator for all projects or activities, and should include mechanisms for addressing performance issues, conducting periodic reviews of

[267] 88 FR 89410 at 89419.

[268] Carbon Market Watch at 4.

[269] aDryada at 1.

[270] AFF at 4.

[271] 88 FR 89410 at 89421.

[272] CarbonPlan at 9–10.

[273] *See* Bloomberg Philanthropies at 3; C2ES at 7; ICVCM at 9.

[274] *See, e.g.,* Carbon Direct at 7; Harvard *et al* at 18.

[275] *See, e.g.,* BCarbon at 3; Context Labs at 1; DGCC at 6; Ecobalance at 2; Flow Carbon at 5; Harvard *et al* at 7; Iconoclast at 5; Nori at 6; NYSSCPA at 6; Stanford Doerr at 1.

[276] *See, e.g.,* Nodal at 6; Terra at 6.

[277] Terra at 6.

[278] Nodal at 6.

[279] *Id.* at 5.

[280] Better Markets at 12.

[281] *Id.*

[282] WWF at 1.

validators, and ensuring that ongoing validation and verification are carried out by different parties from those who performed the initial assessments.'' [283]

Most commenters responding to a specific request for comment on this point agreed that the delivery procedures for a physically-settled VCC derivative contract should describe the responsibilities of registries, crediting programs, or other third parties required to carry out the delivery process.[284] Xpansiv stated that such a description enables buyers and sellers to trade VCC-linked contracts ''with a clear understanding of the delivery mechanism, the responsibilities of all parties involved in the delivery process and the chain of custody of VCCs being transferred in the delivery process.'' [285] Flow Carbon stated that, ''[f]or market participants, transparency around the settlement process, coupled with credible third-party review and independent verification, is critical to ensuring that firms have the confidence to deploy capital into these markets and products.'' [286] Terra stated that delivery procedures should clearly outline the ''responsibilities of all parties involved to ensure the integrity and authenticity of the VCCs upon delivery.'' [287]

ICVCM stated that contracts ''should not have to describe the responsibilities of third parties if the roles of the third party are known to both parties, and the performance of those responsibilities by third parties can be managed through usual risk management in contracts by allocating that risk between the contract parties or providing for default/force majeure etc. type risks.'' [288]

ICE highlighted the role of the DCO in the delivery process.[289] EDF noted that the ''responsibilities of registries, crediting programs and other third-parties required to carry out the delivery process are generally articulated in Terms of Use contracts available on registry websites and mandatory for registry account activation.'' [290] EDF stated that ''DCMs should specify which registry or registries will be used, and also how the respective Terms of Use satisfy governance, tracking mechanisms and double-counting prevention measures.'' [291]

A few commenters expressed concern that, under the Proposed Guidance, DCMs would be expected to assess the sufficiency of a crediting program's procedures for validating and verifying that credited mitigation projects or activities meet the program's rules and standards. CME stated that serving as arbiter of such procedures is not the appropriate role of a DCM.[292] Nodal similarly recommended that, if the Commission finalized the Proposed Guidance, the Commission omit reference to a DCM's consideration of whether a crediting program's procedures contemplated validation and verification by a ''reputable, disinterested'' party or body, as well as reference to a DCM's consideration of whether the crediting program is employing ''best practices'' with respect to third-party validation and verification.[293]

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance with respect to inspection provisions as proposed, with certain revisions. Consistent with the Appendix C Guidance, the Commission continues to believe that inspection or certification procedures for verifying compliance with quality requirements or any other related delivery requirements for a physically-settled VCC derivative contract should be specified in the contract's terms and conditions. With respect to comments on whether the delivery procedures for a physically-settled VCC derivative contract should describe the responsibilities of registries, crediting programs or any other third parties required to carry out the delivery process, the Commission reminds exchanges and market participants that the Appendix C Guidance states that physically-settled derivative contracts should, among other things, specify appropriately detailed delivery procedures ''that describe the responsibilities of deliverers, receivers, and any required third parties in carrying out the delivery process.'' [294] The Commission clarifies that, in the specific context of physically-settled VCC derivative contracts, a registry or crediting program may be considered a deliverer, receiver or required third party as contemplated in the Appendix C Guidance.

The Commission acknowledges comments asserting that a DCM may not have the specialized, technical expertise to make an independent determination regarding the conservativeness, robustness, and transparency of a crediting program's validation and verification procedures. However, given the role played by a crediting program's validation and verification procedures in informing the quality of VCCs issued by the crediting program, the Commission does believe that there should be reasonable assurance that the program's validation and verification procedures are up-to-date, robust and transparent. The Commission believes that comments also support a DCM's consideration of whether there is reasonable assurance that those procedures reflect best practices with respect to third-party validation and verification. The Commission clarifies that, while such *best practices* with respect to third-party validation and verification may include conducting reviews of the performance of validators, procedures for remediating performance issues, not using the same third-party validator to verify every project type or project category, and using a separate third party to conduct ongoing validation and verification from the third party that completed the initial validation and verification process, the Commission does not expect *the DCM itself* to conduct such reviews or implement such procedures. The Commission further clarifies that it does not expect a DCM to specify, in a VCC derivative contract's terms and conditions, or rules, how a registry's Terms of Use address the discussion in this guidance of governance, tracking and double counting.

Taking into account comments received, the Commission is clarifying its view that, as a general matter, industry-recognized standards for high-integrity VCCs, and whether a particular crediting program has been approved or certified as adhering to an industry-recognized standard setting program, can serve as tools for a DCM, in connection with its consideration of the crediting program's validation and verification procedures, including whether there is reasonable assurance that those procedures reflect best practices with respect to third-party validation and verification.

[283] Better Markets at 12.

[284] *See, e.g.,* AFF at 4; Carbonplace at 5; CEPI at 7; EDF at 8; IATP at 23; Kita at 5; Public Citizen at 17; Terra at 5; Xpansiv at 12.

[285] Xpansiv at 12.

[286] Flow Carbon at 5.

[287] Terra at 7.

[288] ICVCM at 9.

[289] ICE at 9–10, stating that the ''delivery procedures used by the relevant DCO for the [VCC derivative contract] should take account of the functions provided by the relevant registries, specify the responsibilities of parties in the delivery process, and address the risks to the DCO and market participants for delivery failures, consistent with the DCO core principles.'' The Commission reiterates that this guidance focuses considerations for DCMs in connection with the design, and listing, of VCC derivative contracts.

[290] EDF at 8.

[291] Id.

[292] CME at 8.

[293] Nodal at 6.

[294] Appendix C Guidance, paragraph (b)(2)(i)(B).

3. A DCM Shall Monitor a Derivative Contract's Terms and Conditions as They Relate to the Underlying Commodity Market

The Commission received a few comments regarding the Commission's discussion in the Proposed Guidance of considerations for a DCM under DCM Core Principle 4. Better Markets supported the Commission's proposal.[295] Iconoclast stated that continual monitoring by the DCM of the appropriateness of a VCC derivative contract's terms and conditions should include price.[296]

BPC noted that, given that DCMs ''are at their root financial services companies,'' they may not currently have ''the in-house scientific or technical expertise needed to comprehensively evaluate and continuously monitor for changes in carbon crediting programs that may affect the terms and conditions of VCC derivative contracts.'' [297] BPC suggested that the ''Commission could consider facilitating a community of practice among DCMs to encourage sharing of best practices and developing common evaluation frameworks.'' [298]

The Commission appreciates the comments that it received on this subject and, after considering the comments, has determined to finalize its guidance with respect to DCM Core Principle 4 as proposed, with one revision. The Commission notes that implementing Commission regulations under DCM Core Principle 4 already require a DCM, among other things, to monitor a physically-settled derivative contract's terms and conditions as they relate to the underlying commodity market and to the convergence of the contract price and the price of the underlying commodity.[299] Given that VCC derivatives are a comparatively new and evolving class of products, and given that standardization and accountability mechanisms for VCCs are still being developed, the Commission does believe that it is appropriate for a DCM's monitoring of a VCC derivative contract to include monitoring of the continued appropriateness of the contract's terms and conditions that includes, among other things, monitoring to ensure that the underlying VCC conforms, or, where appropriate, updates to reflect the latest certification standard(s) applicable for that VCC. However, for enhanced clarity, the Commission is replacing its reference in the guidance to ''continual'' monitoring of a contract's appropriateness, with a reference to ''ongoing'' monitoring of such appropriateness. For example, where there are changes to either the crediting program or the types of projects or activities associated with the underlying VCC, due for example to new standards or certifications, then the DCM should amend the contract's terms and conditions to reflect this update.

