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The President

Establishment of the Carlisle Federal Indian Boarding School National Monument

By the President of the United States of America

A Proclamation

For a century and a half spanning the early 19th and mid-20th centuries, the Federal Government removed American Indian, Alaska Native, and Native Hawaiian children (Native children) from their families, Tribes, and homelands, often by force or coercion, and transported them to institutions across the United States. These institutions collectively became known as the “Federal Indian boarding school system.” The Federal Government’s goal was to assimilate Native children by stripping them of their languages, religions, and cultures. To that end, the children taken to these institutions were often separated from their families for years, and many never returned to their homes. The schools often used physical abuse, compulsory labor, and corporal punishment to achieve their assimilative ends. Many Native children were subjected to sexual abuse at the schools. School staff cut their hair, made them give up their traditional clothes and names, provided them with inadequate medical services, and deprived them of essential nutrition. According to available records, nearly 1,000 Native youths died in schools across the system, but the actual number of lives lost is likely much higher. Many children attempted to flee from schools in the system; while some managed to escape, those who did not often faced severe discipline. For the survivors of the schools, and for the families and Tribes whose children were taken from them, the trauma and violence inflicted by the Federal Indian boarding school system have had profound effects across multiple generations, and those impacts continue today.

The Federal Government’s attempt to control and assimilate Native children into Anglo-European culture, society, and religion through the Federal Indian boarding school system was part of a broader effort to destroy American Indian, Alaska Native, and Native Hawaiian political, social, and cultural structures; stifle opposition and resistance in those communities; and appropriate Tribal lands, waters, and resources. This effort was carried out through policies implemented at Federal Indian boarding schools and actions taken by multiple executive departments and agencies across the administrations of 34 Presidents—from Thomas Jefferson through Lyndon B. Johnson—using today’s equivalent of at least \$23 billion in Federal appropriations.

Despite this system and other destructive Federal policies, Indian Tribes (Tribes, or Tribal Nations), including Alaska Native Villages, and the Native Hawaiian Community retained their identities and cultures and rebuilt their political and community institutions, including by taking over and transforming some of the Federal Indian boarding schools that once caused widespread and enduring pain.

Founded in 1879, the Carlisle Indian Industrial School (Carlisle School) in Pennsylvania was the first Federal off-reservation boarding school for Native children. By the time it ceased operations in 1918, the Carlisle School had subjected 7,800 Indian children from more than 140 Tribes to its coercive form of education. Some children were as young as 5 years old when they arrived. The Federal Indian boarding school system, which continued through the 1960s following practices first used at the Carlisle

School, inflicted a legacy of individual, collective, and multi-generational trauma on Tribes and the Native Hawaiian Community.

The former campus of the Carlisle School is located within the boundaries of what is now the United States Army's Carlisle Barracks (Carlisle Barracks), one of the Nation's oldest military installations. The Continental Congress first used the property as a center for artillery and ordnance supplies for the Continental Army under General George Washington. In 1863, during the Civil War, Confederate troops torched buildings on the campus, which functioned at the time as a central supply center for the Union Army. The Federal Government rebuilt the barracks between 1863 and 1864 in the original footprint and style.

The Carlisle School campus was designated as a National Historic Landmark in 1961 and added to the National Register of Historic Places in 1966. The 24 historic structures associated with the Carlisle School include residential, vocational, and athletic buildings that evoke the Federal Indian boarding school era. Prominent among these are the historic School Road Gateposts. Constructed by the labor of children and youths at the Carlisle School, these gateposts were the first structures that some children taken to Carlisle would have seen as they walked along the pathway and entered the campus. The gateposts still stand today as a marker of the removal and separation of children from their families, Tribes, and homelands.

The concept of using the education of Native children and separation from their families and Tribes as weapons of control and religious conversion echoes back centuries to early colonial times in the 1600s. In 1819, the Congress laid the groundwork for a general system of Indian education by enacting the Civilization Fund Act (3 Stat. 516). The Act authorized the President to provide for "[e]mployment of instructors for Indians," including "for teaching their children in reading, writing, and arithmetic," and provided an annual appropriation of funds for that purpose. Over the ensuing five decades, these funds were distributed to various entities (particularly missionary organizations) and individuals "prominent in the effort to 'civilize' the Indians." At least 59 religious institutions and organizations received Federal Government funding to operate or support schools in the Federal Indian boarding school system.

The more immediate origins of the philosophy of the Federal Indian boarding school system trace to an organized "experiment of enforced civilization" in 1875. At that time, President Ulysses S. Grant's War Department, acting on directions from the Congress, selected Tribal members labeled as "hostiles" or "ringleaders" to be taken prisoner and transported by train from the West to Fort Marion, Florida. The United States Army targeted and arrested 72 members from a range of Tribes. The War Department then issued Special Orders detailing 1st Lieutenant Richard Henry Pratt of the 10th Cavalry to accompany the prisoners—a group of men, women, and children—on their trip and remain in charge of them upon arrival.

Pratt oversaw all aspects of the Fort Marion incarceration and treatment of the prisoners: cutting off their hair, clothing them in military uniforms, running military drills, selling their crafts and drawings, teaching them English, and assigning prisoners to work as laborers. During a speech delivered in 1892 to the National Conference of Charities and Corrections in Denver, Colorado, Pratt expressed his infamous approach to assimilation: "[T]hat all the Indian there is in the race should be dead. Kill the Indian in him and save the man." This soon became the blueprint and philosophy for how children would be treated at Federal Indian boarding schools.

In 1882, the Congress authorized the Secretary of War to set aside any vacant posts or barracks for industrial training for Indian youth and to detail Army officers for Indian education under the direction of the Secretary of the Interior. Three years earlier, in August 1879, the Secretary of War had approved the first such transfer, of the vacant Carlisle Barracks in Pennsylvania, to the Secretary of the Interior to be used as a school for Native children. On October 6, 1879, 83 American Indian and Alaska Native

children—24 girls and 59 boys—arrived at the newly founded Carlisle School. The Congress subsequently passed a law that paid a salary to Pratt, whom the Secretary of War had placed in charge of the Carlisle School at the request of the Secretary of the Interior. For almost 40 years, the Department of the Interior operated the Carlisle School as an Indian Industrial School, melding the approach of incarceration with assimilative education policies.

When children arrived at the Carlisle School, they were immersed in the practices of so-called “civilized” life—a term frequently used to describe the goal of the Federal Indian boarding schools in Federal Government reports. Their hair was cut and their clothing was replaced with military uniforms for boys and Victorian dresses for girls. One of the children brought to the Carlisle School in its opening year, Luther Standing Bear—a child of the Oglala Lakota Chief Standing Bear—later recounted his experience: “Now, after having my hair cut . . . I felt that I was no more Indian but would be an imitation of a white man.” Zitkala-Sa, a Dakota woman from the Yankton Sioux Reservation, recalled the confusion and fear she felt on her first day as a child at Carlisle, during which school officials dragged her from her hiding place under a bed, tied her to a chair, and forcibly cut her thick braids: “Then I lost my spirit. . . . In my anguish I moaned for my mother, but no one came to comfort me . . . for now I was only one of many little animals driven by a herder.”

All children at the Carlisle School experienced a regimented daily schedule starting at 6:00 a.m. and concluding with Taps and room inspection at 9:00 p.m. Sunday school, chapel services, Catholic instruction, and Bible study classes were required. Carlisle School instructors also imposed strict rules about teaching English and prohibited the children from speaking their native languages—a rule that was often enforced with corporal punishment.

“Vocational” or “industrial” training in the form of compulsory labor was a central component of the Carlisle School throughout its operation. Boys were assigned mechanics, blacksmithing, tin-smithing, wagon-making, carpentering, tailoring, shoemaking, harness-making, baking, painting, printing, and farming. Girls were assigned cooking, laundry, and housekeeping. In what became known as the “outing system”—an arrangement intended to “impart[] the lesson of Americanism”—Carlisle School administrators regularly sent children and youths to spend a portion of each year living with and working for white families. School administrators then deposited the children’s compensation “to their credit” with the school.

Carlisle School leaders also used the children’s labor to perform maintenance, construction, and operations work on the campus. Several buildings—including a large brick printing office, a gymnasium, a hospital, doctor’s quarters, a model home, a laundry building, the Leupp Indian Art Studio, and a warehouse—were primarily constructed by the youths of the Carlisle School.

The Carlisle School’s start as a Federal Indian boarding school coincided with the rise of American football. Although students also participated in other athletics, the Carlisle School used the football team as a means to earn publicity and garner support for the boarding school approach to assimilation. In 1899, the Carlisle School hired a well-known football coach, Glenn “Pop” Warner, and in the ensuing years the Carlisle football team boasted an impressive win-loss record, including victories over colleges such as Harvard and the University of Pennsylvania. Newspapers published articles with sensational stories and photographs of the Carlisle School games, spotlighting Carlisle student athletes Dennison Wheelock, Gus Welch, and Jim Thorpe. For a small number of players, like Thorpe, football provided access to higher educational opportunities and athletic success. But for most players, the Carlisle football team did not lead to additional opportunities.

Indeed, for the student body more generally, the athletic program amounted to another form of exploitation by the school. To fund the gymnasium, the Carlisle School took purported donations from the children’s Individual Indian Money Accounts, which were trust accounts created and managed

by the Federal Government. The school also used sales of items made by children and gate receipts from athletic events held on the Carlisle School's fields and cinder track for its own uses. A congressional investigation in 1914 received testimony that Warner used the Carlisle football game proceeds for his personal gain.

Conditions at the Carlisle School—located in a remote area over a thousand miles away from many children's homes—were unfamiliar and harsh. Children lived in close quarters and were exposed to diseases they had not encountered previously. More than 180 children died while attending the Carlisle School; many of them are buried in marked gravesites at the Carlisle Barracks Main Post Cemetery.

The Carlisle School's tenure as a Federal Indian boarding school ended in 1918, at the end of World War I, when the War Department took back control of the post and opened a hospital to care for wounded soldiers. At that time, 279 children left the Carlisle School and were transferred to other Federal Indian boarding schools.

The Carlisle School's legacy extends far beyond its almost 40 years of operation. The Carlisle School became a model replicated in more than 417 federally supported Indian boarding schools in 37 States and then-territories over the course of the next century. In addition, some Indian boarding schools were operated by religious institutions and organizations that did not receive Federal Government support. Across the Federal Indian boarding school system, the Federal Government's policies of cultural disruption and assimilation resulted in a collective loss of language, religion, and identity, and inflicted intergenerational trauma that persists today and remains a painful but important part of our Nation's story.

Many Tribal leaders resisted the Federal Indian boarding school system and took steps to try to protect Native children and reunite families. After the United States military entered Third Mesa of Hopi in 1890 and took 104 children from their families into the Federal Indian boarding school system, Hopi leaders refused to send additional Hopi children to the school. In response, in November 1894, the Federal Government arrested 19 Hopi leaders and held them as prisoners for nearly a year at Alcatraz Island in California, a former United States military installation. The names of these Hopi leaders were: Heevi'ima, Polingyawma, Masatiwa, Qotsventiwa, Piphongva, Lomahongewma, Lomayestiwa, Yukiwma, Tuvehoyiwma, Patupha, Qotsyawma, Sikyakeptiwa, Talagayniwa, Talasyawma, Nasingayniwa, Lomayawma, Tawalestiwa, Aqawsi, and Qoiwiso.

On May 23, 1881, Chief Spotted Tail and parents from the Rosebud Sioux Tribe requested that the Federal Government return the human remains of Rosebud Sioux Tribe children buried at the Carlisle School to their Indian Reservation in South Dakota. On July 14, 2021—over 140 years later—the Army transferred the human remains of nine children to the Rosebud Sioux Tribe to return them to their homelands. The names of these nine children were: Dennis Strikes First (Blue Tomahawk); Rose Long Face (Little Hawk); Lucy Take The Tail (Pretty Eagle); Warren Painter (Bear Paints Dirt); Ernest Knocks Off (White Thunder); Maud Little Girl (Swift Bear); Alvan, aka Roaster, Kills Seven Horses, One That Kills Seven Horses; Friend Hollow Horn Bear; and Dora Her Pipe (Brave Bull). The Army is currently implementing its Carlisle Barracks Disinterment Program, which, consistent with Army regulations and policy, promotes engagement with the Tribes and families of the children who died at the Carlisle School to return their remains to their ancestral homelands. This program has successfully disinterred and returned the remains of 41 children to their families.

Many buildings that made up or are connected to the original Carlisle School campus remain. Twenty-four historic structures associated with the Carlisle School have been preserved by the Army and stand today within the National Historic Landmark district at Carlisle Barracks. In addition to those structures mentioned above, the site also includes living quarters, the Superintendent's residence, the "Pop" Warner House, Washington Hall,

the Hessian Powder Magazine (built in 1777 and known since 1870 as a guard house), and athletic fields that parallel the original Carlisle School track. The four School Road Gateposts, when constructed in 1910, marked the main entrance to the boarding school campus.

Designating the former campus of the Carlisle School, with boundaries consistent with the National Historic Landmark, as a national monument will help ensure this shameful chapter of American history is never forgotten or repeated. Establishing a national monument at the historic Carlisle School and acknowledging the Federal Government's policies aimed at destroying Tribal and Indigenous political structures, cultures, and traditions—including through the Federal Indian boarding school system—takes a step toward redress and national healing in the arc of the survival, resilience, and triumph of Indian Tribes (including Alaska Native Villages) and the Native Hawaiian Community.

WHEREAS, section 320301 of title 54, United States Code (the “Antiquities Act”), authorizes the President, in the President's discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected; and

WHEREAS, the Department of the Interior, at the direction of the Secretary of the Interior, who is herself a descendant of survivors of the Federal Indian boarding school system, established the Federal Indian Boarding School Initiative, which has helped bring to light the extensive breadth and depth of the role the Federal Government played in creating the Federal Indian boarding school system; and

WHEREAS, I issued a long-overdue Presidential apology to Tribal Nations and Native people on behalf of the Federal Government acknowledging the lasting harms caused by the Federal Indian boarding school policy and recognizing the need to learn from this history and advance the goal of healing; and

WHEREAS, the Carlisle School was the Nation's first off-reservation Federal Indian boarding school, provided a template for institutions across the Nation and internationally for its assimilation practices, and today remains one of the Nation's best-preserved examples of the Federal Indian boarding school era; and

WHEREAS, the Department of the Army (Army) has taken steps to preserve part of the Carlisle School campus and the historic objects it contains, ensuring that its history can be told; and

WHEREAS, the historic buildings and pathways that are part of the Carlisle School campus—where thousands of Native children lived, and in some cases died, far from their families, Tribes, and homelands; were compelled to participate in school activities designed to separate them from their cultures and identities; and performed compulsory manual labor—are important historic objects that reflect and embody the Carlisle School's years of operation and the similar practices of other institutions in the Federal Indian boarding school system; and

WHEREAS, the School Road Gateposts are a nationally significant passageway and an historic object on the site through which Native children walked after being removed from their homes and families during the Federal Indian boarding school era, and are contributing features of the Carlisle Indian Industrial School National Historic Landmark first designated by the Secretary of the Interior in 1961 and updated in 1985; and

WHEREAS, designation of the monument will further the efforts of the United States to aid in recovery, reconciliation, and healing for Indian Tribes, the Native Hawaiian Community, and survivors and their descendants

affected by the Federal Indian boarding school system, while honoring and mourning the lives of Native children lost and celebrating those who persisted; and

WHEREAS, I find that all the objects identified above, and objects of the type identified above within the area described herein, are objects of historic interest in need of protection under section 320301 of title 54, United States Code, regardless of whether they are expressly identified as objects of historic interest in the text of this proclamation; and

WHEREAS, I find that the boundaries of the monument reserved by this proclamation represent the smallest area compatible with the proper care and management of the objects of historic interest identified above, as required by the Antiquities Act; and

WHEREAS, it is in the public interest to preserve and protect the objects of historic interest associated with the Carlisle School and its prominent role in the story of Federal Indian boarding schools instituted under the United States policy of forced assimilation of Native children;

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be part of the Carlisle Federal Indian Boarding School National Monument (monument) and, for the purpose of protecting those objects, reserve as part thereof all lands and interests in lands that are owned or controlled by the Government of the United States within the boundaries described on the accompanying map, which is attached to and forms a part of this proclamation. The reserved Federal lands and interests in lands within the monument's boundaries consist of approximately 24.5 acres, which are coextensive with the boundaries of the Carlisle Indian Industrial School National Historic Landmark and lie within the approximately 520-acre boundary of Carlisle Barracks. The boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws or laws applicable to the Army, including withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral, solar, and geothermal leasing. The establishment of the monument is subject to valid existing rights.

The Secretary of the Army is hereby directed to transfer to the National Park Service (NPS) administrative jurisdiction over the approximately 258 square feet (0.006 acres) identified by the Army as the School Road Gateposts. In furtherance of the Antiquities Act and pursuant to their respective legal authorities, the Secretary of the Interior and the Secretary of the Army shall manage the monument through the NPS and the Army, respectively. The management of the monument shall be conducted in a cooperative manner, in accordance with the terms, conditions, and direction provided by this proclamation, and consistent with an agreement between the NPS and the Army that details their respective duties and responsibilities for management of the monument.

Following transfer of administrative jurisdiction over the School Road Gateposts, the NPS shall administer that portion of the monument, and the Army shall continue to administer the remaining portion of the monument. The NPS shall be responsible for interpretation of and education regarding the entirety of the monument in consultation with the Army.

Within 3 years of the date of this proclamation, or as soon as practicable to incorporate Tribal views, knowledge, and expertise, as appropriate, for the purpose of preserving, interpreting, and enhancing the public understanding and appreciation of the monument, the NPS, in consultation with

the Army, shall prepare a management plan for the monument. The management plan shall ensure the monument fulfills the following purposes for the benefit of present and future generations: (1) to preserve the historic resources within the boundaries of the monument; (2) to interpret the story of the Carlisle School and its significance to the history of the Federal Indian boarding school system; and (3) to commemorate the efforts and resilience of Tribal Nations and Indigenous Peoples, including survivors of the Carlisle School and others affected by Federal Indian boarding schools, who are working to advance healing and reconciliation, to recover Native languages and cultures, and to chart a vibrant future for all Native children.

In recognition of the centrality of Tribal participation to tell this story, to inform interpretation of the objects that are part of the monument, and to enhance public understanding and appreciation of the monument, the Secretary of the Interior, through the NPS and in coordination with the Army, shall meaningfully engage Tribal Nations and the Native Hawaiian Community in the development of the management plan and ongoing management of the monument. The Secretary of the Interior, through the NPS, shall also take steps to ensure that management decisions affecting the monument incorporate Tribal expertise and Indigenous Knowledge in an appropriate manner consistent with Tribal Nations' concerns for protecting Indigenous Knowledge and expertise. The Secretary of the Interior, through the NPS, shall enter into an agreement with interested federally recognized Indian Tribes to set forth terms, pursuant to applicable laws, regulations, and policies, for co-stewardship of the monument. The Secretary of the Interior, through the NPS, shall also provide for consultation with any federally recognized Indian Tribe with historical connections to any part of the Federal Indian boarding school system regarding the interpretation of that system's history at the monument.

As the Federal Indian boarding school system affected nearly every Indian Tribe (including Alaska Native Villages) and the Native Hawaiian Community, and in view of the wide array of resulting experiences and perspectives, the Secretary of the Interior, through the NPS, is also directed, as appropriate, to use applicable authorities to seek to enter into agreements with other entities to address common interests related to the interpretation of and education regarding the monument, and care and preservation of historic objects therein. These entities may include Dickinson College; the Cumberland County Historical Society; Phoenix Indian School; Haskell Indian Nations University; Stewart Indian School Cultural Center and Museum; Sheldon Jackson Museum; Fort Apache Heritage Foundation, Inc.; Kamehameha Schools; and existing National Park System units with resources related to the Federal Indian boarding school system.

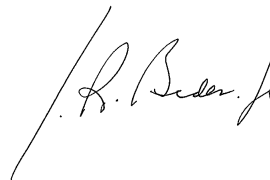
Nothing in this proclamation shall affect or diminish the Army's authority to administer Carlisle Barracks, including the Army's ability to execute its mission at Carlisle Barracks, or the Army's obligations to comply with environmental protection and historic preservation laws or engage in appropriate Tribal consultation. Further, nothing in this proclamation shall limit the Army's ability to control public access to Carlisle Barracks or take all necessary measures to ensure emergency preparedness, safety, and security.

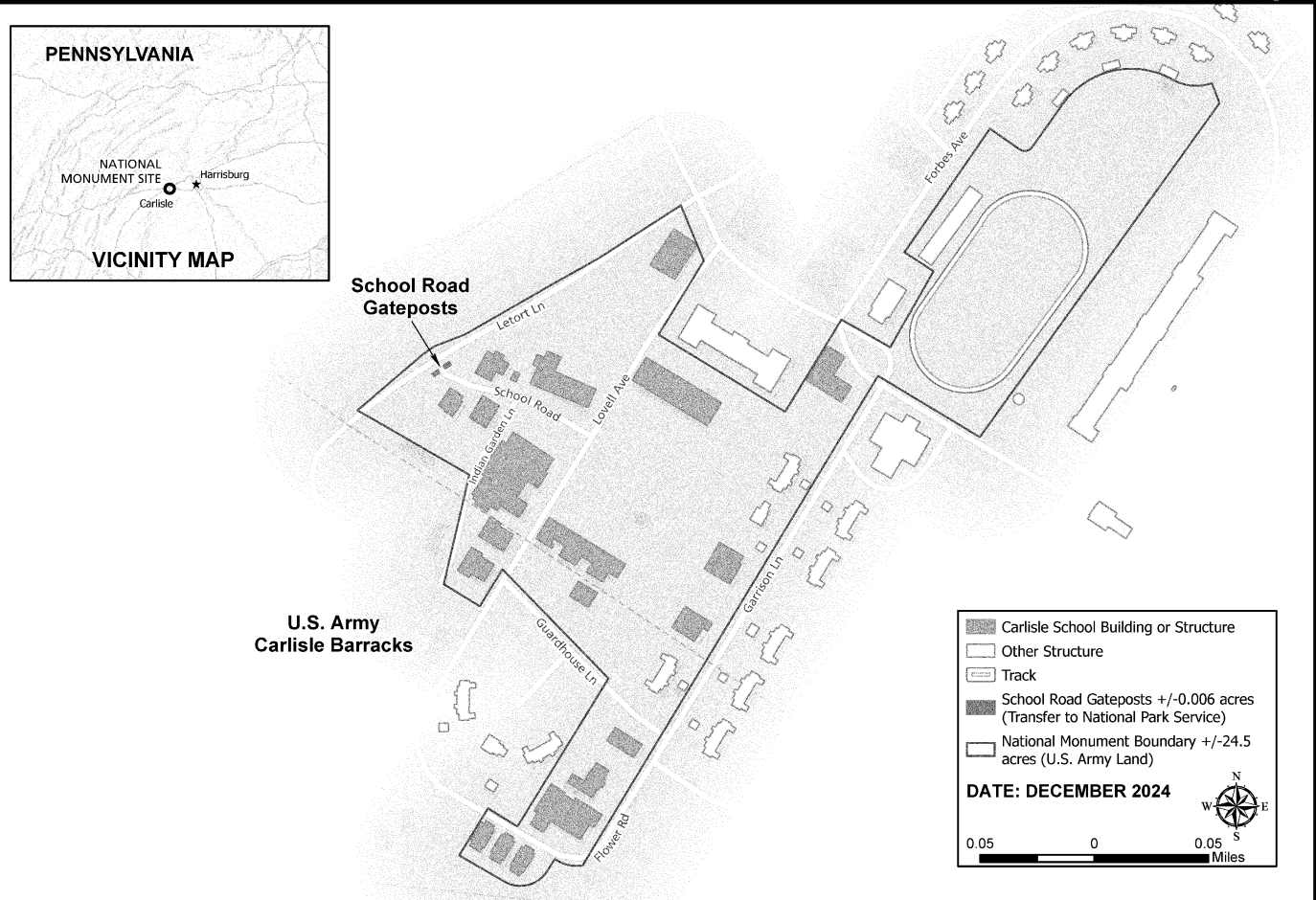
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof.

If any provision of this proclamation, including application to a particular parcel of land, is held to be invalid, the remainder of this proclamation and its application to other parcels of land shall not be affected thereby.

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

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

Carlisle Federal Indian Boarding School National MonumentNational Park Service
U.S. Department of the Interior

[FR Doc. 2024-29459

Filed 12-11-24; 8:45 am]

Billing code 4310-10-C

Presidential Documents

Proclamation 10871 of December 9, 2024

Human Rights Day and Human Rights Week, 2024

By the President of the United States of America

A Proclamation

On Human Rights Day and during Human Rights Week, we recommit to upholding the equal and inalienable rights of all people.

America was founded on an idea—that every person is created equal and deserves to be treated equally throughout their lives. And 76 years ago today, after the wreckage of 2 world wars and the Holocaust, the United States joined countries around the globe to enshrine this idea into a Universal Declaration of Human Rights. We also helped establish the United Nations, upholding the inherent dignity of every person on the world stage and establishing a rules-based international order. Today, our country continues to stand with our partners and allies to defend human rights and fundamental freedoms around the world—from combatting threats to silence and intimidate human rights defenders like journalists to championing democracy, fair elections, and the universal human rights to freedoms of association, peaceful assembly, religion, and expression. When crises erupt, we protect civilians from mass atrocities, promote accountability for those responsible for human rights violations and abuses, seek to free political prisoners, and create space for civilian dialogue. This year, we also recognize another landmark achievement in the global fight for human rights with the 40th anniversary of the adoption of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. And we continue to stand with free people everywhere who are bravely fighting for justice and defending life and liberty at home and around the world.

My Administration has been committed to protecting the dignity and rights of people here at home and around the globe. We established the White House Gender Policy Council to advance the rights and opportunities of women and girls across domestic and foreign policy—from preventing and responding to gender-based violence to promoting participation in peace and security efforts. We rejoined the United Nations Human Rights Council to highlight and address pressing human rights concerns. From the beginning of my Administration, we have worked to protect the rights of LGBTQI+ people, working toward a future where no one is targeted or persecuted because of who they are. We are working to ensure all people are treated equally and have equal access to opportunities, no matter who they are or where they come from. We have made progress in bringing new investments to communities that have too often been left behind and in expanding accessibility for people with disabilities. And we have worked to advance technology in support of democracy and internet freedom, while leading important efforts to stop the expansion and misuse of commercial spyware, which has enabled human rights abuses around the world.

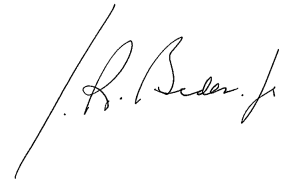
I have made the preservation of democracy—the best tool for protecting human rights—the central cause of my Presidency. That is why we convened the Summit for Democracy to strengthen democratic institutions, root out corruption, promote gender equality and human rights, and reject political violence. There will always be forces that pull the world apart: aggression, extremism, chaos, cynicism, and a desire to retreat from the world and go it alone. The task of our time is to ensure that the forces holding

us together are stronger than those that are pulling us apart. Together, we can make sure our shared values and determination withstand any challenge.

Today and this week, may we reaffirm our commitment to standing up for human rights at home and around the world. The future will be won by those who unleash the full potential of their people to live with dignity, prosper, think freely, innovate, and exist and love openly without fear. Together, nothing is beyond our capacity.

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 December 10, 2024, as Human Rights Day and the week beginning December 10, 2024, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

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

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

Rules and Regulations

Federal Register

Vol. 89, No. 239

Thursday, December 12, 2024

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

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

DEPARTMENT OF ENERGY

10 CFR Part 420

RIN 1930-AA01

Mandatory Transmission and Distribution Planning Support Activities

AGENCY: Office of State and Community Energy Programs, State Energy Program, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) published an interim final rule on April 29, 2024, that amends the State Energy Program (SEP) regulations to incorporate certain changes made to the DOE-administered formula grant program by the Infrastructure Investment and Jobs Act of 2021. DOE is adopting the interim final rule as final without changes.

DATES: This rule is effective on December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Ari Gerstman, U.S. Department of Energy, Office of State and Community Energy Programs, State Energy Program, SCEP-30; 1000 Independence Avenue SW, Washington, DC 20585-0121; or Telephone: (240) 388-5805; or Email: ari.gerstman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

The U.S. Department of Energy's State Energy Program provides financial assistance in the form of formula grants to States, U.S. territories, and the District of Columbia (hereinafter referred to as States)¹ for a wide variety of energy efficiency and renewable energy initiatives authorized under the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163), as amended. 42 U.S.C. 6321 *et seq.* Section 40109(a)(3) of the Infrastructure

Investment and Jobs Act (IIJA 2021) (Pub. L. 117-58) amended Section 362(c) of EPCA, which pertains to the mandatory features of State energy conservation plans. 42 U.S.C. 6322(c). The submission of such plans is required for a State's participation in SEP and receipt of a formula grant.

II. Discussion

On April 29, 2024, DOE issued an interim final rule that amended SEP regulations in part 420 of title 10 of the Code of Federal Regulations to incorporate the IIJA 2021 amendments. 89 FR 33194. As discussed in the interim final rule, section 40109 of IIJA 2021 amended section 362(c) of EPCA to include a new paragraph (7) that mandates the inclusion of transmission and distribution planning support activities into States' energy conservation plans.² 42 U.S.C. 6322(c). DOE amended 10 CFR 420.15 to include a new paragraph (g) adopting statutory requirement verbatim. DOE also revised the reference to the EPCA included in the 10 CFR part 420 authority line from Part D to Part B through the interim final rule.

DOE issued the interim final rule without prior notice and opportunity for public comment for two reasons. First, because the Administrative Procedure Act's (APA) requirements for notice and public comment do not apply "to the extent that there is involved . . . a matter related to agency . . . grants, benefits, or contracts." 5 U.S.C. 553(a)(2), emphasis added. SEP is a program that provides formula and competitive grants, as well as technical assistance to States to enhance energy security, advance State-led energy initiatives, and increase energy affordability.

Second, the rulemaking covered a nondiscretionary action because DOE adopted the section 40109(a)(3) of IIJA 2021 amendment without further substantive change in SEP's regulations. A more comprehensive discussion is available in section II of the interim final rule.

² The mandatory plan features include "the mandatory conduct of activities to support transmission and distribution planning, including—(A) support for local governments and Indian Tribes; (B) feasibility studies for transmission line routes and alternatives; (C) preparation of necessary project design and permits; and (D) outreach to affected stakeholders." 42 U.S.C. 6322(c)(7).

In response to the interim final rule, SEP received no comments. Because DOE did not receive any comments in response to the interim final rule, the interim final rule is adopted as final without change. For the reasons stated in this document, SEP is finalizing the interim final rule without change.

III. Procedural Requirements

A. Review Under Executive Orders 12866, 13563, and 14094

This final rule has been determined not to be a "significant regulatory action" under E.O. 12866, Regulatory Planning and Review, 58 FR 51735 (October 4, 1993) as supplemented and reaffirmed by E.O. 13563, "Improving Regulation and Regulatory Review," 76 FR 3821 (January 21, 2011) and amended by E.O. 14094, "Modernizing Regulatory Review," 88 FR 21879 (April 11, 2023). Accordingly, this rule was not subject to review under the E.O. by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB).

B. Administrative Procedure Act

The APA, 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule becomes effective. 5 U.S.C. 553(b)–(c). However, the APA provides that the requirements of 5 U.S.C. 553 do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants, benefits, or contracts." The interim final rule amended SEP's regulations to include the new mandatory State energy conservation plan features established by section 40109(a) of the IIJA 2021, which amended SEP's State energy conservation plan requirements. States applying for SEP grants are required to submit plans that consider these, and the other mandatory features established in statute and codified in SEP's regulations. Because the rulemaking amended SEP's regulations at 10 CFR 420.15 to include features States must satisfy to receive a grant from SEP, the APA's general notice and comment requirements do not apply.

C. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been

¹ Per 10 CFR 420.2, "state" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

III. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs—energy, Technical assistance.

Signing Authority

This document of the Department of Energy was signed on December 5, 2024, by David Crane, Under Secretary for Infrastructure, 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 December 6, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

PART 420—STATE ENERGY PROGRAM

■ Accordingly, the interim final rule amending 10 CFR 420.15, which was published at 89 FR 33194 on April 29, 2024, is adopted as final without change.

[FR Doc. 2024–29062 Filed 12–11–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 429

Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment

CFR Correction

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

■ In Title 10 of the Code of Federal Regulations, Parts 200 to 499, revised as of January 1, 2024, in section 429.69, at

the end of paragraph (a)(1)(iii), reinstate the text “Represented values must be rounded to the nearest hundredth.”

[FR Doc. 2024–29415 Filed 12–11–24; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2293; Airspace Docket No. 24–ACE–8]

RIN 2120–AA66

Amendment of Class E Airspace; Ottumwa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Ottumwa, IA. This action is the result of an airspace review conducted due to the decommissioning of the Ottumwa very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. This action also updates the name and geographic coordinates of the airport to coincide with the FAA’s aeronautical database. This action brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, February 20, 2025. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support

Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2024–2293 in the **Federal Register** (89 FR 80432; October 3, 2024) proposing to amend the Class E airspace at Ottumwa, IA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This amendment to 14 CFR part 71: Modifies the Class E surface area at Ottumwa Regional Airport, Ottumwa, IA, by removing the Ottumwa VOR/DME and associated extension from the airspace legal description; and updates the name (previously Ottumwa Industrial Airport) and geographic

coordinates of the airport to coincide with the FAA's aeronautical database;

And modifies the Class E airspace extending upward from 700 feet above the surface at Ottumwa Regional Airport by removing the Ottumwa VOR/DME and the associated extensions from the airspace legal description; and updates the name (previously Ottumwa Industrial Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designates as a Surface Area.

* * * * *

ACE IA E2 Ottumwa, IA [Amended]

Ottumwa Regional Airport, IA
(Lat. 41°06'26" N, long. 92°26'50" W)

Within a 4.1-mile radius of Ottumwa Regional Airport.

* * * * *

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

* * * * *

ACE IA E5 Ottumwa, IA [Amended]

Ottumwa Regional Airport, IA
(Lat. 41°06'26" N, long. 92°26'50" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Ottumwa Regional Airport.

* * * * *

Issued in Fort Worth, Texas, on December 9, 2024.

Steven T. Phillips,

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

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BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

[Docket No. 241206–0314]

RIN 0625–AB20

Procedures and Rules for Article 10.12 of the United States-Mexico-Canada Agreement; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Rule; correction.

SUMMARY: On January 31, 2024, the Department of Commerce (Commerce) updated and made final an interim final rule that amended its regulations pertaining to the procedures and rules related to Article 1904 of the North American Free Trade Agreement (NAFTA) with appropriate references to the United States-Mexico-Canada Agreement (USMCA), which went into effect on July 1, 2020. This rule is correcting language in the regulations which was erroneously duplicated.

DATES: Effective December 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Scott D. McBride, Associate Deputy Chief Counsel, at (202) 482–6292 or Spencer Neff, Senior Attorney, at (202) 482–8184.

SUPPLEMENTARY INFORMATION: On January 31, 2024, the Department of Commerce published a final rule amending its regulations pertaining to the procedures and rules related to Article 1904 of the North American Free Trade Agreement (NAFTA) with appropriate references to the United States-Mexico-Canada Agreement (USMCA), which went into effect on July 1, 2020 (89 FR 6011). The final rule erroneously duplicated language in 19 CFR 356.8(b)(2) from § 356.8(b)(1). This amendment corrects § 356.8(b)(2).

List of Subjects in 19 CFR Part 356

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Countervailing duties, Imports.

Dated: December 6, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Accordingly, 19 CFR part 356 is corrected by making the following correcting amendment:

PART 356—PROCEDURES AND RULES FOR ARTICLE 10.12 OF THE UNITED STATES-MEXICO-CANADA AGREEMENT

- 1. The authority citation for part 356 continues to read as follows:

Authority: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

- 2. In § 356.8, revise paragraph (b)(2) to read as follows:

§ 356.8 Continued suspension of liquidation.

* * * * *

(b) * * *

(2) A participant in a binational panel review that was a party to the proceeding, as described in section 771(9)(A) of the Act (19 U.S.C. 1677(9)(A)), may request continued suspension of liquidation of the merchandise which it manufactured, produced, exported, or imported and which is covered by the administrative determination under review by the panel. Foreign governments are not listed as interested parties who may

request the continuation of suspension under 19 U.S.C. 1516a(g)(5)(C)(iii).