The Commission further notes that it is supportive of exchanges sharing best practices for statutory and regulatory compliance.

4. A DCM Must Satisfy the Product Submission Requirements Under Part 40 of the CFTC's Regulations and CEA Section 5c(c)

Some commenters on the Proposed Guidance responded to the Commission's discussion of requirements in connection with the submission of a VCC derivative contract to the Commission under CEA section 5c(c)(5)(C) and part 40 of the Commission's regulations. WWF believed the Commission should disallow self-certification of VCC derivative contracts ''[d]ue to the limited number of voluntary carbon credit derivative contracts and the newness of this function for the CFTC.'' [300] Similarly, AFREF and EDF supported the development by the Commission of a ''heightened review framework for any self-certified climate-related products.'' [301] The Commission notes that, with specific limited exceptions, the CEA contemplates that a DCM may list a new derivative contract for trading, or amend an existing derivative contract, by way of self-certification, provided that the DCM complies with the substantive and procedural requirements set forth in the statute and the Commission's implementing regulations, including the requirement that the DCM submit certain prescribed information to the Commission, including but not limited to the contract's terms and conditions.[302] The Commission notes that the CEA also sets forth the standard that must be met by the DCM in order to list or amend a derivative contract—which would include a VCC derivative contract—namely, that the contract comply with the CEA and the regulations thereunder.[303]

The Commission also received a comment regarding the requirement that a contract submission to the Commission—including a submission with respect to a VCC derivative contract—include an ''explanation and analysis of the contract and its compliance with applicable provisions of the [CEA], including core principles and the Commission's regulations thereunder.'' [304] BPC urged the Commission to ''encourage consistency across DCMs in their development of the required 'explanation and analysis' of how their VCC derivative contract meets . . . this proposed guidance.'' [305]

The Commission notes that each DCM has an obligation to ensure, through its own review and analysis, that the derivative contracts that it seeks to list for trading—including any VCC derivative contracts—comply with the CEA and the regulations thereunder, and the DCM's contract submissions to the Commission should reflect this review and analysis. That said, by outlining certain relevant considerations for a DCM in connection with the design and listing of a VCC derivative contract, the Commission is hopeful that this guidance will help to support the standardization of such contracts in a manner that not only facilitates informed evaluations and comparisons by market participants, but also fosters greater consistency in VCC derivative product submissions to the Commission.

The Commission appreciates all of the comments that it received on this subject. After considering the comments, the Commission has determined to finalize its guidance regarding the product submission requirements under part 40 of the CFTC's regulations and CEA section 5c(c)(5)(C) as proposed.

5. Foreign Boards of Trade

The Commission requested comment on whether the VCC commodity characteristics identified in the Proposed Guidance should be recognized as being relevant to submissions with respect to VCC derivative contracts made by a registered foreign board of trade (''FBOT'') under CFTC regulation § 48.10.[306] Most commenters who

[295] *See* Better Markets at 13.

[296] Iconoclast at 4.

[297] BPC at 3.

[298] *Id.*

[299] *See* 17 CFR 38.252(a).

[300] WWF at 1.

[301] AFREF at 7; EDF at 2.

[302] CEA section 5c(c)(1), 7 U.S.C. 7a–2(c)(1); 17 CFR 40.2.

[303] CEA sections 5c(c)(1) and (5), 7 U.S.C. 7a–2(c)(1) and (5).

[304] 17 CFR 40.2(a)(3)(v) (for self-certification) and 40.3(a)(4) (for Commission approval).

[305] BPC at 3.

[306] 88 FR 89410 at 89421. CEA section 4(b)(1)(A), 7 U.S.C. 6(b)(1)(A), provides that the Commission may adopt rules and regulations requiring registration with the Commission for an FBOT that provides the members or other participants located in the United States with direct access to the

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responded were supportive of the VCC commodity characteristics being recognized as relevant to such FBOT submissions.[307] For example, after noting that both DCMs and registered FBOTs are held to a ''not readily susceptible to manipulation'' standard,[308] CME stated that if the Commission's guidance was intended to guard against the listing of contracts readily susceptible to manipulation, then the scope of the guidance should extend to FBOTs.[309] Conversely, one commenter stated that it did not support the application of the Commission's guidance to contract submissions by registered FBOTs. ICE stated that under the Commission's framework for registered FBOTs, the exchange's home country regulator is generally tasked with the primary oversight of the FBOT's contract terms.[310]

The Commission appreciates all of the comments that it received on this subject. The Commission acknowledges efforts that have been made across jurisdictions—by governmental bodies, private sector and multilateral initiatives, and derivative exchanges themselves—to support transparent markets for high-integrity VCCs. The Commission recognizes that its counterparts in other jurisdictions have similar regulatory interests in the manner in which VCC derivatives, as a product class, evolve—as well as in ensuring, more generally, that the financial markets that they oversee are liquid, fair, and stable, and free from manipulation and other abusive trading practices. The Commission further recognizes that, given the global nature of financial markets—including voluntary carbon markets—international coordination is critical to support market integrity. The Commission looks forward to continuing to coordinate with its regulatory counterparts on efforts to promote the integrity and orderly functioning of voluntary carbon markets, including markets for VCC derivative contracts.

III. Guidance Regarding the Listing of VCC Derivative Contracts

The Commission is issuing guidance that outlines factors for consideration by DCMs when addressing certain requirements under the CEA, and CFTC regulations, that are relevant to the listing for trading of VCC derivative contracts. The Commission recognizes that VCC derivatives are a comparatively new and evolving class of products, and believes that guidance that outlines factors for a DCM to consider in connection with the contract design and listing process may help to advance the standardization of such products in a manner that promotes transparency and liquidity.

This guidance does not establish new obligations for DCMs. Unlike a binding rule adopted by the Commission, which would state with precision when particular requirements do and do not apply to particular situations, this guidance is a statement of the Commission's views regarding factors that may be relevant in its evaluation of DCM compliance, and allows for flexibility in application to various situations, including consideration of all relevant facts and circumstances, whether or not explicitly discussed in the guidance. The Commission intends for this guidance to be an efficient and flexible vehicle to communicate the agency's current views, in order to give DCMs the benefit of the Commission's thinking as they address their Core Principle and regulatory compliance obligations.[311]

This guidance is not intended to modify or supersede existing Commission guidance that addresses the listing of derivative contracts by CFTC-regulated exchanges, including the Appendix C Guidance. Rather, taking into account certain unique attributes of VCC derivatives and voluntary carbon markets, this guidance outlines particular matters for consideration by a DCM when designing and listing a VCC derivative contract. Among other things, this guidance addresses how certain aspects of the Appendix C Guidance may be considered in the specific context of VCC derivative contracts.

This guidance focuses primarily on the listing by DCMs of physically-settled VCC derivative contracts. In part, this focus reflects the fact that all VCC derivative contracts that are currently listed for trading on DCMs are physically-settled contracts. To date, no DCM has listed for trading a cash-settled VCC derivative contract. In addition, the Commission believes that at this juncture in the evolution of VCC derivatives as a product class, it may be of particular benefit to outline considerations for a DCM that can help to ensure that, upon delivery, the quality and other attributes of VCCs underlying a derivative contract will be as expected by position holders. This will support accurate pricing, help reduce the susceptibility of the contract to manipulation, and foster confidence in the contract that can enhance liquidity.

While this guidance focuses primarily on physically-settled VCC derivative contracts, the Commission continues to believe that, with respect to cash-settled derivative contracts, an acceptable specification of the cash settlement price would include rules that fully describe the essential economic

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electronic trading and order matching system of the FBOT, including rules and regulations prescribing the procedures and requirements applicable to the registration of such FBOTs. CEA section 4(b)(1)(A)(i) provides that, in adopting such rules and regulations, the Commission shall consider, inter alia, whether any such FBOT is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the FBOT's home country. The Commission has adopted rules requiring the registration of FBOTs that seek to provide such direct access to members or other participants located in the United States, which among other things prescribe the procedures and requirements applicable to registration. These rules are set forth at part 48 of the Commission's regulations. Commission regulation § 48.10(a), 17 CFR 48.10(a), provides that a registered FBOT that wishes to make an additional derivative contract available for trading via direct access to members or other participants located in the United States must submit a written request ''prior to offering the contracts within the United States,'' which must include specified information, including the contract's terms and conditions. In general, the registered FBOT can make the contract available for trading by direct access 10 business days after the date of the Commission's receipt of the written request, unless the Commission notifies the FBOT that additional time is needed to complete its review of policy or other issues pertinent to the contract.

[307] *See, e.g.,* AFREF at 9; Carbonplace at 3; CEPI at 4; Charm at 3; CME at 8; C2ES at 5; IATP at 20; ICVCM at 7; NYSSCPA at 3; Public Citizen at 13; Xpansiv at 9.

[308] Commission regulation § 48.7(c)(1), 17 CFR 48.7(c)(1), provides, among other things, that that derivative contracts to be made available by a registered FBOT via direct access to members or other participants located in the United States must not be readily susceptible to manipulation. As discussed herein, DCM Core Principle 3, CEA section 5(d)(3), 7 U.S.C. 7(d)(3), provides that a DCM must only list derivative contracts that are not readily susceptible to manipulation. *See also* 17 CFR 38.200 and 38.201.

[309] CME at 2.

[310] ICE at 2. The Commission has adopted specific requirements for two types of derivative contracts offered by registered FBOTs for trading via direct access to members and other participants located in the United States: linked contracts and certain securities-related contracts. Commission regulation § 48.8(c), 17 CFR 48.8(c), imposes notification and reporting requirements on registered FBOTs related to their offering for trading via direct access of contracts that settle to the price of a futures contract listed on a DCM (''linked contracts''). Commission regulation § 48.7(c)(2), 17 CFR 48.7(c)(2), provides that registered FBOTs may only offer via direct access non-narrow-based security index futures and option contracts that have been certified by the Commission pursuant to Commission regulation § 30.13, 17 CFR 30.13, in accordance with criteria set forth in Commission regulation § 40.11, 17 CFR 40.11.

[311] For a number of the statutory Core Principles for DCMs, the Commission has adopted rules that establish the manner in which a DCM must comply with the Core Principle. Unless otherwise determined by the Commission by rule or regulation, a DCM has reasonable discretion in establishing the manner in which it complies with a Core Principle. CEA section 5(d)(1)(B), 7 U.S.C. 7(d)(1)(B).

characteristics of the underlying commodity.[312] Accordingly, the Commission believes that discussions in this guidance of VCC commodity characteristics for consideration by a DCM in connection with the design and listing of a physically-settled VCC derivative contract, would also be relevant for cash-settled derivative contracts that settle to the price of a VCC, unless otherwise noted.[313]

Further, while this guidance focuses on the listing of VCC derivative contracts by DCMs, the Commission believes that the factors outlined for consideration also would be relevant for consideration by any SEF that may seek to permit trading in swap contracts that settle to the price of a VCC, or in physically-settled VCC swap contracts.[314]

In developing this guidance, the Commission has considered those public comments on the RFI on Climate-Related Financial Risk that addressed product innovation and voluntary carbon markets, as well as comments received in response to the Proposed Guidance. Taking into account these comments, the Commission believes that this guidance furthers the agency's mission and may help to advance the standardization of VCC derivative contracts in a manner that fosters transparency and liquidity.[315]

The Commission recognizes that VCC derivative products and voluntary carbon markets are evolving and that it may therefore be appropriate for the Commission to revisit this guidance or to issue additional guidance in the future,[316] as VCC derivative products and voluntary carbon markets continue to develop and mature.[317]

A. A DCM Shall Only List Derivative Contracts That Are Not Readily Susceptible to Manipulation

DCM Core Principle 3 provides that a DCM shall only list for trading derivative contracts that are not readily susceptible to manipulation.[318] With respect to DCM Core Principle 3, the Appendix C Guidance (''Demonstration of Compliance That a Contract is Not Readily Susceptible to Manipulation'')[319] outlines certain relevant considerations for a DCM when developing contract terms and conditions, and providing supporting documentation and data in connection with the submission of a contract to the Commission.[320]

With respect to a physically-settled derivative contract, the Appendix C Guidance states that the terms and conditions of the contract should describe or define all of the economically significant characteristics or attributes of the commodity underlying the contract.[321] Among other things, failure to specify the economically significant attributes of the underlying commodity may cause confusion among market participants, who may expect a commodity of different quality, or with other features, to underlie the contract. This may render the precise nature of the commodity that the contract is pricing ambiguous, and make the contract susceptible to manipulation or price distortion.

The Appendix C Guidance states that, for any particular contract, the specific attributes of the underlying commodity that should be described or defined in the contract's terms and conditions ''depend upon the individual characteristics of the commodity.''[322] Where the underlying commodity is a VCC, the Commission recognizes that standardization and accountability mechanisms for VCCs are currently still developing. The Commission believes that the fact that standardization and accountability mechanisms for VCCs are currently still developing is, itself, an ''individual characteristic of the commodity'' that should be taken into account by a DCM when designing a VCC derivative contract and addressing the underlying commodity in the contract's terms and conditions.

To that end, the Commission recognizes that, while standardization and accountability mechanisms for VCCs are currently still being developed, there are certain characteristics that have been identified broadly—across both mandatory and voluntary carbon markets—as helping to inform the integrity of carbon credits. The Commission believes that a DCM should take these characteristics—referred to in this guidance as ''VCC commodity characteristics'' and discussed more fully below—into consideration when designing a VCC derivative contract, and addressing in the contract's terms and conditions the underlying VCC.

As a general matter, the Commission believes that a DCM should consider the VCC commodity characteristics when selecting one or more crediting programs from which eligible VCCs, meeting the derivative contract's specifications, may be delivered at the contract's settlement. The Commission believes that consideration of these characteristics will assist the DCM in understanding key attributes of the commodity—the VCC—that underlies the derivative contract.

More specifically, the Commission believes that, at a minimum, a DCM should consider the VCC commodity characteristics when addressing the following criteria in the design of a VCC derivative contract:

- Quality standards,
- Delivery points and facilities, and
- Inspection provisions.

These are among the criteria identified in the Appendix C Guidance as criteria for a DCM to consider addressing in the terms and conditions of a physically-settled derivative contract. As discussed above, addressing these three criteria clearly in

[312] Appendix C Guidance, paragraph (c)(1).

[313] As noted herein, and for the avoidance of doubt, this guidance is not intended to modify or supersede the Appendix C Guidance, which outlines considerations for both cash-settled and physically-settled derivative contracts—including considerations that are not touched on in this guidance. DCMs are reminded to consult and consider the Appendix C Guidance when developing rules, terms and conditions, and contract submissions to the Commission, for all derivative product types—including VCC derivative products.

[314] As noted above, the Appendix C Guidance is also relevant for SEFs, which, like DCMs, are obligated by statute only to permit trading in contracts that are not readily susceptible to manipulation. CEA section 5h(f)(3), 7 U.S.C 7b–3(f)(3). Like DCMs, SEFs also are subject to a statutory obligation to monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures. CEA section 5h(f)(4) 7, U.S.C 7b–3(f)(4). *See also* 17 CFR 37.400 through 37.408.

[315] *See also, e.g.,* International Emissions Trading Association comment in response to the Second Voluntary Carbon Markets Convening at 5–6 (stating that the CFTC is in a fortunate position to leverage the evolving work of existing initiatives to support the drive for quality and integrity in the voluntary carbon markets), and BP America, Inc. comment in response to the Second Voluntary Carbon Markets Convening at 3 (supporting guidance for CFTC-regulated exchanges).

[316] For example, the Commission may in the future revisit this guidance, or issue additional guidance, to further address the listing of cash-settled VCC derivative contracts, including index-based contracts, or to further address the listing of VCC derivative contracts by SEFs.

[317] For the avoidance of doubt, this guidance does not address the regulatory treatment of any underlying VCC or associated offset project or activity, including whether any such product, project or activity may qualify as a swap or be eligible for the forward contract exclusion under Commission's ''swaps'' definition. See Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 FR 48208 (August 13, 2012).

[318] CEA section 5(d)(3), 7 U.S.C. 7(d)(3).

[319] 17 CFR part 38, appendix C.

[320] *See also* section I.A., *supra.* As noted above, the Appendix C Guidance is also relevant to SEFs, which are similarly obligated by statute only to permit trading in derivative contracts that are not readily susceptible to manipulation. CEA section 5h(f)(3); 7 U.S.C 7b–3(f)(3).

[321] Appendix C Guidance, paragraph (b)(2)(i)(A).

[322] *Id.*

the contract's terms and conditions helps to ensure that trading in the contract is based on accurate information about the underlying commodity. This, in turn, helps to promote accurate pricing and helps to reduce the susceptibility of the contract to manipulation.

The Commission believes that, as a general matter, industry-recognized standards for high-integrity VCCs can serve as tools for DCMs, in connection with their consideration, with respect to a particular crediting program, of the VCC commodity characteristics outlined in this guidance. Where a crediting program for VCCs that are eligible for delivery under a derivative contract has been approved or certified by an industry-recognized standards program for high-integrity VCCs, the DCM should consider clearly identifying the standards program in the contract terms and conditions, along with the crediting program itself.