* * * * *

[FR Doc. 2024–29091 Filed 12–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 726

RIN 1240–AA16

Black Lung Benefits Act: Authorization of Self-Insurers

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations under the Black Lung Benefits Act (BLBA) governing authorization of self-insurers. The updated regulations determine the process for coal mine operators to apply for authorization to self-insure, the requirements operators must meet to qualify to self-insure, the amount of security self-insured operators must provide, and the process for operators to appeal determinations made by the Office of Workers' Compensation Programs (OWCP).

DATES: This rule is effective January 13, 2025.

ADDRESSES: For access to the rulemaking docket and to read backround documents or comments received, go to <https://www.regulations.gov>. Although some information (e.g., copyrighted material) may not be available through the website, the entire rulemaking record, including any copyrighted material, will be available for inspection at OWCP. Please contact the individual named below if you would like to inspect the record.

FOR FURTHER INFORMATION CONTACT: Michael Chance, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW, Suite C–3520–DCWMC, Washington, DC 20210. Telephone: 1–800–347–2502. This is a toll-free number. TTY/TDD callers may dial toll-free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The BLBA, 30 U.S.C. 901–944, provides for the payment of benefits to coal miners and certain of their

dependent survivors for total disability or death due to pneumoconiosis, commonly known as black lung disease. 30 U.S.C. 901(a); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 5 (1976). The BLBA places the primary responsibility for paying benefits on coal mine operators. 30 U.S.C. 932(b). When a coal miner is determined to be eligible for benefits, the operator responsible for paying benefits (the responsible operator) is generally the one that most recently employed the miner for a period of at least one year and is financially capable of paying benefits. 20 CFR 725.495(a)(1). If a responsible operator cannot be determined, is unable to pay, or defaults on its obligation to pay, the responsibility for paying benefits falls to the Black Lung Disability Trust Fund (the Trust Fund), which is financed by an excise tax on coal mined for domestic use and, as necessary, borrowing from the U.S. Treasury's general fund. 30 U.S.C. 932(j), 934(b); 26 U.S.C. 4121, 9501.

Because coal mine operators are principally responsible for paying benefits, the BLBA requires every operator to secure the payment of benefits for which it may be found liable. 30 U.S.C. 932(b). Each operator must secure the payment of benefits either by purchasing commercial insurance or by qualifying as a self-insurer “in accordance with regulations prescribed by the Secretary.” 30 U.S.C. 933(a); *see also* 20 CFR 726.1.

The current regulations—part 726, subpart B—establish the standards for a coal mine operator to qualify as a self-insurer. They provide that, to qualify as a self-insurer, an operator must meet certain minimum requirements, including “obtain[ing] security . . . in a form approved by [OWCP] and . . . in an amount to be determined by [OWCP].” 20 CFR 726.101(b)(4). The regulations identify four forms of security that OWCP may allow an operator to provide: (1) indemnity bonds; (2) deposits of negotiable securities; (3) letters of credit; or (4) trust funds under section 501(c)(21) of the Internal Revenue Code. 20 CFR 726.104(b). The regulations further provide that “[OWCP] shall require the amount of security which it deems necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an operator by the Act.” 20 CFR 726.105. The regulations also set forth a non-exhaustive list of factors that OWCP will consider in setting the amount of security an operator must provide, including the operator's net worth, the existence of a guarantee by a parent

corporation, and the operator's existing liability for benefits. *Id.*

OWCP historically has not required self-insured operators to post security with a face value that would cover all of the operator's expected black lung liability. *See* 62 FR 3338, 3370 (Jan. 22, 1997). Instead, OWCP has relied in part on a company's size as evidence of its ability to make future benefits payments. *Id.* Depending on the operator's assets, OWCP usually required security sufficient to cover from three to fifteen years of the operator's payments on claims currently in award status, rather than the operator's total liability for current and future claims. *Id.* Under this model, most large operators therefore posted fewer years of payment relative to smaller operators.

A number of bankruptcies in the mining industry revealed weaknesses in that process and demonstrated that a more substantial security amount would be required to adequately protect the Trust Fund. Specifically, beginning in 2014, three large self-insured operators filed for bankruptcy. Because these operators had insufficient securities to cover the full amount of expected benefits, an estimated \$865 million in liabilities will ultimately transfer to the Trust Fund. *See* U.S. Government Accountability Office, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed*, at 13 (Feb. 2020), available at <https://www.gao.gov/products/gao-20-21>.

In response, OWCP developed revised guidelines and procedures for authorizing coal mine operators to self-insure, which it began to implement in 2019. These guidelines were intended to standardize the process by which applicants provide financial and actuarial information to OWCP. OWCP required each company to calculate and report its projected black lung liabilities through actuarial reports using a set of standardized assumptions, including discount rate, claim cost trends, and the probability of awards. OWCP also developed a set of financial metrics and a methodology to assess each operator's solvency, profitability, and risk of default. This assessment would determine the proportion of the operator's projected liabilities it would be required to post as security. Operators determined to be at less risk of not meeting their obligations would be required to provide smaller amounts of security, while operators at higher risk would be required to provide larger amounts of security. These guidelines were summarized in a December 2020

bulletin, *see* BLBA Bulletin No. 21–01 (Dec. 7, 2020).¹

Although the revised guidelines were intended to allow OWCP to better identify and account for self-insured operators that presented significant bankruptcy risk, they proved problematic in several respects. The financial metrics were not able to consistently predict which operators were at risk of experiencing financial difficulties. The process contemplated by the guidelines also imposed significant burdens on OWCP in continuously monitoring the financial health of individual operators on a quarterly basis. In addition, although the guidelines were shared with the public in various ways while they were being developed, stakeholders raised procedural concerns about how the guidelines were developed.

Based on its experience administering the self-insurance program over the years and in response to stakeholder concerns, the Department issued a notice of proposed rulemaking (NPRM) on January 19, 2023, proposing a revised subpart B. 88 FR 3349–3366 (Jan. 19, 2023). The proposed rule would codify the practice of basing a self-insured operator's security requirement on an actuarial assessment of its total present and future black lung liability. The Department also proposed eliminating the financial scoring process. Instead, under the proposed rule, OWCP would require all self-insured operators to post security equal to 120 percent of their projected black lung liabilities, ensuring adequate coverage regardless of an operator's financial health.² The Department had determined that 120 percent was an appropriate level of security because, among other things, it would protect the Trust Fund in the event an operator's actual liabilities exceed its projected liabilities. In addition, the proposal removed the requirement that an operator's average current assets over the preceding three years must exceed its current liabilities, which would not be necessary to protect the Trust Fund under the proposed security scheme. The proposed rule also prospectively removed section

501(c)(21) trust funds, which have proven to be less reliable, as an acceptable form of security. Furthermore, the proposed rule clarified the process for operators to apply for authorization to self-insure, how long the authorization remains effective, the conditions under which OWCP will deny or revoke authorization to self-insure, and the process for operators to appeal OWCP's determinations.

The Department proposed these changes to better protect the Trust Fund when a self-insured operator becomes insolvent. Moreover, by eliminating the need to continuously monitor each individual operator's financial situation, the proposed rule lessens the administrative burden on OWCP to gather, review, and analyze operators' financial information, and lessens the burden on operators to collect and provide such information. The procedural changes clarify and add certainty with respect to OWCP's and operators' respective obligations in the self-insurance authorization process.

The public comment period closed on April 19, 2023, after an extension of the original March 20, 2023, deadline. 88 FR 14094–14095 (Mar. 7, 2023). The Department has fully evaluated the received comments and has determined that, with some changes in response to comments, proceeding with a final rule is in the best interests of the Trust Fund, stakeholders, and the program's administration.

II. Statutory Authority

Section 426(a) of the BLBA, 30 U.S.C. 936(a), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration and enforcement of the statute.

III. Discussion of Significant Comments

The Department received 18 comments on the proposed regulations. In addition to comments received on specific sections of the proposed rule, discussed below in the Section-by-Section Explanation, a few commenters offered more general comments. A number of commenters supported the Department's promulgation of a proposed rule to clarify and reform the self-insurance program. Several commenters applauded some of the proposed rule's most significant changes, including the requirement for increased security from self-insured operators. They noted that Congress intended coal-mine operators to bear the cost of black lung disease, and that they should provide enough security to protect the Trust Fund, and ultimately, taxpayers, from any operator bankruptcy.

Other commenters argued the changes will negatively impact self-insured operators. Most of these negative comments asserted that self-insured operators would face too high a financial burden if required to post security equal to 120 percent of their projected liabilities. They also stated that the cost of surety bonds is much higher than the Department estimated. The commenters did not present any evidence of the true cost of surety bonds, however, such as actual quotes from surety bond companies.

Operators that deem surety bonds too expensive may use another form—or multiple forms—of security, *see* § 726.104(b), or obtain commercial insurance, *see* 30 U.S.C. 933(a); 20 CFR 726.1, 726.201.

Several commenters argued that in the proposed rule, the Department failed to consider operators' reliance on OWCP's historical practices in the self-insurance program. They stated that operators made business decisions based on OWCP's previous collateral requirements, and it would be arbitrary and capricious for the Department not to weigh that reliance against competing policy considerations. In addition, these commenters say, the Department neglected to offer accommodations for the operators' reliance interests, such as by grandfathering in existing self-insurance arrangements and phasing in the requirement for increased security over time.

The Department appreciates the commenters' concerns and has given them serious consideration in preparing this rule. The Department has also weighed operators' reliance interests against competing policy considerations—most importantly, the financial security of the Trust Fund. As many commenters acknowledged, OWCP's historical practices left vulnerabilities in the self-insurance program and contributed to the Trust Fund's current debt. That is why, as explained in the proposed rule's economic analysis, the Department considered but declined to maintain existing security levels. 88 FR 3356–3360 (Jan. 19, 2023). That is also why it is not a viable option to grandfather in all existing self-insurance arrangements, which would fail to adequately protect the Trust Fund.

To better balance the Department's obligation to protect the Trust Fund with the burden on self-insured operators to properly secure their liabilities, the Department has decided to revise the proposed rule in several ways. As explained more fully in the Section-by-Section Explanation, the Department is lowering the security

¹ OWCP published a notice in the **Federal Register** seeking comment on the Bulletin in January 2021, pursuant to then-operative Executive Order 13891 and the Department's implementing regulation. 86 FR 1529 (Jan. 8, 2021). OWCP later withdrew the notice after the Executive order and the Department's regulation were rescinded and the new Administration imposed a temporary regulatory freeze. 86 FR 8806 (Feb. 9, 2021).

² This proposal meant the applicant would have to purchase an instrument that would pay out up to 120 percent of the projected liability, not that the applicant would have to actually spend that amount on collateral.

requirement from 120 percent to 100 percent of self-insured operators' projected liabilities. Reducing the required security will lessen the financial burden on self-insured operators, while upholding the operators' obligation under the BLBA to adequately secure their liabilities in case they can no longer pay benefits directly. See 30 U.S.C. 932(b) (operators "shall be liable for and shall secure the payment of benefits"). The requirement for 100 percent security also preserves congressional intent that "individual coal operators rather than the trust fund bear the liability for claims arising out of such operators' mines to the maximum extent feasible." *Old Ben Coal Co. v. Luker*, 826 F.2d 688, 693 (7th Cir. 1987) (quoting S. Rep. No. 209, 95th Cong., 1st Sess. 9 (1977), reprinted in House Comm. on Educ. and Labor, 96th Cong., *Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977*, 612 (Comm. Print 1979); see also *Arkansas Coals, Inc. v. Lawson*, 739 F.3d 309, 313 (6th Cir. 2014); *C & K Coal Co. v. Taylor*, 165 F.3d 254, 258 (3d Cir. 1999); 20 CFR 725.1(e) ("The purpose of the [Black Lung Disability Trust Fund] and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future.")). In addition, OWCP will also allow operators that currently use section 501(c)(21) trusts as security instruments to continue doing so, see § 726.104(b), and will allow operators to phase in any increased security over the course of one year, see § 726.104(c).

One commenter argued that the Department's concern about the financial security of the Trust Fund is not a valid reason for the proposed rule, stating that self-insured operator bankruptcies are not a major threat to the Trust Fund. The commenter cited a report by the Government Accountability Office (GAO) for this conclusion. The Department believes the commenter misunderstood the report. GAO concluded the Trust Fund "faces financial challenges, and DOL's limited oversight of coal mine operator insurance has further strained Trust Fund finances by allowing operator liabilities to transfer to the federal government;" it opined that "the looming unsecured black lung benefit liabilities . . . still threaten the Trust Fund." See GAO, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed*, at 27, 29 (Feb. 2020), available at <https://www.gao.gov/products/gao-20-21>. GAO also noted that the Trust

Fund faced particular risk in the self-insurance context, because "in the past, DOL did not estimate future benefit liability when setting the amount of collateral required to self-insure." *Id.* at 2. The report recommended the Department change this practice. *Id.*³

Two commenters argued that the proposed rule would give OWCP such broad discretion to set collateral, without sufficient guidelines, that the rule would violate the Administrative Procedure Act. The Department disagrees with these comments. The rule provides clear guidelines and uniform requirements for self-insurance applications and determinations, and, as a result, limits the discretion OWCP has to set security amounts. For example, the rule requires the same documents from all applicants; provides that all operators must use the same OWCP-mandated actuarial assumptions in their actuarial reports; explains that OWCP will require the same percentage of security from all operators; and clarifies the timelines by which OWCP will process all applications and appeals.⁴ Where the Department agreed with commenters that the rule should be clarified, it revised this final rule accordingly.

Several supporters of the proposed rule suggested that OWCP create a public database including information about all self-insurance applications, OWCP's estimates of operators' liability amounts, the amount and type of security that operators provide, the status of any operator appeals, and OWCP's decisions on self-insurance applications. While the Department understands the value of increased transparency in the self-insurance program, it declines to create such a public database out of concern for operators' confidential business interests. The Department believes this final rule will provide greater clarity, transparency, and efficacy in the self-insurance program.

No negative comments were received on the following revised or new regulations: sections 20 CFR 726.101(c)

³ The Department now includes estimates of future liability in security calculations and requires that applicants submit those estimates in their actuarial reports. That requirement is reflected in OWCP's self-insurance application form, CM-2017, which requests "[a] current, certified actuarial report on [the applicant's] existing and future BLBA liabilities." See CM-2017, available at <https://www.dol.gov/agencies/owcp/dcmwc/regs/compliance/blforms>; see also section 20.

⁴ 20 CFR 726.102(b)(2) in this rule (applicants must submit an actuarial report using OWCP-mandated actuarial assumptions). In addition, the rule provides that self-insurers will be required to "submit security equal to 100 percent of the actuarially estimated liabilities (all present and future liabilities)." See 20 CFR 726.105.

and (d); 726.102(a) and (c); 726.107; 726.108; 726.110 through 726.113, and 726.115. Thus, the Department is promulgating these regulations as proposed.

The following regulatory provisions were not revised in the proposed rule and thus were not open to comment: 20 CFR 726.101(a), 726.103, and 726.106.

Severability. If upon judicial review any provision of this rule is deemed invalid, the Department intends that such provision(s) will be severable and the rest of the provisions will remain intact. For example, the following provisions of the rule can operate independently and are mutually severable from the other provisions of the rule: (1) the minimum requirements for self-insurance authorization under § 726.101(b); (2) the requirement that applicants submit actuarial reports using OWCP-mandated actuarial assumptions under § 726.102(b)(2); (3) the updated process that OWCP will follow in issuing written determinations on self-insurance applications under § 726.104(a); (4) the limitation of section 501(c)(21) trusts to those established before publication of the rule, and the requirement for the submission of quarterly financial statements for such trusts under § 726.104(b)(4); (5) the option for operators to phase in their initial or increased security deposits over the course of one year under § 726.104(c); (6) the requirement that operators submit security equal to 100 percent of their actuarially estimated liabilities under § 726.105; (7) the timeframes for authorization and reauthorization to self-insure under § 726.114; and (8) the appeals process set forth under § 726.116. This list is not exhaustive. Generally, the Department believes that the provisions of the rule can operate independently and will improve the effectiveness of the self-insurance program, even if other provisions are deemed invalid.

Section-by-Section Explanation

20 CFR 726.101 Who May Be Authorized To Self-Insure

(1) The Department is substantially revising § 726.101 to update the minimum requirements an operator must meet to qualify for authorization to self-insure and to remove the provisions requiring OWCP to continuously monitor each applicant's financial situation.

Current paragraph (b) establishes the minimum requirements that an operator must meet to qualify for authorization to self-insure. At present, paragraphs (b)(1), (3), and (5) respectively provide that an operator must have been in the

business of coal mining for at least three consecutive years prior to applying, the operator's average current assets over the prior three years must exceed its current liabilities by a specified amount, and the operator must have five or more employee-miners. Paragraphs (b)(2) and (4) respectively provide that an operator must demonstrate the administrative capacity to fully service claims and that an operator must obtain security in a form approved by OWCP and in an amount determined by OWCP. The Department proposed removing paragraphs (b)(1), (3), and (5) because they would no longer be necessary when all self-insurers are required to post security that fully covers their projected black lung liabilities.

(2) Three commenters expressed concern that by no longer evaluating companies' financial health, OWCP is applying a "one-size-fits-all" approach that will harm financially sound companies. In their view, more profitable companies will present less risk to the Trust Fund and OWCP should therefore require less security (or no security) to cover their liabilities. Another commenter suggested OWCP maintain at least enough financial review to ensure companies could fulfill their self-insurance obligations. Other commenters questioned whether the financial review process would truly burden OWCP, and suggested that OWCP ought to be able to conduct a financial review because other federal agencies do so.

(3) The Department declines to revise the regulation in response to these comments. As explained in the proposed rule, the Department is eliminating the financial review process to reduce administrative burdens and avoid the ever-present challenge of predicting which operators are at risk of experiencing financial difficulties. Importantly, the requirement that self-insured operators post security equal to their projected black lung liabilities will adequately cover the Trust Fund regardless of an operator's continuously changing financial status, making the financial review process unnecessary. The commenters have not shown that these changes will cause any particular harm to companies that are financially stronger than others. In fact, those companies will arguably be able to meet a higher security requirement more easily than less financially secure companies. Similarly, the requirement to post 100 percent security addresses a commenter's concern that operators will not be able to fulfill their self-insurance obligations; if they default, the Trust Fund will have enough security to cover the operators' projected liabilities.

(4) For these reasons, as proposed in the NPRM, the Department is removing paragraphs (b)(1), (3), and (5). The Department is renumbering current paragraph (b)(2) as paragraph (b)(1), and paragraph (b)(4) as paragraph (b)(2).