1. Quality Standards

The Commission believes that a DCM should consider the following VCC commodity characteristics when addressing quality standards in connection with the design of a VCC derivative contract: (i) transparency, (ii) additionality, (iii) permanence and risk of reversal, and (iv) robust quantification.[323]

The Commission also understands that the measures that a crediting program has in place with respect to social and environmental safeguards, and net zero alignment, may have a bearing on how market participants evaluate the quality of the VCCs that are issued by the crediting program. In light of this, a DCM may determine that it is appropriate to consider, when addressing quality standards in connection with derivative contract design, whether the crediting program for underlying VCCs has implemented measures to help ensure that credited mitigation projects or activities: (i) meet or exceed best practices on social and environmental safeguards, and (ii) would avoid locking in levels of GHG emissions, technologies or carbon intensive practices that are incompatible with the objective of achieving net zero GHG emissions by 2050.

i. Transparency—Publicly Available Data To Promote Transparency

As a threshold matter, the Commission believes that a DCM should provide, in the terms and conditions of a physically-settled VCC derivative contract, information about the VCCs that are eligible for delivery under the contract. The contract terms and conditions should clearly identify what is deliverable under the contract, including by providing information that readily specifies the crediting program or programs from which underlying VCCs may be issued. To the extent that underlying VCCs are associated with a specific category of mitigation project or activity—such as nature-based projects or activities—this also should be readily evident from the contract's terms and conditions.

Specifying which crediting programs and, as applicable, which types of projects or activities are eligible for purposes of delivery will help to provide clarity to market participants regarding the VCCs that can be expected to deliver under the contract, and will thereby help to ensure that the pricing of the contract accurately reflects the intended quality of the underlying VCCs. Where there is ambiguity or confusion about the quality of the VCCs that may be delivered under the contract, this may render the contract susceptible to manipulation or price distortion.

The Commission believes that, when designing a VCC derivative contract, DCMs should also consider whether the crediting program for underlying VCCs is making detailed information about its policies and procedures, and the projects or activities that it credits—such as relevant project documentation—publicly available in a searchable and comparable manner. Making such information publicly available would assist market participants in understanding how GHG emission reductions or removals are calculated by the crediting program—including how additionality, which is discussed further below, is assessed—and how GHG emission reductions or removals are quantified. This would assist market participants in making informed evaluations and comparisons of the quality of the VCCs that underlie derivative contracts, which would help to support accurate pricing.

ii. Additionality

The Commission believes that, in connection with the design of a VCC derivative contract, a DCM should consider whether the crediting program for underlying VCCs has procedures in place to assess or test for additionality. Additionality is recognized by many as an important element of a high-quality VCC. If holders of positions in a VCC derivative contract understand and intend for VCCs that are eligible for delivery under the contract to be additional, but in fact they may not be, then the pricing of the derivative contract may not accurately reflect the quality of the VCCs that may be delivered under the contract. The cheapest-to-deliver VCC,[324] that otherwise meets the contract's specifications, may not have additionality. Accordingly, the Commission believes the DCM should consider whether the procedures that a crediting program has in place to assess or test for additionality provide reasonable assurance that GHG emission reductions or removals will be credited only if they are additional.

While additionality is recognized by many as an important element of a high-quality VCC, the Commission understands that there currently is variation across the voluntary carbon markets in how, precisely, additionality is characterized. For example, an assessment of additionality may focus on whether VCCs are credited only for projects or activities that result in GHG emission reductions or removals that would not have been developed and implemented in the absence of the added monetary incentive created by the revenue from the sale of carbon credits. Alternatively or additionally, an assessment of additionality may focus on whether the project or activity is already required by law, regulation, or any other legally binding mandate applicable in the project's or activity's jurisdiction, or on other approaches such as performance standard approaches.[325] The Commission understands that the factors that inform an assessment of additionality also may vary depending on the type of mitigation project or activity in issue, and that, as the voluntary carbon markets continue to develop, industry consensus on how to characterize and assess additionality may evolve.

In recognition of the foregoing, the Commission is not providing in this guidance a definition of additionality. The Commission believes that, as a general matter, industry-recognized

[323] As is the case for physically-settled VCC derivative contracts, the Commission believes that for cash-settled derivative contracts that settle to the price of a VCC, it is important to clearly specify the VCC quality standards in the contract's terms and conditions to help ensure that the pricing of the contract reflects the quality of the VCC underlying the contract.

[324] The term ''cheapest-to-deliver'' refers to the least expensive commodity that can be delivered under the derivative contract that otherwise meets the contract's specifications.

[325] *See* Joint Policy Statement on Voluntary Carbon Markets, U.S. Department of the Treasury, May 2024, *available at: https://home.treasury.gov/system/files/136/VCM-Joint-Policy-Statement-and-Principles.pdf.*

standards for high-integrity VCCs can serve as tools for a DCM, in connection with its consideration of a particular crediting program's characterization of additionality, as well as the DCM's consideration of whether the crediting program's procedures to assess or test for additionality provide reasonable assurance that GHG emission reductions or removals will be credited only if they are additional, as so characterized.

iii. Permanence and Accounting for the Risk of Reversal

The Commission believes that, in connection with the design of a VCC derivative contract, a DCM should consider whether the crediting program for underlying VCCs has measures in place to address and account for the risk of reversal (*i.e.,* the risk that VCCs issued for a project or activity may have to be recalled or cancelled due to carbon removed by the project or activity being released back into the atmosphere, or due to a reevaluation of the amount of carbon reduced or removed from the atmosphere by the project or activity).

The risk of reversal may impact the risk management needs of VCC derivative market participants. Market participants that are utilizing physically-settled VCC derivative contracts to help meet their carbon mitigation goals have an interest in ensuring that, upon physical settlement, the underlying VCCs will actually reduce or remove the amount of emissions that they were intended to reduce or remove. Accordingly, the risk of reversal—and the manner in which it is accounted for by a crediting program—is tied to the quality of the underlying VCCs and, by extension, to the pricing of the derivative contract. The crediting program's measures to address and account for the risk of reversal may be particularly important where underlying VCCs are issued for project or activity types with a higher reversal risk.

Most crediting programs have established VCC ''buffer reserves'' to help address the risk of credited GHG emission reductions or removals being reversed. Under this approach, VCCs are set aside into a common buffer reserve (or ''pool''). Reserved VCCs can be drawn upon and cancelled, proportional to the magnitude of the reversal. A DCM should consider whether a crediting program has a buffer reserve in place to help address the risk of reversal. Relevant considerations with respect to a crediting program's buffer reserve could include whether the crediting program regularly reviews the methodology by which the size of its buffer pool is calculated in order to address evolving developments that may heighten reversal risk, and whether there is a mechanism in place to audit the continuing sufficiency of the buffer reserve. The Commission recognizes, however, that a crediting program may, now or in the future, have measures other than, or in addition to, a buffer reserve to address the risk of reversal. This guidance contemplates that a DCM should consider whether a crediting program has a buffer reserve and/or other measures in place to address such risk.

iv. Robust Quantification—GHG Emission Reductions or Removals Should Be Conservatively Quantified

Given the current absence of a standardized methodology or protocol to quantify GHG emission reduction or removal levels [326]—not only across crediting programs, but even by a particular crediting program, with respect to different types of projects or activities—the Commission believes that, in connection with the design of a VCC derivative contract, a DCM should consider whether there is reasonable assurance that the quantification methodology(ies) or protocol(s) used by the crediting program for calculating emission reductions or removals for underlying VCCs is robust, conservative, and transparent. A robust, conservative, and transparent quantification methodology or protocol helps to ensure that the number of VCCs that are issued for a project or activity accurately reflects the level of GHG emission reductions or removals associated with the project or activity.