20 CFR 726.102 Application for Authority To Become a Self-Insurer; How Filed; Information To Be Submitted

(1) The Department is revising paragraph (b) to change and update the information that must be submitted with an application for authorization to self-insure or to renew authorization to self-insure.

(2) The Department is adding a new paragraph (b)(2) to require an applicant to include with its application an actuarial report using OWCP-mandated actuarial assumptions. OWCP has previously required such an actuarial report from applicants, as indicated on OWCP's self-insurance application form CM-2017 (Application or Renewal of Self-Insurance Authority), available on OWCP's website at <https://www.dol.gov/agencies/owcp/dcmwc/regs/compliance/blforms>. In that form, OWCP requires "[a] current, certified actuarial report on [the applicant's] existing and future BLBA liabilities," unless renewal applicants have provided one in the previous three years. The proposed rule explained that form CM-2017 would still be required under the new regulations, and it requests much of the information required in current paragraphs (b)(1), (2), (3), and (5). In this new paragraph (b)(2), the Department is adding the actuarial report requirement to the regulatory text, including that an operator must submit a new actuarial report every three years. The new paragraph (b)(2) also allows an operator to submit an additional actuarial report using alternative assumptions.

(3) Several commenters objected to the requirement to use OWCP actuarial assumptions in their reports. They argued that OWCP's actuarial assumptions differ from the operators' assumptions, which are based on the operators' experiences in paying benefits. The Department declines to revise the regulation in response to these comments, but provides the following clarification. Requiring operators to use OWCP's actuarial assumptions, rather than their own, more accurately projects the Trust Fund's potential liability and promotes fairness and uniformity across operators. As noted in the proposed rule and again above, OWCP has previously required companies to provide actuarial reports that include data for different

elements of actuarial analysis, such as the discount rate, claim cost trends, and the probability of awards. See 88 FR 3350 (Jan. 19, 2023). A numerical value is assigned to each element. This numerical value is called an actuarial assumption. Operators then apply those values in determining their liability. OWCP sets actuarial assumptions for the various elements of actuarial analysis every year, accounting for changing interest rates, medical costs, and other relevant fluctuations. Commenters have not challenged the elements of actuarial analysis that are to be included in their reports. Instead, commenters have argued that the numerical values that OWCP assigns to these elements—the actuarial assumptions themselves—differ from the values that operators would use based on their individual experiences, and are therefore improper. OWCP bases its actuarial assumptions on data from claims in which the Trust Fund is responsible for paying benefits. If a self-insured operator goes bankrupt and the Trust Fund absorbs its responsibility for paying benefits, it will cost the Trust Fund a different amount to pay those benefits than it would have cost the operator. For example, medical costs differ for the Trust Fund and operators because operators may use different payment formulas than the Trust Fund and may have arrangements with providers that result in lower medical costs that the Trust Fund does not have. For these reasons, OWCP must estimate how much it will cost the Trust Fund to bear responsibility for benefits that were formerly the responsibility of the operator. Further, using one set of actuarial assumptions, rather than different assumptions for each operator, promotes consistency and fairness.

Still, the Department acknowledges an operator could, under unusual circumstances, have a compelling reason to use different actuarial assumptions than those required by OWCP. Therefore, the rule permits operators, as part of the application process, to submit reports using their own actuarial assumptions and explain why they should be used instead, and OWCP will consider each submission. See Section-by-Section Explanation for 20 CFR 726.104.

(4) Commenters raised concerns that while the proposed rule allows operators to submit an additional actuarial report and explain why alternate assumptions are appropriate, it does not specify that OWCP will consider that report or how OWCP would choose between or reconcile the two reports. The Department agrees the regulation should state that OWCP will review and consider an operator's

additional report and, as stated below, is amending § 726.104(a) to clarify this. The Department is also clarifying the circumstances in which OWCP might use the actuarial assumptions an operator submits. For any alternative actuarial report OWCP receives, it will evaluate each of the operator's arguments about why alternative actuarial assumptions should apply. Some, but not all, of OWCP's considerations may include whether the operator's circumstances would persist if the Trust Fund took over benefit payments and whether sufficient and reliable data support the operator's arguments. For instance, if an operator's claimant population differs markedly from that of the Trust Fund, it may be reasonable to use one or more of an operator's actuarial assumptions. However, the Department expects this situation will be rare. In most cases it will be more appropriate to apply OWCP's assumptions based on the Trust Fund's experience. Again, using OWCP's assumptions in most cases will help ensure fairness and uniformity across operators.

(5) Commenters also claimed the proposed rule did not identify OWCP's actuarial assumptions (the numerical values), or explain how they were derived and whether they comply with generally accepted actuarial standards. OWCP provides its actuarial assumptions to the public on its website.⁵ OWCP uses the same assumptions in reporting on the Trust Fund for the Department's Agency Financial Report and the U.S. Government's tracking of significant social insurance programs, which are also publicly available and prepared in accordance with Generally Accepted Accounting Principles (GAAP) and the financial reporting requirements of Office of Management and Budget (OMB) Circular A-136.⁶ OWCP's actuaries review the assumptions annually, including peer review by other actuaries. OWCP determines the value for each assumption using actuarial judgment, by considering historical experience adjusted to current conditions, expected future trends, and

the reliability of the available historical data as a predictor of future experience. Each of the assumptions represents values that, in the actuaries' professional judgment, are internally consistent and have no known significant bias to underestimation or overestimation. OWCP's assumptions comply with the Actuarial Standards of Practice as promulgated by the Actuarial Standards Board (ASB), available at <http://www.actuarialstandardsboard.org>.

(6) Some commenters asserted that OWCP's actuarial assumptions should have been included in the proposed rule and subject to notice and comment. The Department disagrees for several reasons. As the commenters made clear, one of their major objections was to the requirement to use OWCP's actuarial assumptions at all. This requirement was open for comment in the proposed rule, and the Department received and responded to related comments above. The actuarial assumptions themselves, though, were not included in the rule because, as explained above, the numerical values will vary from year to year as needed to adapt to new data and circumstances.

20 CFR 726.104 Action by OWCP Upon Application of Operator

(1) The Department proposed deleting and replacing paragraph (a) to clarify what action OWCP must take with respect to an application and the timeframe within which OWCP will take such action. New paragraph (a) provides that OWCP will issue a written determination, either denying the application or determining the amount of security, within 30 days after determining that an application is complete. New paragraph (a) also allows OWCP to extend the 30-day deadline if it determines that additional evidence is needed or that the applicant's evidence is not in compliance with OWCP's requirements.

Commenters noted that while the proposed regulatory text allows operators to submit a report using actuarial assumptions other than those mandated by OWCP, it did not require OWCP to consider such reports. The Department agrees the regulation should state that OWCP will review and consider any relevant evidence the operator submits. To clarify this, the Department is amending section 104(a) to explain that OWCP will consider all relevant evidence and include its reasoning when issuing a written determination denying an application.

(2) The Department proposed removing current paragraph (b)(4), which allows a self-insurer to give

security by funding a trust pursuant to section 501(c)(21) of the Internal Revenue Code. As explained in the proposed rule, few self-insured operators use section 501(c)(21) trusts as security and most of those operators use them in combination with other forms of security. Also, OWCP has determined that section 501(c)(21) trusts are a less reliable form of security and more burdensome for OWCP to monitor because, unlike other forms of security which generally guarantee a fixed dollar amount, the amounts kept in the trusts can fluctuate and significantly decrease as self-insurers use such trusts to pay claims and the costs of administration and for other allowed purposes.

One commenter asserted that the Department cannot remove section 501(c)(21) trusts as an optional form of security. The commenter states the Department does not have the authority to disallow section 501(c)(21) trusts, arguing Congress intended such trusts would be available for black lung self-insurance security deposits. It also argues that even if the Department has the authority to disallow the use of section 501(c)(21) trusts, it has no valid reason to do so, because such trusts pose no greater risk than other forms of security. Finally, the commenter urges the Department to accept any existing section 501(c)(21) trusts, because they are irrevocable and cannot be repurposed; operators would be prejudiced if no longer allowed to use the funds in such trusts toward their self-insurance security deposits.

The Department disagrees that it must offer section 501(c)(21) trusts as a form of security for self-insurance. The BLBA does not specify the form in which an operator must "secure the payment of benefits for which he is liable." 30 U.S.C. 933(a). Moreover, the Internal Revenue Code does not require that OWCP accept section 501(c)(21) trusts as security for self-insurance. Section 501(c)(21) specifies the circumstances under which an entity may establish such trusts, but does not direct OWCP to allow them for self-insurance security.

The Department also disagrees that section 501(c)(21) trusts are no riskier than other forms of security. In arguing this, the commenter noted that such trusts can only hold qualified investments such as U.S., state, and municipal bonds. However, the Department is not concerned about the riskiness of the investments in the trust, but about the risk that the money in the trust may fall below the necessary security amount, given that the trust can also be used for paying claims and other expenses. 26 U.S.C. 501(c)(21)(A).

⁵ OWCP provides information on the black lung program to operators and insurance carriers, available at <https://www.dol.gov/agencies/owcp/dcmwc/operators-insurers>.

⁶ See Treasury's reporting on financial statements for significant social insurance programs, available at <https://www.fiscal.treasury.gov/reports-statements/financial-report/statements-of-social-insurance.html>. The Department's most recent Agency Financial Report is also available on that website. OMB Circular A-136, on Financial Reporting Requirements, is available at <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>.

Because trust assets can be (and are) used for a number of purposes other than security for a self-insurance arrangement, the trust assets are subject to continual erosion. As a result, use of the trusts as self-insurance security would place the Trust Fund at greater risk than the use of other forms of security. And unlike other forms of security, the Trust Fund does not have direct access to 501(c)(21) trust assets or even have ready access to the trusts' financial reports.

Nevertheless, the Department has determined that existing section 501(c)(21) trusts should be permitted to continue as self-insurance security, even though new trusts will not be allowed. As the commenter noted, 501(c)(21) trusts are irrevocable, and the Department agrees that it would prejudice those operators currently using this form of security if they are no longer allowed to do so. Rather than remove the option entirely, then, the Department is revising paragraph (b)(4) to provide that section 501(c)(21) trusts established before the publication of this rule can continue to be used as self-insurance security. However, to protect the Trust Fund, operators continuing to use existing section 501(c)(21) trusts must submit quarterly financial statements to OWCP documenting the value of the trust. This will allow OWCP to monitor the financial status of a trust, the value of which may decrease in the period between annual reviews. If, for any reason, the trust value decreases below the amount of the operator's required security, OWCP may require an increase in the operator's security under § 726.109. The Department is adding the requirement for quarterly financial reports to paragraph (b)(4).

(3) Several commenters expressed concern that a greatly increased security requirement would be difficult to fulfill immediately. These commenters suggested that OWCP collect the increased security over a period of years instead of all at once.

The Department agrees the burden on operators could be lessened by staggering the collection of security over a reasonable period of time. While commenters suggested phasing in the collection over a period of years, the Department believes this would leave the Trust Fund inadequately secured for too long. However, the Department will allow operators to post security in phases over the course of one year, which the Department has determined will properly balance the interests in providing operators more time while limiting the Trust Fund's risk of inadequate security. To further limit the Trust Fund's risk of delay in receiving

adequate security, the Department is requiring that operators phase in their payments in quarterly installments. Thus, the Department is adding a new paragraph (c) to provide that operators may submit their increased security requirements in equal portions quarterly, to be complete in one year: operators opting for phased posting must deposit at least 25 percent of the increased security amount within 30 days of OWCP issuing the notification provided in newly redesignated paragraphs (d) and (e), followed by at least 50 percent of their increased security amount within four months of that notification, at least 75 percent within eight months, and 100 percent within one year. If an operator fails to timely pay any of one of these installments, it will be deemed non-compliant with its self-insurance authorization, and OWCP will revoke that authorization. The civil money penalty provisions of 20 CFR part 726, subpart D, will apply to any operator that fails to timely secure its benefits under this regulation. Accordingly, any operator that disagrees with the penalties imposed must follow the procedures at 20 CFR 726.307 for contesting penalties, and not the self-insurance authorization appeals process outlined below in the new 20 CFR 726.116.

In light of these changes, the Department is redesignating new paragraphs (c), (d), and (e) to paragraphs (d), (e), and (f), respectively. The Department is also revising paragraphs (d) and (e) to provide that self-insurance authorization or reauthorization will be effective upon OWCP's receipt of a completed agreement and undertaking, along with either the applicant's full security amount or its first quarterly installment.

20 CFR 726.105 Fixing the Amount of Security

(1) Current § 726.105 requires OWCP to set the amount of security each applicant is required to post by determining the amount "necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an operator by the Act."

The Department proposed replacing current § 726.105 with the requirement that any operator approved to self-insure must submit security equal to 120 percent of its actuarially estimated liabilities (all present and future liabilities) as determined by OWCP based on the actuarial report or reports submitted by the applicant with their application (or on file with OWCP), other information submitted with the operator's application, or any other

materials or information that OWCP deems relevant. As noted in the proposed rule, this meant applicants would have to purchase an instrument that would pay out up to 120 percent of the projected liability, not that the applicant would have to actually spend that amount on collateral. The Department estimated that premiums on surety bonds would cost anywhere from 2 percent to 12 percent of the security amount and solicited comments on this estimation.

(2) Some commenters supported this proposed change. They stated that in keeping with congressional intent, the increased security amount would help avoid shifting liability from bankrupt operators to the Trust Fund and, ultimately, to taxpayers. One commenter noted that the requirement for increased security is all the more important now that severe forms of black lung disease are on the rise, meaning that operators' future liabilities would rise too. The commenters also believed the requirement would not unduly burden operators, who could secure their liability for benefits through other instruments or purchase commercial insurance instead of self-insuring.

(3) By contrast, several coal-mine operators and their associations commented that requiring security at 120 percent of projected liability would be too great an expense. As explained above, the Department has decided to lower the required security amount from 120 to 100 percent of an operator's projected liability. The Department has weighed the interests of protecting the Trust Fund and of reducing the burden on operators, and determined that 100 percent security is the proper balance. The new § 726.105 will provide that operators approved to self-insure must submit 100 percent of the actuarially estimated liabilities. This requirement comports with the BLBA's requirement that operators secure their liability (30 U.S.C. 932(b), 933(a)). The natural reading of this requirement is that operators must secure their full liability, not merely a portion of it. The requirement also harmonizes the treatment of self-insured operators with that of commercially insured operators, as an insurance policy for Federal black lung claims must cover all of an operator's liability—present and future. 20 CFR 726.202 and 726.203(c)(1)(ii).

(4) Some commenters asserted that the Department erred in expecting that operators could obtain surety bonds for an annual premium of 2 to 12 percent of the covered bond amount. These commenters highlighted that this range was based on general surety bonds, not

those specific to the coal industry. Instead, they posited that in addition to premiums, operators would need to post collateral for the surety bonds, up to and including 100 percent of the bond amount.

In the proposed rule, the Department invited comment on the cost of surety bonds. The Department explained that the range of 2 to 12 percent of security was based on a review of public data from surety companies. While commenters alleged the cost would be far greater, they did not submit any direct evidence of the asserted cost, such as actual surety bond quotes. Notably, no surety company submitted comment on the proposed rule. Therefore, the Department has no basis on which to change its estimation.

(5) Some commenters complained that surety bonds are also harder for coal companies to obtain in today's market but did not submit evidence of this assertion. These commenters stated that they are aware of only three surety bonds used as security for self-insurance since 1980, and only one that is still active. These numbers are inaccurate. Over ten currently active self-insured operators have security in the form of surety bonds, and some of them have more than one; these operators have submitted proof of their surety bonds to OWCP as part of their participation in the self-insurance program. As the Department noted in the proposed rule, surety bonds are the most common form of security that current self-insured operators use. The Department recognizes, as these commenters noted, that coal companies and coverage of black lung benefits might be considered high risk in the surety industry. That is one reason the Department is acting to better protect the Trust Fund and ensure that self-insured operators are properly secured. The Trust Fund should not be subject to enhanced risk so that operators may self-insure. Rather, Congress intended that coal operators, and not taxpayers, bear responsibility for paying black lung benefits to the miners who worked for them. Furthermore, as stated above, operators have security options other than surety bonds. They may use other forms—or multiple forms—of security for self-insurance (negotiable securities and letters of credit) or purchase commercial insurance to satisfy their obligations under the BLBA.

(6) Several commenters argued that the Department could not require an operator to secure its future liabilities, and instead could only require security for current claims in award status. The Department finds no merit in this argument. The BLBA requires every

operator to secure the payment of benefits for which it may be found liable. See 30 U.S.C. 932(b) (“each such operator shall be liable for and shall secure the payment of benefits”), 933(a) (“each operator of a coal mine . . . shall secure the payment of benefits for which he is liable under section 932 of this title by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) [purchasing commercial insurance]”); 20 CFR 726.1 (“[the BLBA] requires each coal mine operator who is operating or has operated a coal mine . . . to secure the payment of benefits for which he may be found liable”).

Further, the BLBA and its implementing regulations⁷ provide that liability extends to claims filed in the future. See 30 U.S.C. 932(i) (operators that acquire a mine or its assets “shall be liable for and shall . . . secure the payment of all benefits which would have been payable by the prior operator.”); 20 CFR 725.494(a) (“[a]n operator may be considered a ‘potentially liable operator’ . . . if . . . [t]he miner’s disability or death arose at least in part out of employment in or around a mine or other facility during a period when the mine or facility was operated by such operator, or by a person with respect to which the operator may be considered a successor operator.”); 20 CFR 724.494(e)(2) (an operator that “qualified as a self-insurer . . . during the period in which the miner was last employed by the operator” is “deemed capable of assuming its liability for a claim[.]”).

By necessity, an operator’s liability extends to future claims. As various commenters noted, black lung claims may be filed long after miners stopped working, due to the progressive nature of black lung disease; it may disable miners even years after their exposure to coal-mine dust ends. See 20 CFR 718.201(c) (black lung disease is “a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.”). As a result, a significant portion of operators’ liability involves claims that are incurred but not reported (IBNR). In other words, these claims

involve situations in which the miner has suffered or will suffer an injury (exposure to coal-mine dust), but has not yet filed a claim or received an award. The only accurate way of securing an operator’s black lung liability, then, is to account for future claims.

Further, reading the BLBA as the commenters proposed would lead to untenable results, such as OWCP being unable to require a new operator to secure the payment of benefits at all, as it would have no claims currently in award status.

To support their arguments against securing future liability, several commenters asserted that state workers’ compensation programs only require security for present claims in award status. This is not accurate. Although states vary in how they determine an employer’s estimated liability, some states require actuarial reports estimating the total liability from all present and future claims. See, e.g., Minn. Stat. sec. 79A.04, subd. 2 (“The minimum deposit is 110 percent of the private self-insurer’s estimated future liability . . . as determined by an Associate or Fellow of the Casualty Actuarial Society[.]”). Even the commenters acknowledge that a high percentage of black lung liability consists of IBNR claims. Thus, the Department believes that it must take IBNR claims into account when setting security amounts.

In its study of insurance in the black lung program, the GAO concluded that future liabilities should be factored into security amounts, and explained that not doing so in the past contributed to inadequate protection of the Trust Fund. See GAO, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed*, at 18, 19 (Feb. 2020), available at <https://www.gao.gov/products/gao-20-21>. The GAO reported that “[e]stimating future costs based on sound actuarial practice is essential to the integrity of the insurance and the risk financing system and is key to fulfilling the promises embodied in insurance contracts, according to Actuarial Standards Board standards.” *Id.* at 19 (internal citation omitted)). Providing for future liability also serves Congress’s intent that operators bear the burden of paying benefits to the “maximum extent feasible. *Luker*, 826 F.2d at 693 (quoting S. Rep. No. 209, 95th Cong., 1st Sess. 9 (1977), reprinted in House Comm. on Educ. and Labor, 96th Cong., *Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977*, 612 (Comm. Print 1979)).

⁷ The Secretary has authority to promulgate regulations directing the payment of benefits by operators and apportioning liability among them. 30 U.S.C. 932(a) (“the Secretary is authorized to prescribe in the **Federal Register** such additional provisions . . . as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto[.]”); 30 U.S.C. 932(h) (“The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.”).

(7) The Department will not lower the required amount of security below 100 percent of an operator's liability. As noted above, the BLBA requires that operators secure their full liability. Moreover, as explained in the proposed rule, the Department decided to require 120 percent security in part because of the challenges in accurately estimating liabilities, and the possibility that an insolvent operator's actual liabilities could be greater than OWCP expected. Some of the factors that could increase an operator's actual liabilities over their estimated liabilities could include pneumoconiosis becoming more prevalent, or the costs of medical treatment increasing faster than expected. However, for the reasons discussed above, the Department is modifying the final rule to require only 100 percent security rather than the proposed 120 percent security.

(8) One commenter argued that the proposed rule would allow OWCP to disregard an operator's actuarial report(s) and rely instead on any other information it deems relevant. This was not the Department's intent. OWCP will review and consider all relevant information that operators submit with their application, including any information not identified in § 726.105 that would be pertinent. To clarify that OWCP will not disregard any submissions, the Department is revising the regulation to exchange the word "and" for "or" in the following: "Any operator approved to self-insure must submit 100 percent of the actuarial estimated liabilities (all present and future liabilities), as determined by OWCP based on the actuarial report or reports submitted with the operator's application or on file with OWCP, other information submitted with the operator's application, *and* any other materials or information that OWCP deems relevant" (emphasis added).

20 CFR 726.109 Increase in the Amount of Security

(1) The Department proposed deleting and replacing current § 726.109. New § 726.109 provides that OWCP may, at its discretion, increase the amount of security a self-insurer is required to post whenever OWCP determines that the amount of security on deposit is insufficient to secure the payment of benefits and medical expenses under the BLBA. This allows OWCP to require a correction in security if, between annual renewals, a self-insured operator's security has fallen below the requirement for 100 percent of their liability.

(2) Several commenters expressed concern that OWCP would increase an

operator's security without a known reason or prescribed grounds, and could increase an operator's security beyond the percentage of collateral initially required.

(3) As stated in the proposed rule, OWCP could decide that the amount of an operator's security on deposit is insufficient if, for example, it learns that the data on which an operator's liability estimate were based have significantly changed or an operator acquires new mines or employees. The Department believes the ability to increase security for reasons like this is necessary to protect the Trust Fund, consistent with Congress's intent that the coal operators who expose coal miners to coal dust be responsible for paying black lung benefits, not taxpayers. Further, if an operator disagrees with OWCP's determination to increase its security amount, it would be free to appeal that determination using the appeals process set forth in § 726.116.

However, the Department agrees with the commenters that the regulation should clarify that OWCP will provide a written explanation of the reasons and grounds for increasing an operator's security. The Department, however, will not increase the required liability beyond 100 percent of the operator's actuarially estimated liability. The regulation has been revised to make this clear.

20 CFR 726.114 Authorization and Reauthorization Timeframes

(1) The Department proposed deleting and replacing current § 726.114 to substantially revise the timeframe for authorizations and reauthorizations.

(2) Several commenters noted that legacy operators (those who have ceased mining operations but remain liable for black lung claims) should continue to be authorized for self-insurance. In revising § 726.114(a) and (b), the Department inadvertently omitted paragraph (c). Section 726.114(c) provides that self-insured operators must continue to reapply for self-insurance reauthorization after ceasing their mining operations. This regulation is consistent with other parts of the black lung regulations dealing with the requirement for operators to secure the payment of benefits after they cease coal-mining operations. *See, e.g.*, 20 CFR 726.1, 726.4, and 726.302(c)(2)(ii). The Department intends to keep the current paragraph (c) as part of the new regulation.

(3) Therefore, the Department is clarifying that current § 726.114(c) is retained in its entirety. The Department is making stylistic changes to § 726.114(c). No alteration in meaning

either results from or is intended by these changes.

20 CFR 726.116 Appeal Process

(1) Section 726.116 is new. It establishes and clarifies the process for an operator to appeal a self-insurance determination made by the Division of Coal Mine Workers' Compensation (DCMWC). The proposed rule provided that a self-insurance applicant would submit a request for review of the initial determination within 30 days to DCMWC. Within 30 days of submitting the request, the applicant would have to submit any evidence and/or briefing on which they intended to rely. In its briefing, the applicant could request an informal conference with DCMWC. The conference would be limited to the issues identified in the applicant's written materials. Upon review, the Director of DCMWC would issue a supplemental decision. The proposed rule then provided that an applicant aggrieved by a supplemental decision could request further review by the Director of OWCP, who would review the evidence of record and not accept any new evidence or arguments. The Director of OWCP would then issue a final agency decision.

(2) Several commenters expressed concern about operators remaining under-secured during a potentially lengthy appeals process. One commenter requested that OWCP include timeframes for its decision-making, to ensure appeals do not drag on while the Trust Fund lacks sufficient security. Several commenters asserted that operators should post the required security during the pendency of their appeals, to protect the Trust Fund from inadequate funding if operators declare bankruptcy while contesting their security requirements. Expressing the opposite view, some commenters requested that the security requirement be stayed pending appeals and argued that operators would be irreparably harmed if forced to provide the security before their appeals were decided.

(3) The Department agrees that the timeline of the appeals process needs to be clear and limited, to ensure operators do not remain under-secured for too long, increasing the risk to the Trust Fund in case of bankruptcy. However, the Department is concerned that, as some commenters indicated, operators would be harmed if forced to post the required security during the pendency of their appeals. Therefore, the Department has decided to address the risk to the Trust Fund by streamlining the appeals process and setting clear deadlines for OWCP decision-making.

(4) The new regulation will provide a one-step—rather than two-step—appeals process. Instead of appealing to the Director of DCMWC first and, if unsatisfied, to the Director of OWCP, applicants will be able to appeal DCMWC's initial determination directly to the Director of OWCP. The Director of OWCP will not accept any new evidence, and instead review only the applicants' arguments about an error in the initial DCMWC determination. This is consistent with general appellate practices and provides an applicant with an adequate opportunity to be heard on its appeal.

The Director of OWCP will have 60 days to take up the appeal and issue a final agency decision. At this time, if the applicant had been authorized to self-insure and was seeking a renewal that OWCP denied, their self-insurance will end and they will need to secure commercial insurance or face civil penalties for failure to secure benefits. 30 U.S.C. 933(d)(1), 20 CFR 726.300. These changes are reflected in new paragraphs (a) through (d).

(5) Paragraph (a) sets forth the process to file an appeal. It provides that any applicant who wishes to appeal a determination made by DCMWC must submit an appeal to the Director of OWCP within 30 days after DCMWC issues such determination. It also provides that the 30-day deadline to appeal may not be extended. This method is consistent with general appellate practices and 30 days provides operators with sufficient time to determine whether to appeal a determination.

(6) Paragraph (b) sets forth the process for submitting briefs containing any arguments that DCMWC erred in its initial determination. It provides that, within 30 days of submitting an appeal, the applicant must submit any briefing on which the applicant intends to rely. It also provides that the Director of OWCP may, at their discretion, extend this deadline for up to 30 days upon a showing of good cause by the applicant. No more than two extensions will be granted. Examples of good cause may include the applicant representative's personal illness or an unusual circumstance prohibiting their access to necessary documents. The applicant must document an inability to comply or extreme hardship in complying on a timely basis.

(7) Paragraph (c) sets forth the process for requesting an informal conference on an appeal. Paragraph (c)(1) provides that an applicant may request an informal conference and that such requests must be made when the applicant submits briefing in support of its appeal.

Paragraph (c)(2) provides that, if an applicant requests a conference, the Director of OWCP will hold a conference with OWCP, the Office of the Solicitor, and the applicant's representatives. Paragraph (c)(3) provides that, if the applicant does not request a conference, the Director of OWCP may either decide the appeal on the record or schedule a conference on their own initiative. Paragraph (c)(4) provides that the conference will be limited to the issues identified in the applicant's written materials. Again, this method is consistent with general appellate practices and provides an applicant with an adequate opportunity to be heard on its appeal.

(8) Paragraph (d) sets forth the Director of OWCP's obligations in the appeal process. Paragraph (d)(1) provides that the Director of OWCP will review the initial determination, evidence of record, and arguments submitted on appeal, and that the applicant may not submit any new evidence to the Director of OWCP. Paragraph (d)(2) provides that the Director of OWCP will have 60 days from receipt of the appeal to take up the appeal and issue a final agency decision. This requirement will ensure that there is a final agency action that is reviewable in the Federal courts as provided in the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* See also 5 U.S.C. 704. Paragraph (d)(3) explains that if the Director of OWCP issues a final agency decision denying self-insurance, and the operator's self-insurance application is one for renewal (they have previously been approved for self-insurance), their self-insurance authorization will end and they must secure commercial insurance or face civil penalties for their failure to secure benefits.

IV. Administrative Law Considerations

A. Information Collection Requirements

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person may generally be subject to penalty for failing to comply with a collection of information that does not

display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Although the proposed rules contained information collections within the meaning of the PRA (see proposed § 726.102), these collections related to the self-insurance application forms are not new. They are currently approved for use in the black lung program by OMB under Control Number 1240-0057 (CM-2017 Application or Renewal of Self-Insurance Authority; and CM-2017b Report of Claims Information for Self-Insured Operators). Aside from the removal of the collection associated with form CM-2017a, the requirements for completion of the forms and the information collected on the forms are not changed in this final rule; therefore, the overall burdens imposed by the information collections are reduced.

One commenter argued that an operator's information collection burden would increase under the new regulation's requirement to submit actuarial reports with OWCP-mandated actuarial assumptions. The Department disagrees with this contention. OWCP has required applicants to submit actuarial reports with OWCP-mandated actuarial assumptions since 2019. Further, OWCP already considered and requested public comment on the information collection burden of producing these actuarial reports. Along with the self-insurance application forms, OWCP explained in the notice to the public that applicants would need to submit actuarial reports, and estimated that twenty operators would have to submit actuarial reports they did not otherwise prepare in the course of business.⁸ The main application form, CM-2017, approved under OMB Control Number 1240-0057, provides that applicants' actuarial reports "must comply with the standards specified by OWCP, which are posted on the black lung program's website: <https://www.dol.gov/agencies/owcp/dcmwc/operators-insurers>." The website, in turn, provides OWCP's current actuarial assumptions. Because applicants' information collection burden with respect to forms CM-2017 and CM-2017b will not increase under this regulation, OWCP will proceed with the burden estimates contained in the NPRM for these forms.

This final rule provides a minimal burden in requiring quarterly financial statements for section 501(c)(21) trusts. See § 726.104(b)(4). OWCP estimates this will add a minimal burden to the

⁸ The Supporting Statement is available on OMB's website at <https://omb.report/icr/202201-1240-003/doc/122887700>.

public, totaling under two hours per year for all statement submissions. Similarly, OWCP estimates this requirement will add a minimal burden to OWCP in reviewing the statements, amounting to 1.67 hours of review time and \$85.47 in wages.

OMB Control Number: 1240–0057.

Affected Public: Business or other for-profit.

Number of Respondents: 61.

Frequency: Annually for Forms CM–2017 and CM–2017b, and quarterly for Section 501(c)(21) trust statements.

Number of Responses: 142.

Annual Burden Hours: 246.

Annual Respondent or Recordkeeper Cost: \$34,000.

Federal Government Cost: \$15,695.

OWCP Collections: OWCP Forms CM–2017 (Application or Renewal of Self-Insurance Authority) and CM–2017b (Report of Claims Information for Self-Insured Operators); Quarterly Financial Reports on Section 501(c)(21) Trusts.

B. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review; and Executive Order 14094: Modernizing Regulatory Review

Under Executive Order (E.O.) 12866, as amended by E.O. 14904, the Office of Information and Regulatory Affairs (OIRA) of OMB determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that may (1) have an annual effect on the economy of \$200 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise legal or policy issues “for which centralized review would meaningfully further the President’s priorities or the principles set forth in this Executive order.” See E.O. 12866, 58 FR 51735 (Oct. 4, 1993), as amended by E.O. 14094, 88 FR 21879 (Apr. 11, 2023).

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It also instructs agencies to review “rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline,

expand, or repeal them.” See E.O. 13563, 76 FR 3821 (Jan. 21, 2011).

OIRA has determined that this rule is a significant regulatory action. See E.O. 12866, 58 FR 51735, as amended by E.O. 14094, 88 FR 21879.

Economic Considerations

This final rule will have an economic impact on coal mine operators that currently participate in the self-insurance program, as well as any new applicants. This final rule nevertheless is necessary to better protect the Trust Fund, reduce the administrative burdens on OWCP and operators, and bring clarity to the self-insurance process.

As explained in the preamble, prior security requirements have proven inadequate to protect the Trust Fund when a self-insured operator becomes insolvent. From 2014 to 2016, three self-insured coal operators entered bankruptcy with combined collateral of \$27.4 million; the resulting transfer of black lung liabilities to the Trust Fund was eventually estimated to be \$865 million. See GAO, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed*, at 13 (Feb. 2020), available at <https://www.gao.gov/products/gao-20-21>. Had this final rule been in effect at the time, the three operators would have had far more in collateral, producing dollar-for-dollar savings for the Trust Fund. Of note, the amount of the coal operators’ black lung liability was originally estimated in 2019 to be around \$313 million to \$325 million. This was revised to \$865 million in 2020 due to a variety of factors, including increases in black lung benefit award rates and higher medical treatment costs.

This final rule eliminates the financial scoring process and requires all self-insured operators to post security equal to 100 percent of their projected black lung liabilities. By requiring sufficient security based simply on projected liabilities, the Trust Fund will be better protected and the financial scoring process is no longer needed. This final rule also removes certain minimum requirements that are now unnecessary, including the requirement that an operator’s average current assets over the preceding three years exceed its current liabilities.

This analysis provides the Department’s estimate of the economic impact of this final rule, both on the economy as a whole and on individual operators.

a. Data Considered

To determine the rule’s general economic impact, the Department calculated how the rule will affect several stakeholder groups, including: (i) OWCP, (ii) taxpayers, (iii) commercially insured operators, and (iv) self-insured operators.

i. OWCP

This final rule does not impose additional demands on OWCP resources and in fact will result in a reduction in administration costs.⁹ It eliminates the need for OWCP to repeatedly perform annual financial health assessments on each self-insured operator.

This produces a short-term savings in the administrative costs to perform the analysis, including both costs associated with OWCP time and contractors hired to assist OWCP in this analysis. This final rule will require OWCP to review actuarial liability estimates every three years and monitor authorized self-insureds for compliance with eligibility requirements, but these are not new costs because OWCP is already performing those functions under the current guidelines. The savings in administrative expenses is estimated to be, at a minimum, equivalent to the annual cost of one full-time financial analyst.

ii. Taxpayers

This final rule provides taxpayers with both short- and long-term benefits. In the short term, taxpayers will benefit from lower administration expenses, because savings can be used elsewhere in the government without requiring additional tax revenues. In the long term, this final rule reduces taxpayers’ financial exposure by reducing the risk that the Trust Fund—which has borrowed from the U.S. Treasury’s general fund nearly every year since 1979 to make needed expenditures—will need to assume liabilities of self-insured operators that become insolvent. This final rule will require security deposits that are 100 percent of the operators’ actuarial liability, instead of only partial security deposits as is currently the case for most self-insured operators. Under the current guidelines, the Trust Fund remains partially exposed to the risk of coal operator bankruptcies for operators that do not secure 100 percent of their black lung liabilities under existing guidelines. Moreover, a number of operators have

⁹In the 2017 Information Collection Request, when the form CM–2017a was first approved, OWCP estimated that analyzing the information collected in that form would cost the agency \$3,279.94 annually. No longer requiring this form is expected to save the agency this cost.

securities on deposit with OWCP that are substantially less than those required even under the existing guidelines.

Requiring a 100 percent liability security deposit transfers the risk of insufficient securities to commercial security bond underwriters and banks that specialize in financial risk assessments and are better equipped than OWCP to assess the financial stability of coal mine operators (and who are compensated for assuming that risk via operators' purchase of surety bonds or other forms of security). This final rule requires self-insured operators to post additional security in the aggregate, which would cover the claims for which they are responsible if they were to default on their claim payments (based on the operators' current estimates of their actuarial liabilities). This means the burden for self-insured operators' liabilities would remain with

them instead of transferring to the Trust Fund and, indirectly, to taxpayers.

iii. Commercially Insured Operators

This final rule will not impose additional costs on operators that secure their BLBA liabilities through commercial insurance. This final rule affects only the eligibility criteria, security requirements, and other procedures for operators that secure their liabilities by qualifying to self-insure. At most, commercially insured operators might choose to reassess whether, in light of these changes, commercial insurance remains the most cost-effective option for securing their liabilities or, instead, whether to switch to self-insurance. The cost of any such assessment would be *de minimis*.

iv. Self-Insured Operators

This final rule could increase costs for current operators that are self-insured.