Moreover, the Commission notes that for the derivative contracts that they list, DCMs are required to adopt, as is necessary and appropriate, exchange-set position limits for speculators.[327] To establish exchange-set position limits, a DCM should derive a quantitative estimate of the deliverable supplies of the underlying commodity for the delivery period specified in the contract.[328] A DCM's estimate of a VCC's deliverable supplies is likely to be informed by understanding how the relevant crediting program determines the amount of VCCs that are issued for credited projects or activities. Where the quantification methodology or protocol used to calculate the amount of VCCs is robust, conservative, and transparent, the DCM should have a more reliable basis from which to form its deliverable supply estimate. That deliverable supply estimate, in turn, can be used as the basis for effectively setting the DCM's exchange-set speculative position limits to help reduce the possibility of corners or squeezes that may distort or manipulate the price of the derivative contract.[329]

2. Delivery Points and Facilities

The Appendix C Guidance states that the delivery procedures for a physically-settled derivative contract should, among other things, seek to minimize or eliminate any impediments to making or taking delivery by both deliverers and takers of delivery, to help ensure convergence of cash and derivative contract prices at the expiration of the derivative contract.[330] When addressing delivery procedures in connection with the design of a physically-settled VCC derivative contract, the Commission believes that a DCM should consider the governance framework and tracking mechanisms of the crediting program for underlying VCCs, as well as the crediting program's measures to prevent double counting.[331]

i. Governance

The Commission believes that a DCM should consider whether the crediting program for underlying VCCs has in place a governance framework that supports the crediting program's independence, transparency and accountability. As a threshold matter, a governance framework that supports independence, transparency and

[326] Related specifically to the agriculture and forest sector, the Office of Management and Budget, the White House Office of Science and Technology Policy, and White House Office of Domestic Climate Policy announced the release of the National Strategy to Advance an Integrated U.S. Greenhouse Gas Measurement, Monitoring, and Information System, a Strategy developed by the Greenhouse Gas Monitoring and Measurement Interagency Working Group (''GHG IWG'') to enhance coordination and integration of greenhouse gas measurement, monitoring, and information efforts across the Federal government. The GHG IWG issued this Federal Strategy on November 29, 2023, *available at: https://www.whitehouse.gov/ostp/news-updates/2023/11/29/national-strategy-to-advance-an-integrated-u-s-greenhouse-gas-measurement-monitoring-and-information-system/.*

[327] CEA section 5(d)(5), 7 U.S.C. 7(d)(5). *See* also 17 CFR 38.300 and 38.301.

[328] Guidance on estimating deliverable supply can be found in the Appendix C Guidance.

[329] For a cash-settled VCC derivative contract, a DCM may similarly consider the deliverable supply of the underlying VCCs when setting exchange-set speculative position limits or historical open interest when establishing non-spot month position accountability levels. *See* 17 CFR 150.5 and appendix F to part 150, title 17.

[330] Appendix C Guidance, paragraph (b)(2)(i)(B).

[331] While cash-settled VCC derivative contracts do not result in the delivery of a VCC, the Commission believes that considering the VCC commodity characteristics of governance, tracking and no double counting when developing the terms and conditions of a cash-settled VCC derivative contract will help to ensure that the contract terms and conditions address essential economic characteristics of the underlying VCC in a manner that promotes accurate pricing and helps to reduce the susceptibility of the contract to manipulation.

accountability helps to ensure the overall quality of the VCCs issued by a crediting program. Furthermore, it is the Commission's understanding that a crediting program's registry may be used as a delivery point to facilitate physical settlement for a VCC derivative contract. A registry is a repository for tracking mitigation projects or activities and associated VCCs. An effective crediting program governance framework can help to ensure that the crediting program operates or makes use of a registry that has appropriate measures in place to facilitate the physical settlement of a VCC derivative contract.

Relevant factors when considering a crediting program's governance framework could include, among other things, the program's decision-making procedures, including who is responsible for administration of the program and conflict of interest measures such as how the independence of key functions is ensured; reporting and disclosure procedures; public and stakeholder engagement processes, including whether there are appeals mechanisms; and risk management policies, such as financial resources/reserves, cyber-security, and anti-money laundering policies. A DCM should consider whether detailed information regarding a crediting program's governance framework, such as information regarding the above-described procedures and policies, is made publicly available.

ii. Tracking

The Commission believes that a DCM should consider whether the crediting program for the underlying VCCs has processes and procedures in place to help ensure clarity and certainty with respect to the issuance, transfer, and retirement of VCCs. The DCM should consider whether the crediting program operates or makes use of a registry, and whether there is reasonable assurance that the registry has effective measures in place to track the issuance, transfer, and retirement of VCCs; to identify who owns or retires a VCC; and to make sure that each VCC is uniquely and securely identified and associated with a single emission reduction or removal of one metric ton of carbon dioxide equivalent.

iii. No Double-Counting

The Commission believes that a DCM should consider whether the crediting program for the underlying VCCs has measures in place that provide reasonable assurance that credited emission reductions or removals are not double counted. That is, that the VCCs representing the credited emission reductions or removals are issued to only one registry and cannot be used after retirement or cancelation. As discussed above in connection with the VCC commodity characteristics of additionality and permanence, market participants that are utilizing physically-settled VCC derivative contracts to help meet carbon mitigation goals have an interest in ensuring that, upon physical settlement, the underlying VCCs will actually reduce or remove the emissions that they were intended to reduce or remove. In order for VCCs to effectively further carbon mitigation goals, it is important for each credited VCC to be uniquely associated with a single emission reduction or removal of one metric ton of carbon dioxide equivalent; a crediting program should have measures in place that provide reasonable assurance of this. If there is not a reasonable assurance that the VCCs underlying a derivative contract are each unique, then, among other things, this could distort or obscure the accuracy of the derivative contract's pricing.

In the context of evolving national and international carbon markets and emissions trading frameworks, effective measures to ensure that emission reductions or removals are not double counted may include, among other things, procedures for conducting cross-checks across multiple carbon credit registries.

3. Inspection Provisions—Third-Party Validation and Verification

Consistent with the Appendix C Guidance, the Commission believes that any inspection or certification procedures for verifying compliance with quality requirements or any other related delivery requirements for physically-settled VCC derivative contracts should be specified in the contract's terms and conditions.[332] The Commission believes that these inspection or certification procedures should be consistent with the latest procedures in the voluntary carbon markets.

Additionally, the Commission believes that, when designing a VCC derivative contract, a DCM should consider whether there is reasonable assurance that the crediting program for underlying VCCs has up-to-date, robust and transparent procedures for validating and verifying that credited mitigation projects or activities meet the crediting program's rules and standards.

By providing independent confirmation that mitigation projects or activities are achieving the claimed GHG emission reductions or removals, third-party validation and verification can help to ensure that the underlying VCC accurately reflects the quality intended by the DCM and supports voluntary carbon market integrity.[333] Accordingly, a DCM should consider whether there is reasonable assurance that the crediting program's procedures reflect best practices with respect to third party validation and verification. Such best practices may include: crediting program reviews of the performance of its validators; procedures for remediating performance issues; not using the same third-party validator to verify every project type or project category; and using a separate third-party to conduct ongoing validation and verification from the third-party that completed the initial validation and verification process.

B. A DCM Shall Monitor a Derivative Contract's Terms and Conditions as They Relate to the Underlying Commodity Market

DCM Core Principle 4 requires a DCM to prevent manipulation, price distortion, and disruptions of the physical delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures.[334] For physically-settled derivative contracts, implementing Commission regulations under DCM Core Principle 4 require a DCM, among other things, to monitor the contract's terms and conditions as they relate to the underlying commodity market, and to the convergence between the contract price and the price of the underlying commodity, and to monitor the supply of the underlying commodity in light of the contract's delivery requirements.[335] Such monitoring will help a DCM identify circumstances that may cause the contract to become susceptible to price manipulation or distortions, and to assess whether the terms and conditions of the contract continue to be appropriate—or whether a change in circumstances should be addressed, for example, through changes to the contract's terms and conditions.[336]

[332] Appendix C Guidance, paragraph (b)(2)(i)(G) (noting that to the extent that formal inspection procedures are not used in the cash market, an acceptable specification would contain provisions that assure accuracy in assessing the commodity, that are available at a low cost, that do not pose an obstacle to delivery on the contract and that are performed by reputable, disinterested third party or by qualified designated contract market employees).

[333] *Id.*

[334] CEA section 5(d)(4), 7 U.S.C. 7(d)(4). *See also* 17 CFR 38.250 through 38.258.

[335] 17 CFR 38.252.

[336] The Commission has, similarly, recognized that a DCM has a responsibility to monitor the

Given that VCC derivatives are a comparatively new and evolving class of products, and given that standardization and accountability mechanisms for VCCs are still being developed, the Commission believes that the monitoring by a DCM of the terms and conditions of a physically-settled VCC derivative contract should include ongoing monitoring of the appropriateness of the contract's terms and conditions that includes, among other things, monitoring to ensure that the delivery instrument—that is, the underlying VCC—conforms or, where appropriate, updates to reflect the latest certification standard(s) applicable for that VCC. For example, where there are changes to either the crediting program or the types of projects or activities associated with the underlying VCC, due for example to new standards or certifications, then the DCM should amend the contract's terms and conditions to reflect this update. In such circumstances, the DCM should also ensure that it is monitoring the adequacy of the estimated deliverable supply of the underlying VCC to satisfy the contract's delivery requirements.

Finally, the Commission reminds market participants that Commission regulations implementing DCM Core Principle 4 require DCMs to have rules requiring their market participants to keep records of their trading that include records of their activity in the underlying commodity and related derivatives markets.[337] A DCM's rules also must require market participants to make such records available upon request to the DCM.[338] As such, DCM market participants are required, upon request, to make records of their trading in underlying VCC cash markets available to the DCM, in order to assist the DCM in fulfilling its market monitoring obligations. These records also are subject to Commission inspection under applicable Commission recordkeeping rules.

C. A DCM Must Satisfy the Product Submission Requirements Under Part 40 of the CFTC's Regulations and CEA Section 5c(c)

There are generally two processes by which a DCM may list a new derivative contract for trading.[339] The DCM may elect to list the contract for trading by providing the Commission with a written certification—a ''self-certification''—that the contract complies with the CEA, including the CFTC's regulations thereunder.[340] Alternatively, the DCM may elect voluntarily to seek prior Commission approval of the contract.[341] In each case, the DCM must submit prescribed information to the Commission, including but not limited to the contract's terms and conditions.[342] Amendments to an existing derivative contract also must be submitted to the Commission, along with prescribed information, either by way of self-certification or for prior Commission approval.[343]

This guidance highlights three submission requirements in connection with the listing of VCC derivative contracts. These requirements apply regardless of whether a DCM elects to list the contract by way of self-certification or with prior Commission approval. These requirements generally apply with respect to the listing by a DCM of a derivative contract, regardless of the underlying asset class. However, the Commission wishes to remind DCMs of the importance of fully complying with these requirements in a submission for a VCC derivative contract.

The relevant requirements provide, first, that a contract submission to the Commission must include an ''explanation and analysis'' of the contract and the contract's compliance with applicable provisions of the CEA, including core principles and the Commission's regulations thereunder.[344] Second, the relevant requirements provide that the explanation and analysis of the contract either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources.[345] Third, the relevant requirements provide that, if requested by Commission staff, a DCM must provide any additional evidence, information or data that demonstrates that the contract meets, initially or on a continuing basis, the requirements of the CEA or the Commission's regulations or policies thereunder.[346]

Since VCC derivatives are a comparatively new and evolving class of products, and since standardization and accountability mechanisms for VCCs are still being developed, the Commission anticipates that in connection with the submission for a VCC derivative contract, a DCM may provide qualitative explanations and analysis to assist in addressing the three above-described requirements. The Commission expects that the information—including supporting documentation, evidence and data—provided by the DCM to describe how the contract complies with the CEA and applicable Commission regulations, will be complete and thorough. This is especially important given unique and developing aspects of VCCs and VCC derivative markets. Including complete and thorough information will assist the Commission and its staff in their understanding of the contract and their analysis of the contact's compliance with applicable statutory and regulatory requirements, including whether or not the contract is readily susceptible to manipulation.

Issued in Washington, DC, on October 2, 2024, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts—Voting Summary and Chairman's and Commissioner's Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioner Goldsmith Romero voted in the affirmative. Commissioners Johnson and Pham voted to concur. Commissioner Mersinger voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

The Commission's final guidance for designated contract markets (DCMs or Contract Markets) that list derivatives on voluntary carbon credits (VCCs) as the underlying commodity is a critical step in support of the development of high-integrity voluntary carbon markets (VCMs). For the first time ever, a U.S. financial regulator is

continued appropriateness of the terms and conditions of a cash-settled derivative contract. *See, e.g.,* 17 CFR 38.253(a)(2).

[337] 17 CFR 38.254(a).

[338] *Id.*

[339] SEFs also may generally list new contracts by way of either of these two processes. *See,* generally, CEA section 5c(c), 7 U.S.C. 7a–2(c).

[340] CEA section 5c(c)(1), 7 U.S.C. 7a–2(c)(1). *See also* 17 CFR 40.2. The Commission must receive the DCM's self-certified submission at least one business day before the contract's listing. 17 CFR 40.2(a)(2).

[341] CEA sections 5c(c)(4) and (5), 7 U.S.C. 7a–2(c)(4) and (5). *See also* 17 CFR 40.3.

[342] 17 CFR 40.2 and 40.3.

[343] 17 CFR 40.5 and 40.6.

[344] 17 CFR 40.2(a)(3)(v) (for self-certification) and 40.3(a)(4) (for Commission approval). The ''explanation and analysis'' requirement for self-certified contracts provides for such explanation and analysis to be ''concise.'' The ''explanation and analysis'' requirement for contracts submitted for prior Commission approval does not include the ''concise'' qualifier. The Commission requires DCMs to provide a more detailed explanation and analysis of contracts that are submitted for affirmative Commission approval.

[345] 17 CFR 40.2(a)(3)(v) (for self-certification) and 40.3(a)(4) (for Commission approval).

[346] 17 CFR 40.2(b) (for self-certification) and 40.3(a)(10) (for Commission approval).

issuing regulatory guidance for contract markets that list financial contracts aimed at providing tools to manage risk, promote price discovery, and foster the allocation of capital towards decarbonization efforts.

The publication of this final guidance marks the culmination of over five years [1] of work with a diverse group of market participants, including agricultural stakeholders, ranchers, foresters, landowners, commercial end users, energy market stakeholders, emission-trading focused entities, carbon-credit rating agencies, crediting programs, CFTC-registered exchanges and clearinghouses, public interest groups, academics, and others. This guidance also represents a whole-of-government approach in coordination with our partners across the U.S. federal complex.

Each step has been intentional. I sponsored the Market Risk Advisory Committee's Climate-Related Market Risk Subcommittee, which issued a first-of-its-kind report on Managing Climate Risk in the U.S. Financial System in September 2020, that identified pricing carbon as a fundamental element for financial markets to efficiently allocate capital to reduce greenhouse gas emissions (GHGs).[2] I established the CFTC's Climate Risk Unit in March 2021 to support the Commission's building of subject matter expertise through external engagement, cooperation, and coordination regarding the role that climate-related derivatives play in pricing and managing climate-related financial risk.[3] I hosted two Voluntary Carbon Markets Convenings in June 2022 and July 2023 to gather information from a wide variety of market participants to better understand the potential role of the official sector in these markets, particularly as we began to see the emergence of listed futures products that reference underlying VCC cash markets.[4] The CFTC issued a Request for Information on Climate-Related Financial Risk in June 2022 that received 80 comments on ten priority areas of interest including VCMs and product innovation.[5] The Commission then issued proposed guidance with a request for public comment in December 2023, that received over 85 comments,[6] the majority of which generally supported the proposal. I have also testified before Congress on several occasions specifically on the role of financial markets in addressing the climate crisis and my views on the CFTC's role in supporting market-based solutions.[7]

The primary takeaway from this research, public engagement, and consultation is clear; the Commission should act, consistent with its statutory authority under the Commodity Exchange Act (CEA), to strengthen market integrity, transparency, and liquidity for derivatives with underlying voluntary carbon credits that are real, additional, permanent, verifiable, and each represent a unique metric ton of GHG emissions reduced or removed from the atmosphere.

While VCC derivatives are a comparatively new and evolving class of products, Contract Markets must ensure that any listed derivatives comply with the CEA and Commission regulations. The guidance outlines factors that Contract Markets may consider in connection with the VCC derivative contract design and listing process including: Core Principle 3, which requires Contract Markets to list only contracts that are not readily susceptible to manipulation; Core Principle 4, which requires Contract Markets to have the capacity and responsibility to prevent manipulation, price distortion, and other market disruptions through market surveillance, compliance, and enforcement practices and procedures; the Commission's regulations promulgated for these Core Principles; and the product submission provisions set forth in CEA section 5c(c) and part 40 of the Commission regulations.

The guidance is not intended to modify or supersede existing statutory or regulatory requirements, or existing Commission guidance that addresses a Contract Market's listing of derivative contracts, such as appendix C to part 38 of the Commission's regulations. Instead, the guidance outlines VCC characteristics for a Contract Market to consider in connection with the contract design and listing process for VCC derivatives to address certain requirements under the CEA and the Commission's rules.

These voluntary carbon credit characteristics are: (i) transparency, additionality, permanence and accounting for the risk of reversal, and robust quantification of emissions reductions or removals, for consideration when addressing quality standards; (ii) governance, tracking mechanisms, and measures to prevent double counting, for consideration when addressing delivery procedures; and (iii) third-party validation and verification, for consideration when addressing inspection or certification procedures. A Contract Market's consideration of these characteristics in connection with the design of the contract and the listing process should promote accurate pricing, reduce susceptibility of the contract to manipulation, help prevent price distortions, and foster confidence in the voluntary carbon credit contracts. Consistent with the current statutory and regulatory requirements, Contract Markets would retain reasonable discretion to comply with the DCM Core Principles and the Commission's regulations.