In 2019, OWCP identified a total of 20 operators that were, or recently had been, actively mining coal and participating in the self-insurance program. Four of these operators have since gone bankrupt and are not included in this impact analysis. Of the remaining 16 self-insured operators, seven have commercial insurance for their current operations, but self-insure their legacy liabilities. Nine secure both their current and legacy liabilities through self-insurance.

This final rule will apply to the 16 operators noted above. Table 1 lists the 16 operators' actuarially estimated liabilities, securities currently on deposit, the present security requirement under existing guidelines, and future security requirements under this final rule.

TABLE 1—SELF-INSURED COAL MINE OPERATORS ACTUARIAL LIABILITIES AND SECURITY DEPOSITS
[All dollar amounts in thousands (.000)]

Coal mine operator			Operator reported black lung actuarial liability	Present—on deposit		Existing guidelines		Final rule	
ID No.	Name	Status		Operator securities on deposit	Ratio of securities to reported actuarial liability (%)	Operator securities requirement	Ratio of securities to reported actuarial liability (%)	Operator securities requirement	Ratio of securities to reported actuarial liability (%)
1	Company 1	Active	\$162,939	\$24,400	15	\$114,057	70	\$162,939	100
2	Company 2	Active	111,518	6,900	6	78,063	70	111,518	100
3	Company 3	Active	93,826	2,500	3	65,678	70	93,826	100
4	Company 4	Legacy	57,730	8,400	15	40,411	70	57,730	100
5	Company 5	Legacy	56,802	21,000	37	39,761	70	56,802	100
6	Company 6	Active	49,382	1,500	3	34,567	70	49,382	100
7	Company 7	Active	29,581	20,330	69	20,707	70	29,581	100
8	Company 8	Legacy	23,935	12,412	52	16,755	70	23,935	100
9	Company 9	Active	21,400	14,079	66	14,980	70	21,400	100
10	Company 10	Legacy	3,297	3,301	100	3,297	100	3,297	100
11	Company 11	Legacy	1,364	1,364	100	1,159	85	1,364	100
12	Company 12	Legacy	1,333	1,133	85	1,133	85	1,333	100
13	Company 13	Legacy	1,230	1,046	85	1,046	85	1,230	100
14	Company 14	Active	746	634	85	634	85	746	100
15	Company 15	Active	656	558	85	558	85	656	100
16	Company 16	Active	205	400	195	174	85	205	100
Self-Insured Operators Total			615,944	119,957	19	432,980	70	615,944	100

This final rule does not impose additional reporting or filing requirements on the coal operators currently in the self-insurance program beyond notifying OWCP of any business structure changes that could affect the operator's liability for benefits under the BLBA. If anything, this final rule decreases administrative burdens. Operators are required to continue updating their actuarial liability estimates on a three-year cycle but are no longer required to file quarterly financial reports. There will be a cost to the operators for the time required to review and understand the rule. Because of the small number of affected establishments, this rule familiarization

cost is *de minimis* in aggregate and is not included in the rule's total cost estimate.

This final rule requires self-insured operators to adjust the amount of their security deposits to reach 100 percent of their reported actuarial black lung liability. Table 1 reflects that 13 of the 16 current self-insured operators will be required to increase their security deposits as a result. For each operator, the cost of the increase in security deposits depends on which security deposit option the operator employs (since different security options have different costs) and the amount of the required increase.

Operators with security deposits in the form of indemnity bonds will incur a cost determined by the commercial bond underwriters. OWCP does not have direct information on the cost of these bonds, as pricing is a function of multiple qualitative and quantitative attributes of each operator and is determined by underwriters on a case-by-case basis. Each underwriter has their own pricing formula and offers various payment options. To estimate the cost impacts of the final rule, an annual premium ranging from 2 percent to 12 percent of the additional security was used as an estimate. This range is based on a review of public data from several different surety companies;

however, actual costs could be higher or lower.¹⁰ As noted above, commenters did not provide alternative data on the cost of bonds. Additionally, this analysis focuses solely on surety bonds because that is both the most widely used option among currently self-insured operators and the most cost-effective option. If operators do not wish to use surety bonds, however, they may obtain a different form—or multiple forms—of security, or commercial insurance. See 20 CFR 726.104(b), 30 U.S.C. 933(a), and 20 CFR 726.1 and 726.201.

For operators with security deposits in the form of negotiable securities, the additional costs would consist of the opportunity costs of the additional deposits (*i.e.*, the difference in return between funds held in such accounts and funds invested elsewhere, such as in higher-performing investments or reinvested into the operations of the business itself). One common convention to estimate hypothetical returns on forgone investments is to use

a company or industry-level Weighted Average Cost of Capital (WACC); the median WACC for the metals and mining industry is currently around 7.7 percent, although the WACC for coal mining companies specifically, and in particular for individual coal mining companies, may be higher or lower. The opportunity costs for these operators could be estimated by calculating the difference between their WACC and the annual return earned on their security deposit and multiplying that figure by the dollar increase in their security. OWCP has not quantified these costs for two principal reasons. First, as noted above, most self-insured operators use indemnity bonds as security. OWCP does not anticipate that these operators will begin using negotiable securities. Second, annual indemnity bond costs are likely to be lower than the one-time payment of negotiable securities and associated opportunity costs, making indemnity bonds the more cost-effective option. Furthermore, any operators that currently use negotiable securities to

secure some or all of their liabilities can continue using those securities in combination with indemnity bonds to comply with any increased security requirement (*i.e.*, some portion of the operator's liabilities could be secured with negotiable securities and the remainder could be secured with indemnity bonds).

Table 2 calculates the estimated increased costs of a larger indemnity bond for each operator and compares this figure to each operator's annual revenues. Annual revenues are represented by the most recent revenue available to OWCP, as reported by S&P or operator-provided financial statements. Annual costs are estimated as the average of the maximum and minimum annual premium (*i.e.*, the midpoint of the 2 percent to 12 percent range). As shown in table 2, the estimated annual impact for operators as a percentage of annual revenue ranges from a high of 0.422 percent to less than one thousandth of a percent (including one negative value).¹¹

TABLE 2—ESTIMATED ANNUAL COST OF INCREASED SECURITY DEPOSIT IN THE FORM OF INDEMNITY BONDS
[All dollar amounts in thousands (,000)]

Coal mine operator		Required security deposit = 100%				Minimum estimated cost of change in securities	Maximum estimated cost of change in securities	Average estimated cost of change in securities	Annual revenue	Year of annual revenue	Estimated operator impact as a percent of revenue
ID No.	Name	Operator reported black lung actuarial liability	Operator securities on deposit	Operator securities required: final rule	Change in required secured position ¹						
1	Company 1	\$162,939	\$24,400	\$162,939	\$138,539	\$2,771	\$16,625	\$9,698	\$2,296,100	2022	0.422
2	Company 2	111,518	6,900	111,518	104,618	2,092	12,554	7,323	3,703,100	2022	0.198
3	Company 3	93,826	2,500	93,826	91,326	1,827	10,959	6,393	4,101,600	2022	0.156
4	Company 4	57,730	8,400	57,730	49,330	987	5,920	3,453	1,972,500	2022	0.175
5	Company 5	56,802	21,000	56,802	35,802	716	4,296	2,506	1,738,700	2022	0.144
6	Company 6	49,382	1,500	49,382	47,882	958	5,746	3,352	2,406,500	2022	0.139
7	Company 7	29,581	20,330	29,581	9,251	185	1,110	648	4,981,900	2022	0.013
8	Company 8	23,935	12,412	23,935	11,523	230	1,383	807	1,603,500	2018	0.050
9	Company 9	21,400	14,079	21,400	7,321	146	879	512	14,918,500	2022	0.003
10	Company 10	3,297	3,301	3,297	(4)	(0)	(1)	(0)	241,700	2022	0.000
11	Company 11	1,364	1,364	1,364	(0)	(0)	(0)	(0)	636,657	2018	0.000
12	Company 12	1,333	1,133	1,333	200	4	24	14	11,080,000	2018	0.000
13	Company 13	1,230	1,046	1,230	184	4	22	13	22,989,000	2022	0.000
14	Company 14	746	634	746	112	2	13	8	68,545	2018	0.011
15	Company 15	656	558	656	98	2	12	7	70,826	2018	0.010
16	Company 16	205	400	205	(195)	(4)	(23)	(14)	2,551,800	2022	-0.001
Self-Insured Operators Total.		615,944	119,957	615,944	495,987	9,920	59,518	34,719	75,360,928	.....	0.046
Commercially Insured Operators Total ².		.....	.....	.....	.....	.....	.....	.....	.....	.....	0.000
Coal Mine Industry Total (Self-Insured + Commercially Insured).		.....	.....	.....	.....	.....	.....	.....	.....	.....	0.024

¹ The change represents the difference between the final rule and the securities currently on deposit.

² Commercially Insured Operators includes all other coal mine operators other than the self-insured operators listed.

¹⁰ In reaching this estimate, OWCP reviewed publicly available estimates of surety bond premiums from BondExchange; Bryant Surety Bonds; Insureon; JW Surety Bonds; Lance Surety Bond Associates, Inc.; NNA Surety Bonds; Surety Bonds Direct; Surety Solutions; and Value Penguin.

Note that these are for surety bonds generally, not surety bonds for coal companies specifically. The 2 to 12 percent range was then developed based on this public data.

¹¹ Surety bonds are generally paid for annually, and the premium is paid up front at the beginning

of the year or charged a finance fee for a payment plan. Discounting is not presented in table 2 because the average estimated cost represents one annual premium payment, rather than the total net present value of all future payments.

b. Economic Impact Summary

Operator securities on deposit are estimated to change by nearly \$500 million. This, however, represents an estimate of the projected liabilities over the lifetime of all claims for all self-insured companies. Even if they were all to go bankrupt simultaneously—which is extremely unlikely—the estimated liabilities represent benefits payments over the lifetime of the impacted miners and survivors. As an illustration, consider the annual payout in recent years from the estimated \$865 million transfer of black lung liabilities to the Trust Fund as a result of the three bankruptcies from 2014 to 2016. From fiscal years 2015 through 2022, the Trust Fund paid out between \$8 million and \$30 million per year to active beneficiaries as a direct result of those three bankruptcies. OWCP does not have the ability to predict bankruptcies with certainty, as explained elsewhere in this preamble as a rationale for proposing to eliminate the financial scoring process. Nevertheless, given the fact that \$865 million in projected liabilities has thus far not resulted in more than \$30 million in disbursements to active beneficiaries per year, OWCP predicts that the share of benefits paid from this additional \$500 million in securities on deposit will not exceed \$30 million in any given year.

Furthermore, OWCP estimates ranges from approximately \$10 million to \$60 million on an annual basis, with a mid-range estimate of \$35 million. In table 2 above, the minimum and maximum estimated costs of change in securities are based on 2 percent and 12 percent,

respectively, of the total change in secured position for each operator. OWCP used an annual premium ranging from 2 percent to 12 percent of the additional security based on a review of public data from several different surety companies. OWCP used estimates for surety bonds because that is both the most widely used option among currently self-insured operators and likely to be the most cost-effective option.

The combined opportunity cost on the current self-insurance operators is less than 0.1 percent of aggregate average annual revenues. Even for the operator facing the largest increase as a portion of revenues (Company 1 in Table 2), the expected impact is less than a half of a percent of average annual revenues. The impact on the coal industry overall is smaller than that of the self-insured operator group because there is no impact (0.0 percent) on commercially insured operators.

C. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, requires an agency to prepare a regulatory flexibility analysis for regulations that will have “a significant economic impact on a substantial number of small entities” or to certify that the regulations will have no such impact.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. For the mining industry,

the Small Business Administration (SBA) uses two levels of employee counts to define small mining operations:

1. North American Industry Classification System (NAICS) code 212114, Bituminous Coal and Lignite Surface Mining—1,250 employees.

2. NAICS 212115, Bituminous Coal Underground Mining—1,500 employees.

For purposes of this analysis, operators were classified as Surface operations (NAICS = 212114) or Underground (NAICS = 212115) depending on their predominant method of coal mining. The SBA classification of small entities was applied according to the operator’s NAICS code type of operations.

According to the SBA criteria, 6 of the 16 self-insured operators, or 38 percent, are considered small firms. Tables 3A and 3B show the impact on small and large self-insured operators. As explained above, the minimum and maximum estimated costs of change in securities are based on 2 percent and 12 percent, respectively, of the total change in secured position for each operator.

The combined impact on these 6 operators ranges from \$0 to \$3.5 million, which translates to 0 percent to 0.18 percent of annual revenues. These impacts are very small, and for that reason the rule is not considered to have a significant economic impact on a substantial number of small operators. The overall impact on the large operators is less than 0.01 percent of annual revenues.¹²

TABLE 3A—SMALL SELF-INSURED COAL MINE OPERATORS

ID No.	Name	Operations type	Dollars in thousands (,000)				Rule change impact (%)	Employee counts ¹			
			Minimum estimated cost of change in securities	Maximum estimated cost of change in securities	Average estimated cost of change in securities	Annual revenue		2020	2021	2022	3 Yr average
4	Company 4	Underground	987	5,920	3,453	1,972,500	0.175	1,133	1,127	1,172	1,144
5	Company 5	Underground	716	4,296	2,506	1,738,700	0.144	1,401	704	854	986
10	Company 10	Surface	– 0.1	– 0.5	– 0.3	241,700	– 0.000	500	500	500	500
11	Company 11	Surface	0	0	0	636,657	0.000	950 est	950 est	950 est	950
14	Company 14	Surface	2	13	8	68,545	0.011	142 est	142 est	142 est	142
15	Company 15	Surface	2	12	7	70,826	0.010	180	180	180	180

¹ Employee counts reflects all employees for each company. It is not limited to coal mining employees.

¹² The RFA does not define “significant” or “substantial.” 5 U.S.C. 601. It is widely accepted, however, that “[t]he agency is in the best position to gauge the small entity impacts of its regulations.” SBA Office of Advocacy, “A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,” at 18 (August 2017), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf>. One measure for determining whether an economic impact is “significant” is the percentage of revenue affected. For this rule, the Department

used as a standard of significant economic impact whether the costs for a small entity equal or exceed 3 percent of the entity’s annual revenue. The Department has used the threshold of 3 percent of revenues for the definition of significant economic impact in a number of recent rulemakings. *See, e.g.*, Wage and Hour Division, Establishing a Minimum Wage for Contractors, Notice of Proposed Rulemaking, 79 FR 34568, 34603 (June 17, 2014); Office of Federal Contract Compliance Programs, Government Contractors, Requirement To Report Summary Data on Employee Compensation, Notice

of Proposed Rulemaking, 79 FR 46562, 46591 (Aug. 8, 2014). The 3 percent standard is also consistent with the standards utilized by various other Federal agencies in conducting their regulatory flexibility analyses. *See, e.g.*, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Part II; Final Rule, 79 FR 27106, 27151 (May 12, 2014).

TABLE 3B—LARGE SELF-INSURED COAL MINE OPERATORS

ID No.	Name	Operations type	Dollars in thousands (,000)				Rule change impact (%)	Employee counts ¹			
			Minimum estimated cost of change in securities	Maximum estimated cost of change in securities	Average estimated cost of change in securities	Annual revenue		2020	2021	2022	3 Yr average
1	Company 1	Underground	2,771	16,625	9,698	2,296,100	0.422	1,494	1,575	1,860	1,643
2	Company 2	Underground	2,092	12,554	7,323	3,703,100	0.198	3,203	3,303	3,404	3,303
3	Company 3	Underground	1,827	10,959	6,393	4,101,600	0.156	3,250	3,500	3,730	3,493
6	Company 6	Underground	958	5,746	3,352	2,406,500	0.139	2,902	2,990	3,371	3,088
7	Company 7	Surface	185	1,110	648	4,981,900	0.013	4,600	4,900	5,500	5,000
8	Company 8	Underground	230	1,383	807	1,603,500	0.050	6,000 est	6,000 est	6,000 est	6,000
9	Company 9	Surface	146	879	512	14,918,500	0.003	16,787	16,688	16,974	16,816
12	Company 12	Surface	4	24	14	11,080,000	0.000	11,300	11,300 est ..	11,300 est ..	11,300
13	Company 13	Surface	4	22	13	22,989,000	0.000	25,000	25,500	27,000	25,833
16	Company 16	Surface	-4	-23	-14	2,551,800	-0.001	3,011	2,884	2,982	2,959
Large Self-Insured Operators Total			8,213	49,278	28,745	70,632,000	0.008	77,547	78,640	82,121	79,436

¹ Employee counts reflects all employees for each company. It is not limited to coal mining employees.

Based on these facts, the Department certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, the Department has made a final determination that a regulatory flexibility analysis is not required. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. *See* 5 U.S.C. 605.

Industry Profile and Analysis

Types of Operations

The United States coal mine industry consists of hundreds of mines controlled by hundreds of operators. Coal mine operators vary in size from owners of multiple mines to operators of single mines. The two main categories of coal mining operations are surface and underground, but many operators

are also involved in other coal-related enterprises, including steel production, mining technology and support services, petroleum products, other mineral mining operations, and energy generation. Coal mining is the only focus of some operators, while for others it is only incidental to their main enterprise. For purposes of this analysis, operators were classified as Surface operations (NAICS = 212114) or Underground (NAICS = 212115) depending on their predominant method of coal mining. The SBA classification of small entities was applied according to the operator's NAICS code type of operations.

Revenues Versus Coal Production

Typically, coal operators are analyzed on the basis of measures such as coal production, coal reserves, and mine

productivity. Among self-insured operators, there are differences in the proportion of coal mining operations covered by self-insurance, and the proportion of operators' total operations that are mining-related. To determine the impact of the rule change, total company revenues were used, because an individual operator could have multiple revenue streams available to support their workers' compensation costs. As noted, 38 percent of the self-insured operators are classified as "small" using employee counts, under the SBA's definitions. However, 50 percent are classified as "major" coal producers based on coal production. The "major" classification is based on the U.S. Energy Information Administration ("EIA") criterion of producing more than 5 million short tons of coal per year.

TABLE 4—COAL PRODUCTION BY OPERATOR

Coal mine operator			Coal production (thousand short tons)				% of U.S. production	Business size
ID No.	Name	Major U.S. coal producer	2020	2021	2022	3 Yr average		
1	Company 1	Yes	18,790	23,963	24,103	22,285	3.9	Large.
2	Company 2	Yes	61,705	71,854	78,364	70,641	12.4	Large.
3	Company 3	Yes	13,897	15,835	15,867	15,200	2.7	Large.
4	Company 4	No	0	0	0	0	0.0	Small.
5	Company 5	Yes	7,864	5,605	6,315	6,595	1.2	Small.
6	Company 6	Yes	26,900	32,218	35,477	31,532	5.5	Large.
7	Company 7	Yes	104,814	105,383	101,929	104,042	18.3	Large.
8	Company 8	No	0	0	0	0	0.0	Large.
9	Company 9	No	456	0	0	152	0.0	Large.
10	Company 10	Yes	30,801	27,852	28,899	29,184	5.1	Small.
11	Company 11	Yes	8,146	6,845	6,425	7,139	1.3	Small.
12	Company 12	No	0	0	0	0	0.0	Large.
13	Company 13	No	1,612	1,443	1,437	1,498	0.3	Large.
14	Company 14	No	115	121	143	126	0.0	Small.
15	Company 15	No	1,741	2,065	1,685	1,831	0.0	Small.
16	Company 16	No	3,737	3,503	3,735	3,658	0.6	Large.
Self-Insured Operators Total			280,578	296,687	304,380	293,882	51.6	
Coal Mine Industry Total			535,434	577,431	594,155	569,007	100.0	

TABLE 4—COAL PRODUCTION BY OPERATOR—Continued

Coal mine operator			Coal production (thousand short tons)				% of U.S. production	Business size
ID No.	Name	Major U.S. coal producer	2020	2021	2022	3 Yr average		
							% of production	
	Major US Coal Producer: Self Insured		272,917	289,555	297,379	286,617	57.8	
	Major US Coal Producer: Commercially Insured		185,690	221,208	220,174	209,024	42.2	
	Total Major US Coal Producers		458,607	510,763	517,553	495,641	100.0	
	Non-Major Self Insured		7,661	7,132	7,001	7,265	9.9	
	Non-Major Commercially Insured		69,166	59,536	69,601	66,101	90.1	
	Total Non-Major US Coal Producers		76,827	66,668	76,602	73,366	100.0	

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector, “other than to the extent that such regulations incorporate requirements specifically set forth in law.” This rule does not include any Federal mandate that may result in increased expenditures by State, local, or Tribal governments, or increase expenditures by the private sector by more than \$100 million, and therefore is not covered by the Unfunded Mandates Reform Act.

E. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have “federalism implications.” E.O. 13132, 64 FR 43255 (Aug. 4, 1999). The rule will not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” *Id.*

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

G. Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*, OIRA has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 20 CFR Part 726

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

For the reasons set forth in the preamble, OWCP amends 20 CFR part 726 as follows:

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

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

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*, 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.*; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990 (as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015)); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary’s Order 10–2009, 74 FR 58834.

■ 2. Revise subpart B to read as follows:

Subpart B—Authorization of Self-Insurers

Sec.

726.101 Who may be authorized to self-insure.

726.102 Application for authority to become a self-insurer; how filed; information to be submitted.

726.103 Application for authority to self-insure; effect of regulations contained in this part.

726.104 Action by OWCP upon application of operator.

726.105 Fixing the amount of security.

726.106 Type of security.

726.107 How negotiable securities are handled.

726.108 Withdrawal of securities.

726.109 Increase in the amount of security.

726.110 Filing of agreement and undertaking.

726.111 Notice of authorization to self-insure.

726.112 Reports required of self-insurer; examination of accounts of self-insurer.

726.113 Disclosure of confidential information.

726.114 Authorization and reauthorization timeframes.

726.115 Revocation of authorization to self-insure.

726.116 Appeal process.

§ 726.101 Who may be authorized to self-insure.

(a) Pursuant to section 423 of part C of title IV of the Act, authorization to self-insure against liability incurred by coal mine operators on account of the total disability or death of miners due to pneumoconiosis may be granted or denied in the discretion of the Secretary. The provisions of this subpart describe the minimum requirements established by the Secretary for determining whether any particular coal mine operator may be authorized as a self-insurer.

(b) The minimum requirements which must be met by any operator seeking authorization to self-insure are as follows:

(1) The operator must demonstrate the administrative capacity to fully service such claims as may be filed against it; and,

(2) Such operator must obtain security, in a form approved by OWCP (see § 726.104) and in an amount to be determined by OWCP (see § 726.105).

(c) No application will be approved until OWCP receives security in the amount and in the form determined by OWCP. If the applicant is seeking authorization to self-insure for the first time, it is not authorized to self-insure while its application is under review.

(d) No operator whose application for authorization to self-insure or to renew authorization to self-insure is denied may reapply until 12 months after a final decision denying such application.

§ 726.102 Application for authority to become a self-insurer; how filed; information to be submitted.

(a) *How filed.* An application for authorization to self-insure or to renew authorization to self-insure must be submitted electronically in the manner

prescribed by OWCP. Such application must be signed by the applicant and if the applicant is not an individual, by the principal officer of the applicant duly authorized to make such application.

(b) *Information to be submitted.* Each application for authority to self-insure or to renew authorization to self-insure must contain the following:

(1) Any application forms required by OWCP.

(2) An actuarial report using OWCP-mandated actuarial assumptions, unless the applicant has submitted such a report within the preceding 3 years. The operator may submit an additional actuarial report using alternate assumptions with an explanation of why it believes the alternative assumptions are appropriate.

(3) A statement of the employer's payroll report for each of the preceding 3 years.

(4) A statement of the average number of employees engaged in employment within the purview of the Act for each of the preceding 3 years.

(5) A list of the mine or mines to be covered by any particular self-insurance agreement. Each such mine or mines listed must be described by name and reference must be made to the Mine Identification Number assigned such mine by the Mine Safety and Health Administration, U.S. Department of Labor.

(6) A statement demonstrating the applicant's administrative capacity to provide or procure adequate servicing for a claim including both medical and dollar claims.

(7) In addition to the information required in paragraphs (b)(1) through (6) of this section, OWCP may in its discretion, require the applicant to submit such further information or such evidence as OWCP may deem necessary.

(c) *Who may file.* An application for authorization to self-insure (including an application to renew authority to self-insure) may be filed by any parent or subsidiary corporation, partner or partnership, party to a joint venture or joint venture, individual, or other business entity which may be determined liable for the payment of black lung benefits under part C of title IV of the Act, regardless of whether such applicant is directly engaged in the business of mining coal. However, in each case for which authorization to self-insure is granted, the agreement and undertaking filed pursuant to § 726.110 and the security deposit must be respectively filed by and deposited in the name of the applicant only.

§ 726.103 Application for authority to self-insure; effect of regulations contained in this part.

As appropriate, each of the regulations, interpretations, and requirements contained in this part, including those described in subpart C of this part, are binding upon each applicant under this subpart, and the applicant's consent to be bound by all requirements of the regulations in this part are deemed to be included in and a part of the application, as fully as though written therein.

§ 726.104 Action by OWCP upon application of operator.

(a) Within 30 days after determining that an applicant's application for authorization to self-insure or to renew authorization to self-insure is complete, OWCP will review and consider all relevant information submitted in the application and issue a written determination either denying the application or determining the amount of security which must be given by the applicant to guarantee the payment of benefits and the discharge of all other obligations which may be required of such applicant under the Act. OWCP may extend the 30-day deadline if it determines that additional evidence is needed or that the applicant's evidence is not in compliance with OWCP's requirements in this subpart.

(b) The applicant will thereafter be notified that they may give security in the amount fixed by OWCP (see § 726.105):

(1) In the form of an indemnity bond with sureties satisfactory to OWCP;

(2) By a deposit of negotiable securities with a Federal Reserve Bank in compliance with §§ 726.106(c) and 726.107;

(3) In the form of a letter of credit issued by a financial institution satisfactory to OWCP (except that a letter of credit is not sufficient by itself to satisfy a self-insurer's obligations under this part); or

(4) In the form of a trust pursuant to section 501(c)(21) of the Internal Revenue Code (26 U.S.C. 501(c)(21)) established prior to December 12, 2024. Operators using such trusts must submit quarterly financial statements to OWCP documenting the value of the trust every ninety days, beginning with ninety days from the date on which OWCP's authorization or reauthorization of the operator's self-insurance becomes effective under paragraphs (d) and (e) of this section.

(c) Operators that are required to submit an initial or increased security deposit may do so in quarterly increments over the course of one year.

Such operators must deposit at least 25 percent of the newly required security amount within thirty days of OWCP issuing the notification provided in paragraphs (d) and (e) of this section, followed by at least 50 percent of their required security within four months, at least 75 percent within eight months, and 100 percent within one year. If an operator fails to timely submit any one of these security installments, OWCP will revoke its self-insurance authorization and the operator will be subject to the civil penalty provisions in subpart D of this part.

(d) If the applicant is receiving authorization to self-insure for the first time, OWCP will notify the applicant that:

(1) Its authorization to self-insure is contingent upon submitting the required security and completed agreement and undertaking; and

(2) The applicant's authorization to self-insure is effective for 12 months from the date such security (either the full amount or first quarterly installment under paragraph (c) of this section) and completed agreement and undertaking are received by OWCP.

(e) If OWCP renews the applicant's authorization to self-insure, OWCP will notify the applicant that:

(1) If there are no changes in the required security amount, the applicant's authorization to self-insure is granted and effective for 12 months from the date the applicant's completed agreement and undertaking is received by OWCP; or

(2) If changes are needed to the existing security amount, the applicant's authorization to self-insure is not granted until the applicant has submitted the required security (either the full amount or first quarterly installment under paragraph (c) of this section) and signed agreement and undertaking. The applicant's authorization to self-insure will be effective for 12 months from the date such updated security and completed agreement and undertaking are received by OWCP.

(f) Any applicant who cannot meet the security deposit requirements imposed by OWCP in this subpart should proceed to obtain a commercial policy or contract of insurance and submit proof of such coverage within 30 days after OWCP issues notification to the applicant of its decision. Any applicant for authorization to self-insure whose application has been denied or who believes that the security deposit requirements imposed by OWCP in this subpart are excessive may appeal such determination in the manner set forth in § 726.116.

§ 726.105 Fixing the amount of security.

Any operator approved to self-insure must submit security equal to 100 percent of the actuarially estimated liabilities (all present and future liabilities), as determined by OWCP based on the actuarial report or reports submitted with the operator's application or on file with OWCP, other information submitted with the operator's application, and any other materials or information that OWCP deems relevant.

§ 726.106 Type of security.

(a) OWCP will determine the type or types of security which an applicant must or may procure. An operator may not provide any form of security other than those provided for in § 726.104(b).

(b) In the event the indemnity bond option is selected, the bond must be in such form and contain such provisions as OWCP prescribes: *Provided* that only corporations may act as sureties on such indemnity bonds. In each case in which the surety on any such bond is a surety company, such company must be one approved by the U.S. Treasury Department under the laws of the United States and the applicable rules and regulations governing bonding companies (see Department of Treasury's Circular-570).

(c) If the form of negotiable securities is selected, the operator must deposit the amount fixed by OWCP in any negotiable securities acceptable as security for the deposit of public moneys of the United States under regulations issued by the Secretary of the Treasury in 31 CFR part 225. The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States.

§ 726.107 How negotiable securities are handled.

(a) Deposits of securities provided for by the regulations in this part must be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by OWCP, or the Treasurer of the United States, and must be held in the name of the Department of Labor.

(b) If the self-insurer defaults on its obligations under the Act, OWCP has the power, in its discretion, to:

(1) Collect the interest as it may become due;

(2) Sell any or all of the securities; and

(3) Apply the collected interest or proceeds from the sale of securities to the payment of any benefits for which the self-insurer may be liable.

(c) If a self-insurer with deposits of securities has neither defaulted nor appealed from a determination made by OWCP under § 726.104, OWCP may allow the self-insurer to collect interest on the security deposit.

§ 726.108 Withdrawal of securities.

(a) Withdrawal of any form of security (indemnity bonds, negotiable securities, and/or letters of credit) is prohibited except upon express written authorization by OWCP.

(b) If a self-insurer wishes to withdraw securities, it must submit a written request, and must submit either an updated actuarial report using OWCP-mandated actuarial assumptions to support why the existing security levels are no longer applicable or replacement securities in the amount and form approved by OWCP. If OWCP approves the operator's request to withdraw and replace its securities, the operator must provide the replacement securities before it withdraws its existing securities.

§ 726.109 Increase in the amount of security.

(a) OWCP may, at its discretion, increase the amount of security a self-insurer is required to post whenever it determines that the amount of security on deposit is insufficient to secure 100 percent of the self-insurer's liability for payment of benefits and medical expenses under the Act. OWCP will provide a written explanation for the increase.

(b) OWCP will not require an operator to post greater than 100 percent of its estimated liabilities, based on the information prompting the increase in security.

§ 726.110 Filing of agreement and undertaking.

(a) In addition to the requirement that adequate security be procured as set forth in this subpart, the applicant for the authorization to self-insure must, as a condition precedent to receiving such authorization, execute and file with OWCP an agreement and undertaking in a form prescribed and provided by OWCP in which the applicant must agree:

(1) To pay when due, as required by the Act, all benefits payable on account of total disability or death of any of its employee-miners;

(2) To furnish medical, surgical, hospital, and other attendance, treatment, and care as required by the Act;

(3) To provide security in a form approved by OWCP (see § 726.104) and in an amount established by OWCP (see § 726.105); and

(4) To authorize OWCP to sell any negotiable securities so deposited or any part thereof, and to pay from the proceeds thereof such benefits, medical, and other expenses and any accrued penalties imposed by law as OWCP may find to be due and payable.

(b) When an applicant has provided the requisite security, it must submit to OWCP a completed agreement and undertaking, together with satisfactory proof that its obligations and liabilities under the Act have been secured.

(c) Any operator authorized to self-insure must notify OWCP of any changes to its business structure, including the purchase, sale, or lease of any coal mining operations, that could affect the operator's liability for benefits under the Act. The operator must provide such notification to OWCP within 30 days of such change. In all events, however, an operator's liability following a change or sale is governed by 20 CFR 725.490 through 725.497.

(d) OWCP may, at its discretion, require an operator to provide any information that may affect the operator's liability for benefits under the Act.

§ 726.111 Notice of authorization to self-insure.

Upon receipt of a completed agreement and undertaking and satisfactory proof that adequate security has been provided, OWCP will notify an applicant for authorization to self-insure in writing that it is authorized to self-insure to meet the obligations imposed upon such operator by section 415 and part C of title IV of the Act. OWCP will also notify the applicant of the date on which its authorization is effective, the date on which such authorization will expire, and the date by which the applicant must apply to renew such authorization if the applicant intends to continue self-insuring its liabilities under the Act.

§ 726.112 Reports required of self-insurer; examination of accounts of self-insurer.

(a) Each operator who has been authorized to self-insure under this part must submit to OWCP reports containing such information as OWCP may from time to time require or prescribe.

(b) Whenever it deems it to be necessary, OWCP may inspect or examine the books of account, records, and other papers of a self-insurer for the purpose of verifying any financial statement submitted to OWCP by the self-insurer or verifying any information furnished to OWCP in any report required by this section, or any other section of this part, and such self-

insurer must permit OWCP or its duly authorized representative to make such an inspection or examination as OWCP may require. In lieu of this requirement OWCP may in its discretion accept an adequate report of a certified public accountant.

(c) Failure to submit or make available any report or information requested by OWCP from an authorized self-insurer pursuant to this section may, in appropriate circumstances, result in a revocation of the authorization to self-insure.

§ 726.113 Disclosure of confidential information.

Any financial information or records, or other information relating to the business of an authorized self-insurer or applicant for the authorization of self-insurance obtained by OWCP is exempt from public disclosure to the extent provided in 5 U.S.C. 552(b) and the applicable regulations of the Department of Labor in 29 CFR part 70.

§ 726.114 Authorization and reauthorization timeframes.

(a) No initial or renewed authorization to self-insure may be granted for a period in excess of 12 months unless OWCP determines that extenuating circumstances exist to allow an extension.

(b) If an applicant is seeking to renew its authority to self-insure, the applicant must file its application no later than 90 days before its existing authorization period ends.

(c) Each operator authorized to self-insure under this part must apply for reauthorization for any period during which it engages in the operation of a coal mine and for additional periods after it ceases operating a coal mine. Upon application by the operator, accompanied by proof that the security it has posted is sufficient to secure all benefits potentially payable to miners formerly employed by the operator, OWCP will issue a certification that the operator is exempt from the coal mine operator insurance requirements of this part based on its prior operation of a coal mine. The civil money penalty provisions of subpart D of this part will be applicable to any operator that fails to apply for reauthorization in accordance with the provisions of this section.

§ 726.115 Revocation of authorization to self-insure.

OWCP may suspend or revoke the authorization of any self-insurer for good cause, including but not limited to:

(a) Failure by a self-insurer to comply with any provision or requirement of law or of the regulations in this part, or

with any lawful order or request made by OWCP;

(b) The failure or insolvency of the surety on its indemnity bond, if such bond is used as security, or any other financial institution holding any form of security provided by an operator; or

(c) Impairment of financial responsibility of such self-insurer.

§ 726.116 Appeal process.

(a) *How to appeal.* Any applicant that wishes to appeal DCMWC's determination on an application must submit a written appeal to the Director of OWCP in the form and manner prescribed by OWCP within 30 days of DCMWC issuing such determination. This deadline may not be extended.

(b) *What to submit.* Within 30 days after filing a written appeal, the applicant must submit any briefing on which it intends to rely, including any arguments that DCMWC's initial determination was erroneous. The applicant is not entitled to submit any further evidence at this time; all evidence must be submitted to DCMWC with the initial application. OWCP may, at its discretion, extend this deadline at the applicant's request for up to 30 days upon a showing of good cause. No more than two extensions will be granted.

(c) *Conferences.* (1) The applicant may request an informal conference to present its position. Such request must be made in writing when the applicant submits briefing in support of its appeal.

(2) If the applicant requests a conference, the Director of OWCP will hold one with the applicant's representatives and the Department's Office of the Solicitor.

(3) If the applicant does not request a conference, OWCP may either decide the appeal on the record or, at its discretion, schedule a conference on its own initiative.

(4) The conference will be limited to the issues identified in the applicant's written materials.

(d) *OWCP's review.* OWCP will review the previous determination and issue a final agency decision.