This guidance is the product of a strong public-private partnership that I have strived to achieve with both the CFTC's traditional stakeholders, as well as a variety of new stakeholders, including carbon market participants to support transparency, liquidity, market integrity, and ultimately scale in these markets. Today's guidance outlines well-researched VCC commodity characteristics that build on several mature private sector and multilateral initiatives that have made great strides to strengthen VCC credit integrity standards through technical analysis, expertise, and broad coalition building. With the benefit of public comment, the CFTC's final guidance specifically recognizes that private sector recognized standards for high-integrity VCCs can serve as tools for CFTC Contract Markets in connection with their consideration of the VCC commodity characteristics.

Recognizing the global nature of derivatives markets, the VCC guidance complements the important work underway by the International Organization of Securities Commissions (IOSCO) through its Sustainable Finance Task Force's Carbon Market Workstream, which I am leading with Verena Ross, the Chair of the European Securities and Market Authority. While this Commission guidance focuses on what Contract Markets may consider in designing and monitoring their proprietary listed VCC derivative contracts, IOSCO's work over nearly three years has been focused on how regulators can promote sound market structure and enhance financial integrity in the VCMs so that high-quality carbon credits can be traded in an orderly and transparent way. IOSCO is hard at work reviewing the many helpful comments received in response to the December 2023 VCM Consultation Report. I am looking forward to the next deliverable of that workstream, which is expected later this year.[8]

The CFTC's unique mission focused on risk mitigation and price discovery puts us on the front lines of the now global nexus

[1] *See, e.g.,* CFTC, Event: Advisory Committee Meetings, CFTC's Market Risk Advisory Committee to Meet June 12 to Discuss Climate-related Financial Risk (Jun. 12, 2019), *https://www.cftc.gov/PressRoom/Events/opaeventmrac051219.*

[2] Managing Climate Risk in the U.S. Financial System, Report to the CFTC's Market Risk Advisory Committee by the Climate-Related Market Risk Subcommittee (Sept. 2020), *https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.*

[3] *See* Press Release Number 8368–21, CFTC Acting Chairman Behnam Creates New Climate Risk Unit (Mar. 17, 2021), *https://www.cftc.gov/PressRoom/PressReleases/8368-21.*

[4] CFTC, Event: Commission Meetings, CFTC Announces Voluntary Carbon Markets Convening (Jun. 2, 2022), *https://www.cftc.gov/PressRoom/Events/opaeventcftccarbonmarketconvene060222*; and CFTC, Event: Commission Meetings, CFTC Announces Second Voluntary Carbon Markets Convening, (July 19, 2023), *https://www.cftc.gov/PressRoom/Events/opaeventvoluntarycarbonmarkets071923.*

[5] Request for Information on Climate-Related Financial Risk, 87 FR 34856 (Jun. 8, 2022), *available at https://www.cftc.gov/sites/default/files/2022/06/2022-12302a.pdf.*

[6] Proposed Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts and Request for Comment, 88 FR 89410 (Dec. 27, 2023), *https://www.cftc.gov/sites/default/files/2023/12/2023-28532a.pdf; See* comment file available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7463&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1_50.*

[7] *See, e.g.,* Rostin Behnam, Chairman, CFTC, Testimony by Chairman Rostin Behnam Before the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies Committee on Appropriations, U.S. House of Representatives (Mar. 28, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam35*; Rostin Behnam, CFTC, Testimony of Commissioner Rostin Behnam before the House Select Committee on the Climate Crisis (Oct. 1, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam16.*

[8] International Organization of Securities Commissions (IOSCO), CR06/2023 Voluntary Carbon Markets, Consultation Report (Dec. 2023), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD749.pdf.*

between financial markets and decarbonization efforts. Leveraging the CFTC's personnel and expertise demonstrates our commitment to taking a thoughtful and deliberate step toward building a financial system that provides effective tools in achieving emission reductions.

I thank my fellow commissioners for enabling the Commission to issue this final guidance. I greatly appreciate the expertise and the tremendous work done by staff in the Division of Market Oversight, the Office of the General Counsel, and in my office on this final guidance.

Appendix 3—Dissenting Statement of Commissioner Summer K. Mersinger

Today's non-binding VCC Guidance [1] to designated contract markets (''DCMs'') regarding listing of voluntary carbon credits (''VCCs'') derivative contracts is a solution in search of a problem. The Commodity Futures Trading Commission [2] has no shortage of topics that warrant our immediate attention. But instead of addressing those, we are issuing guidance on an emerging class of products that have very little open interest and comprise a miniscule percentage of trading activity on CFTC-regulated DCMs.[3]

In addition to issuing the VCC Guidance, the Commission has held multiple ''convenings,'' and the Division of Enforcement established a task force and issued a Whistleblower Office alert.[4] I question whether any other class of derivative products has received the outsized attention that VCC derivative contracts have received from the CFTC.

Guidance can play an important role in providing clarity and fostering transparency regarding rules that are complex and open to interpretation. That is why the Commission published existing guidance to DCMs through appendices B and C to part 38 of the Commission's regulations. But this new VCC Guidance on a singular class of derivatives contracts does very little to provide clarity, and it most certainly does nothing to foster transparency. Because the VCC Guidance is just guidance, it ''does not establish new obligations for DCMs.'' [5] So why are we engaged in a non-binding exercise that does little to provide clarity, does not foster transparency, and does not establish new obligations? It seems the only explanation is to set the stage for the Commission to promote a political agenda.

The VCC Guidance includes veiled attempts to propagate controversial political ideologies best left to debate by voters and elected officials. Specifically, the VCC Guidance states that, ''a DCM may determine that it is appropriate, when addressing quality standards in connection with derivative contract design, to consider whether the crediting program for underlying VCCs has implemented measures to help ensure that credited mitigation projects or activities *(i) meet or exceed best practices on social and environmental safeguards, and (ii) would avoid locking in levels of [greenhouse gas] emissions, technologies or carbon intensive practices that are incompatible with the objective of achieving net zero [greenhouse gas] emissions by 2050.*'' [6]

Environmental and Social Governance (ESG) compliance and Net—Zero goals are completely immaterial to the ability of the listed derivatives products to meet their regulatory obligations. Focusing on ESG and Net Zero in evaluating derivatives contracts is a backdoor attempt to inject and memorialize certain political ideologies into CFTC regulatory decisions.

The Commission should evaluate VCC derivative products as we would any other derivative product listed by a DCM, and we should regulate a DCM listing VCC derivative products the same way we regulate DCMs listing other derivatives products. Our outsized focus on the VCC derivative products and the underlying VCC markets looks a lot more like promotion of ideology than simply offering guidance. For these reasons, I respectfully dissent.

[FR Doc. 2024–23105 Filed 10–11–24; 8:45 am]

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[1] This statement will refer to Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts as ''VCC Guidance.''

[2] This statement will refer to the Commodity Futures Trading Commission as the ''Commission'', ''CFTC'', or ''Agency.'' All web pages cited herein were last visited on September 16, 2024.

[3] CME Group response to Request for Comment on Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts, at 5.

[4] CFTC Announces Second Voluntary Carbon Markets Convening (July 19, 2023) available at: *https://www.cftc.gov/PressRoom/Events/opaevent voluntarycarbonmarkets071923;* CFTC Release Number 8736–23 (''CFTC Division of Enforcement Creates Two New Task Forces'') (June 29, 2023) available at*: https://www.cftc.gov/PressRoom/PressReleases/8736-23;* CFTC Whistleblower Alert, (June 20, 2023) available at: *https://www.whistleblower.gov/sites/whistleblower/files/2023-06/06.20.23%20Carbon%20Markets%20WBO%20Alert.pdf.*

[5] VCC Guidance at page 27.

[6] VCC Guidance at page 39.

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Part VII

The President

Proclamation 10835—General Pulaski Memorial Day, 2024

Proclamation 10836—International Day of the Girl, 2024

Notice of October 11, 2024—Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

Notice of October 11, 2024—Continuation of the National Emergency With Respect to the Democratic Republic of the Congo

Federal Register
Vol. 89, No. 199
Tuesday, October 15, 2024

Presidential Documents

Title 3—

The President

Proclamation 10835 of October 10, 2024

General Pulaski Memorial Day, 2024

By the President of the United States of America

A Proclamation

Today, we pay tribute to General Casimir Pulaski, a Polish immigrant who served alongside American soldiers in the Revolutionary War and made the ultimate sacrifice for our Nation. And we honor the culture and contributions of all our Nation's Polish Americans who follow his legacy, standing up for the cause of freedom at home and around the world.

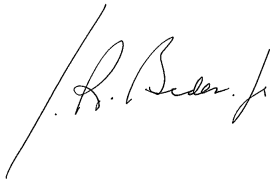
General Pulaski dedicated his life to the pursuit of liberty—not just for himself or his country but for all of us. Born and raised in Warsaw, Poland, he fought against the Russian domination of Poland—efforts that ultimately led him to flee his home country. Later in life, when he was offered an opportunity to join another fight for liberty on the other side of the world, he took it—joining our Nation's fight for independence. General Pulaski's service was critical: He led a critical counterattack that helped slow the British, and during the course of the war, it was said that he even saved George Washington's life.

General Pulaski's story and service are just one example of how much Polish Americans have shaped our Nation's history and our future. Our country's Polish-American communities have helped create new possibilities for all of us—leading in every sector, powering our economy, and enriching our culture. They also strengthen our deep alliance and partnership with Poland and its people at a critical time in our history. Since Russia's brutal invasion of Ukraine, the people of Poland have courageously stood up for freedom, liberty, and justice, rallying around the Ukrainian people and offering them safety and light in their darkest moments. At the same time, Poland has donated tanks, artillery, and aircraft to support Ukraine's self-defense all while becoming an important hub for aid from key partners.

No one knows better than the people of Poland that, in moments of great upheaval and uncertainty, what you stand for is important and who you stand with makes all the difference. Today, we celebrate General Casimir Pulaski, who decided to stand with our Nation to fight for our freedoms. And we honor all the Polish Americans, who continue to push our Nation forward and fight for a future based on our most fundamental values: dignity, liberty, and opportunity.

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 laws of the United States, do hereby proclaim October 11, 2024, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to General Casimir Pulaski, honoring all those who champion freedom around the world, and celebrating the vast contributions of the Polish American communities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, 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.



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Presidential Documents

Proclamation 10836 of October 10, 2024

International Day of the Girl, 2024

By the President of the United States of America

A Proclamation

Girls have the power to shake and shape our world. They will grow up to be doctors, CEOs, artists, entrepreneurs, tradeswomen, service members, scientists, or anything they put their minds to—leading our Nation to a bigger and brighter future. During International Day of the Girl, we honor the lives and contributions of girls worldwide, celebrate their limitless potential, and recommit to opening doors of opportunity so girls everywhere can realize their dreams.

Girls play an invaluable role in the success of our communities. When young women and girls are afforded the same opportunities as young men and boys, we are all better off. Economies grow, education rates and health outcomes improve, and political instability and violence decline. Yet, throughout the world, girls continue to face persecution, violence, and intimidation, and they are barred from fully participating in their communities—socially, educationally, economically, and politically.

That is why my Administration has taken steps to provide girls with the support they need to thrive, beginning in their homes and classrooms. My American Rescue Plan expanded the Child Tax Credit, which reduced child poverty to a historic low. The American Rescue Plan was also the largest one-time education investment ever in our Nation's history, bringing more teachers, counselors, social workers, after-school and summer programs, and tutoring to public schools across the country. My Administration continues to call on the Congress to restore the expanded Child Tax Credit, guarantee affordable high quality child care from birth to kindergarten for 16 million children, and make universal, free preschool available to every four-year-old in America. These actions would lift girls across the country out of poverty and ensure they enter the classroom ready and excited to learn.

In addition, my Administration made it easier for schools to leverage Medicaid to deliver mental health services to their students. We invested over $1.5 billion to strengthen the 988 Suicide and Crisis Lifeline, invest in school-based mental health services, and launched the National Mental Health Strategy, with ongoing investments to strengthen the mental health workforce, ensure mental health parity, and connect Americans to care. We remain dedicated to using every tool in our toolbox to empower girls both in and out of the classroom.

We also remain committed to ensuring that girls can live free from violence, fear, and abuse. Last month, we marked the 30th anniversary of the Violence Against Women Act (VAWA), a bill I authored more than three decades ago. Since then, every time we have reauthorized this law, we have strengthened it. For example, we broadened the law's protections to better address dating violence, sexual assault, and stalking. We expanded services for our Nation's most vulnerable populations and invested in prevention programs for young people. We provided more than $690 million in grants to over 40 VAWA-funded programs in States and Tribal communities nationwide. Through VAWA and other laws like the Victims of Crime Act and the Family Violence Prevention and Services Act, we are working every day to empower girls and end gender-based violence.

Furthermore, we are aggressively combating the harmful effects that social media can have on our children. My White House Task Force to Address Online Harassment and Abuse worked directly with parents and teens to develop ways for children to stay safe online and prevent the misuse of technology that harms girls. We are also tackling the next frontier of gender-based violence and abuse: deepfake images and videos generated by artificial intelligence. My Administration also restored and strengthened vital protections under Title IX to help keep students and employees safe from sexual assault and harassment on campus.

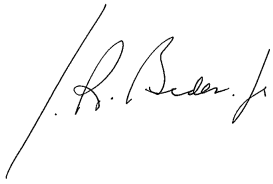
My Administration continues to stand with women and girls who are facing threats to their basic human rights in far too many conflicts around the world. We continue to condemn sexual violence committed by Russia's forces against women and girls in Ukraine, and we condemn the terrorist group Hamas' appalling, despicable acts of rape, mutilation, and other forms of sexual violence in Israel on October 7, 2023, and against hostages in captivity. In 2022, I signed a historic Presidential Memorandum to promote justice and accountability for acts of conflict-related sexual violence, and I have since announced dedicated sanctions and new initiatives to hold perpetrators accountable and support survivors. During this year's NATO Summit, we revised the Women, Peace, and Security Policy to address emerging security threats that put girls at risk, including the climate crisis and conflict-related sexual violence. And we are committed to eliminating child, early, and forced marriage and ending female genital mutilation and cutting, which have lifelong consequences on the health and well-being of victims, families, and communities.

Guided by the belief that our Nation and our world are at their best when there are endless possibilities for all women and girls, my Administration is devoted to helping girls reach their full potential. At the first Summit for Democracy, we established the Advancing Women's and Girls' Civic and Political Leadership Initiative to build and sustain girls' participation in political and civic engagement. And this year, my Administration launched Women Leading Effective and Accountable Democracy in collaboration with international allies to advance women and girls' leadership in democratic, peace, and security processes. And, thanks to the leadership of Vice President Harris, our Administration has galvanized more than $2.9 billion in investments to advance the economic status of women around the world, helping ensure girls will play a meaningful role in the industries of the future.

When First Lady Jill Biden spoke at the White House's first-ever celebration of Girls Leading Change last fall, she reminded the world about the power of girls. She said, ''I hope you leave here knowing that your boldness is beautiful, that you belong in all places of power, that your future can be anything you want it to be, and that you will never be in this alone.'' On this International Day of the Girl and every day, let us each commit to doing our part to create a brighter future worthy of the talents, aspirations, and dreams of all our girls. Because when girls do well, we all do well.

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 October 11, 2024, as International Day of the Girl. I call upon the people of the United States to observe this day with programs, ceremonies, and policies that advance equity and opportunity for girls everywhere.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, 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.



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Presidential Documents

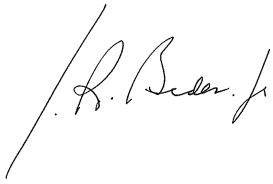
Notice of October 11, 2024

Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The actions of significant narcotics traffickers centered in Colombia continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and cause an extreme level of violence, corruption, and harm in the United States and abroad. For this reason, the national emergency declared in Executive Order 12978 of October 21, 1995, must continue in effect beyond October 21, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia declared in Executive Order 12978.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 11, 2024.

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Presidential Documents

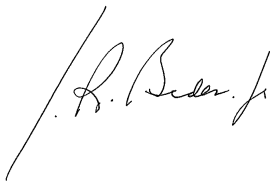
Notice of October 11, 2024

Continuation of the National Emergency With Respect to the Democratic Republic of the Congo

On October 27, 2006, by Executive Order 13413, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities that continue to threaten regional stability. The President took additional steps to address this national emergency in Executive Order 13671 of July 8, 2014.

The situation in or in relation to the Democratic Republic of the Congo continues to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13413 of October 27, 2006, as amended by Executive Order 13671 of July 8, 2014, must continue in effect beyond October 27, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo declared in Executive Order 13413, as amended by Executive Order 13671.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 11, 2024.

[FR Doc. 2024–23966
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