(1) The Director of OWCP will review the initial decision, evidence of record, and arguments submitted on appeal. The applicant may not submit new evidence to the Director of OWCP.

(2) The Director of OWCP will have 60 days from receipt of the appeal to take up the appeal and issue a final agency decision.

(3) If the Director of OWCP issues a final agency decision denying self-insurance, any existing self-insurance authorization of the applicant will end. The applicant will have 30 days from the issuance of the final agency decision

to obtain and submit proof of commercial insurance or begin facing civil penalties for failure to secure benefits.

Signed at Washington, DC, this 3rd day of December 2024.

Christopher J. Godfrey,
Director, Office of Workers' Compensation Programs.

[FR Doc. 2024-28848 Filed 12-11-24; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. OSHA-2019-0003]

RIN 1218-AD25

Personal Protective Equipment in Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is finalizing a revision to its personal protective equipment standard for construction to explicitly require that the equipment must fit properly.

DATES: This final rule is effective January 13, 2025.

ADDRESSES: *Docket:* To read or download comments or other information in the docket, go to <https://www.regulations.gov>. All comments and submissions are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2500 (TDY number 877-889-5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

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Copies of this Federal Register notice and news releases: Electronic copies of these documents are available at OSHA's web page at <https://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

Citation Method

In the docket for the personal protective equipment in construction rulemaking, found at <https://www.regulations.gov>, every submission was assigned a document identification (ID) number that consists of the docket number (OSHA–2019–0003) followed by an additional four-digit number (e.g., OSHA–2019–0003–0002). In this final rule, citations to items in the docket are referenced by the last four digits of the Document ID Number. For example, Document ID number OSHA–2019–0003–0002 would be referenced as “Document ID 0002.” In a citation that contains two or more documents, the citations are separated by commas. In cases where a commenter submitted multiple documents, the attachment number is included after the Document ID. OSHA may also cite items that appear in another docket. When that is the case, OSHA includes the full document ID number for the corresponding docket (e.g., OSHA–2010–0034–4247).

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I. Executive Summary

OSHA is finalizing revisions to its personal protective equipment (PPE)

standard for construction, at 29 CFR 1926.95(c), to explicitly state that PPE must fit properly. This revision will align the language in the PPE standard for construction with the corresponding language in OSHA’s PPE standards for general industry and shipyards and affirm OSHA’s interpretation of its PPE standard for construction as requiring properly fitting PPE. Properly fitting PPE is a critical element of an effective occupational safety and health program. PPE must fit properly to provide appropriate protection to employees from workplace hazards. Improperly fitting PPE may fail to provide any protection to an employee, reduce the effectiveness of protection, present additional hazards, or discourage employees from using such equipment in the workplace.

The Final Economic Analysis for this rulemaking demonstrates that this rule is economically feasible and will not have a significant economic impact on a substantial number of small entities.

II. Background

A. OSHA’s PPE Requirements

Section 6(b)(7) of the OSH Act, 29 U.S.C. 655(b)(7), authorizes OSHA to include requirements for protective equipment within its safety and health standards. Employees wear PPE to minimize exposure to hazards that can cause severe injuries and illnesses in the workplace. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, or other hazards. PPE includes many different types of protective equipment, such as hard hats, gloves, goggles, safety shoes, safety glasses, welding helmets and goggles, hearing protection devices, respirators, coveralls, vests, harnesses, and full body suits.

OSHA has specific standards that address PPE in general industry, shipyard employment, marine terminals, longshoring, and construction. These standards require employers to provide PPE when it is necessary to protect employees from job-related injuries, illnesses, and fatalities. With few exceptions, OSHA requires employers to pay for PPE when it is used to comply with an OSHA standard. In addition, the PPE standards for general industry (29 CFR 1910.132(d)(1)(iii)) and shipyard employment (29 CFR 1915.152(b)(3)) include a specific requirement that employers select PPE that properly fits each affected employee.

OSHA’s standard at 29 CFR 1926.95 sets out the requirements for PPE in construction. Section 1926.95(a)

requires that all types of PPE must be provided, used, and maintained in a sanitary and reliable condition whenever the PPE is necessary due to workplace hazards. Section 1926.95(b) further requires that, even when employees provide their own PPE, the employer must assure its adequacy, including proper maintenance, and sanitation. Section 1926.95(c) provides that all PPE must be of safe design and construction for the work to be performed. Unlike the general industry and shipyards PPE standards, the current PPE construction standard at § 1926.95 does not include an explicit requirement that PPE properly fit each affected employee.

PPE must fit properly to provide adequate protection to employees. If PPE does not fit properly, it can make the difference between an employee being safely protected, having inadequate protection, or being dangerously exposed. In some cases, ill-fitting PPE may not protect an employee at all, and in other cases it may present additional hazards to that employee and to employees who work around them. For example, sleeves of protective clothing that are too long or gloves that do not fit properly may make it difficult to use tools or operate equipment, putting the wearer and other workers at risk of exposure to hazards, or may get caught in machinery, resulting in injuries to the wearer such as fractures or amputations. The legs of protective garments that are too long could cause tripping hazards for the worker with the improperly fitting PPE and could also impact others working near that worker. Protective clothing that is too small may increase a worker’s exposure to hazards by, for example, providing insufficient coverage from dangerous machinery or hazardous substances. The issue of improperly fitting PPE is particularly important for smaller construction workers, including some women, who may not be able to use currently existing standard-size PPE. Fit problems can also affect larger workers, and standard-size PPE does not always accommodate varying body shapes.

B. Rulemaking History

The Advisory Committee on Construction Safety and Health (ACCSH) is a continuing advisory body established by statute (40 U.S.C. 3701 *et seq.*) that provides advice and assistance to the OSHA Assistant Secretary on construction standards and policy matters related to construction. The issue of proper PPE fit in construction was discussed at the ACCSH meeting held on July 28, 2011. At that meeting, the committee unanimously passed a

motion recommending that OSHA use the Standards Improvement Project-Phase IV (SIP-IV) rulemaking “to update the Construction PPE Standards to mirror the General Industry PPE requirements, specifically that PPE fit the employee who will use it” (Document ID 0002).¹ On December 16, 2011, ACCSH unanimously passed another motion recommending that OSHA consider using the SIP-IV rulemaking to revise the construction standards to include the requirement that PPE properly fit construction workers (Document ID 0003).²

On December 6, 2013, OSHA issued a SIP-IV Request for Information (RFI) asking the public “to identify provisions in OSHA standards that are confusing or outdated, or that duplicate, or are inconsistent with, the provisions of other standards, either OSHA standards or the standards of other agencies” (Document ID 0004). In response, several commenters, including the AFL-CIO and the International Safety Equipment Association (ISEA), recommended that OSHA use the SIP-IV rulemaking to revise its construction PPE standard to ensure that PPE properly fits all construction employees (Document ID 0005, 0006).

Based on stakeholder suggestions, on October 4, 2016, OSHA published the SIP-IV Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (Document ID 0007). Among other things, OSHA proposed revising 29 CFR 1926.95(c) to include an explicit requirement that PPE must properly fit each affected employee. In the preamble to the SIP-IV NPRM, OSHA stated that the proposed revision would “clarify the construction PPE requirements on this point and make them consistent with general industry PPE requirements” (Document ID 0007). Additionally, OSHA stated that clarifying the requirement would “help ensure employers provide employees with properly fitting PPE, thereby adequately protecting employees

exposed to hazards requiring PPE” (Document ID 0007).

OSHA received several comments specifically addressing the proposed revision to § 1926.95(c) in the SIP-IV NPRM. Some commenters fully supported the proposed revision while a coalition of construction industry stakeholders opposed it. OSHA discusses the specific comments received during the SIP-IV rulemaking in the next section of this preamble.

Based on the comments received and the rulemaking record, on May 13, 2019, OSHA published the SIP-IV final rule in the **Federal Register** (Document ID 0008). The final rule did not include the proposed revision to the construction standard at § 1926.95(c). Instead, OSHA determined that such a revision to the construction PPE standard should occur in a separate rulemaking outside the SIP process. In the preamble to the final rule, OSHA explained that proposing to revise the PPE requirements separately from the SIP-IV rulemaking “would provide the public with broader notice of the proposal, encourage robust commentary, and better inform OSHA’s approach to employer obligations and worker safety in relation to PPE used in construction” (Document ID 0008).

On July 17, 2019, OSHA presented a draft proposed rule to ACCSH for its recommendation, as required by 29 CFR 1912.3(a). The committee asked OSHA to review enforcement statistics on PPE fit and consider including guidelines for what constitutes “proper fit” (Document ID 0009). One member of ACCSH expressed concern that OSHA would require employers to present a “fit verification” to an OSHA compliance officer during a workplace inspection. OSHA responded that the proposed rule would not change how employers assessed the PPE needs of their workers. OSHA also explained that the proposed revision had been included in the SIP-IV rulemaking in an effort to make the construction standard consistent with the general industry and shipyards PPE standards. In addition, while some ACCSH members did not believe there would be a cost associated with the proposed rule, one member asked OSHA to consider cost closely given the transient nature of the construction industry. After the period for comments and questions ended, ACCSH unanimously passed a motion recommending that OSHA move forward with the proposed rule.

C. Comments Received During the SIP-IV Rulemaking

OSHA received four comments on the proposed revision of § 1926.95(c) in response to the SIP-IV NPRM. The

Laborers’ Health & Safety Fund of North America (LHSFNA) and North America’s Building Trades Unions (NABTU) both supported the proposed revision to clarify that PPE must properly fit each affected employee (Document ID 0016, 0017, Attachment 1). Both commenters also stated that improperly fitting PPE can limit or negate the ability of the PPE to protect employees. According to NABTU, “[t]his is particularly important for women in the construction industry, who often have difficulty obtaining properly fitting PPE” (Document ID 0017, Attachment 1). LHSFNA commented that the fit problem can also affect men, including with respect to harness sizes for men who are over certain weight limits (Document ID 0016). NABTU stated that the proposed revision not only would make the construction standard consistent with the general industry standard but also was supported by worker organizations, safety associations, and ACCSH (Document ID 0017, Attachment 1).

OSHA also received a comment in support of the proposed revision from Emmanuel Omeike (Document ID 0018), a safety professional, which included two studies addressing PPE and women in construction (Document ID 0018, Attachments 3, 4). The comment noted several examples of employees who were wearing PPE but nonetheless sustained injuries due to improper fit (Document ID 0018). Mr. Omeike stated that employees are more likely to remove improperly fitting PPE, thus negating whatever protection the PPE might otherwise provide (Document ID 0018). Lastly, the commenter stated that prevention through design can eliminate many costs associated with PPE because PPE designed to be adjustable and customizable can prevent employee exposure to hazards created by improperly fitting PPE.

Additionally, OSHA received comments from the Construction Industry Safety Coalition (CISC) (Document ID 0019) opposing the proposed revision to § 1926.95(c). This commenter raised concerns about the possible impact the proposed revision would have on the construction industry, the definition of “properly fits,” employer confusion regarding compliance, and whether the SIP-IV rulemaking was the appropriate means to revise the standard. CISC stated they “[did] not believe that OSHA seriously considered the full impact this revision will have on employers and the construction industry in general.” They argued that the proposed revision’s “broad scope covers a wide variety of PPE and situations that are not fully

¹ OSHA’s Standards Improvement Project (SIP) is a series of regulatory reviews and rulemakings intended “to improve and streamline OSHA standards by removing or revising requirements that are confusing or outdated, or that duplicate, or are inconsistent with, other standards” (Document ID 0007).

² ACCSH had previously, in 1999, issued a report titled *Women in the Construction Workplace: Providing Equitable Safety and Health Protection* (Document ID 0020) in which the committee identified ill-fitting PPE as a pressing issue for women in construction and recommended that OSHA revise the construction PPE standards in 29 CFR part 1926 “to conform with the General Industry Standard for PPE (29 CFR 1910.132) which specifies that the employer select PPE that properly fits each affected employee.”

appreciated in the SIP–IV” and that “[p]lacing an explicit requirement that employers must ensure that all types of construction PPE ‘properly fits’ all different sized employees in all different situations would be a monumental task which in many cases is not necessary and will not improve safety.” They further argued that the proposed revision “fails to provide adequate notice to employers as to what ‘properly fit’ would mean” and questioned whether the standard would be violated if an employee complained that a hard hat is uncomfortable or if arc-flash clothing was “too long in the legs for one employee” (Document ID 0019).

CISC also commented that revising § 1926.95(c) to include an explicit requirement that all PPE fit properly “greatly changes the dynamic of th[e] standard and places enormous new responsibilities on construction employers.” According to CISC, the proposed revision does not simply clarify the standard, but “opens up construction employers to subjective standards of whether particular PPE fits properly and what steps employers must take to ensure that such PPE fits properly, particularly when most PPE does not come in exact sizing for employees” (Document ID 0019). They added that, in many cases, whether PPE properly fits is subjective, and it would be difficult for employers in construction to assess PPE for many employees of varying sizes in every situation. “[T]he subjective nature of this standard would greatly increase the potential for enforcement actions without giving employers fair notice of what is required” (Document ID 0019).

CISC also stated that it disagreed with OSHA’s statement in the preamble to the SIP–IV proposed rule that applying the same standard to construction employers will have the same effect or benefit as in general industry. The comment emphasized that the types of and need for PPE vary greatly in construction, therefore adding a new fit requirement would create more of a burden for construction employers (Document ID 0019). CISC also argued that SIP–IV was not the appropriate avenue for making the proposed change and urged OSHA to embark on “a more thorough and complete rulemaking process which gives fair notice to the regulated community and will allow the agency to receive comments from the regulated community as to the impact and implications that this change would have on employers” (Document ID 0019).

In response to CISC’s comment on the SIP–IV proposal, OSHA acknowledged in the NPRM for this rule that there is

a wide variety of PPE and hazards in the construction industry and stated that to protect workers from these varied hazards in the construction industry, it is critical that workers’ PPE fit them properly. OSHA explained that it used the phrase “proper fit” in the SIP–IV rulemaking because that is the phrase used in OSHA’s general industry and shipyards PPE standards. The agency’s intention throughout the SIP–IV rulemaking was to apply the proposed “properly fits” provision in the same manner as in general industry and shipyards. OSHA further noted that the addition of the “properly fits” provision to the general industry standard was made for the same reason that it was proposed during the SIP–IV rulemaking—that standard-sized PPE does not fit all employees, particularly women (see 59 FR 16334 (April 6, 1994)). OSHA’s experience is that employers in general industry have had no issue understanding the phrase “properly fits” with regard to PPE.

Given the limited purposes of SIP–IV (i.e. “to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA’s safety and health standards” (Document ID 0008)) and the comments on the PPE revision described above, OSHA determined not to finalize the revision to § 1926.95(c) in the SIP–IV rulemaking. Instead, OSHA concluded that such a change to the PPE construction standard should take place outside the SIP process, in order to encourage robust public comment and acquire relevant information from stakeholders.

On July 20, 2023, OSHA published the Personal Protective Equipment in Construction Notice of Proposed Rulemaking (NPRM) (Document ID 0001), proposing to revise 29 CFR 1926.95(c) to clarify that personal protective equipment used in the construction industry must properly fit workers to protect them from hazards they may encounter in the workplace. OSHA has considered the issues raised by commenters during the SIP–IV rulemaking along with the comments received on the NPRM and addresses them below in Section III, Summary and Explanation.

III. Summary and Explanation

This final rule amends 29 CFR 1926.95, Criteria for personal protective equipment, to make explicit the existing requirement that employers in the construction industry must ensure PPE worn by employees properly fits. Specifically, OSHA is revising § 1926.95(c) to state that employers must ensure all personal protective

equipment: (1) is of safe design and construction for the work to be performed; and (2) is selected to ensure that it properly fits each affected employee.³ After reviewing the comments received, OSHA is finalizing the provision as proposed because the agency has determined the proposed language appropriately clarifies employers’ obligations under the standard. OSHA has also determined that additional clarifying language is not necessary for the reasons discussed in section III.C. below.

As OSHA explained in the NPRM, the agency has historically interpreted § 1926.95 as requiring that PPE properly fit each employee, has published guidance to that effect, and has issued citations to employers in the construction industry who failed to provide properly fitting PPE (88 FR 46710–46712). As such, the revision in this final rule does not represent a substantive change to the standard. Rather, the goal of the revision is to clarify employers’ existing obligations while aligning the language in the construction PPE standard with similar requirements for properly fitting PPE in OSHA’s general industry (29 CFR 1910.132(d)(1)(iii)) and shipyards (29 CFR 1915.152(b)(3)) standards.

In response to the proposed rule, OSHA received 85 public comments. The vast majority of commenters supported the change. These commenters generally agreed that the change would provide greater clarity about employers’ responsibility to make sure employees wear properly fitting PPE and would improve the workplace safety and health of construction workers. Some commenters raised concerns about the revisions, stating, for example, that the specifics of the requirement were unclear or that the change would result in prohibitive costs for employers. The issues raised by these comments and others are discussed in more detail below.

A. Impact of Improperly Fitting PPE and the Need for an Explicit Requirement

In the NPRM, OSHA discussed the importance of properly fitting PPE in the construction industry, explaining that improperly fitting PPE may not protect workers from hazards and could create additional hazards (81 FR 46710–46711). The agency noted several studies and reports that identified instances of improperly fitting PPE either failing to protect workers from the hazard for which the PPE was intended

³ Existing 1926.95(c) states only that all personal protective equipment shall be of safe design and construction for the work to be performed.

(e.g., loose-fitting goggles exposing an employee's eyes to flying debris) or introducing additional hazards (e.g., loose-fitting gloves becoming caught in machinery). In addition, OSHA identified evidence that employees are more likely to remove or not use ill-fitting PPE.

In response to the NPRM, many commenters agreed with OSHA that improperly fitting PPE poses a hazard to workers in the construction industry (see, e.g., Document ID 0040, 0052, 0057, 0073, 0076, 0079–0081, 0115). For example, the American Industrial Hygiene Association (AIHA) commented that “[a]ny worker’s safety and health can be adversely impacted by PPE that does not fit properly,” adding that workers who are smaller and larger than average size are most likely to be impacted by improperly fitting PPE (Document ID 0058). NABTU similarly stated that “[p]roperly fitting PPE is essential in the construction industry because poorly fitting PPE does not provide the wearer with adequate protection” (Document ID 0108). The National Institute for Occupational Safety and Health (NIOSH) identified several studies demonstrating that poorly fitting PPE can inadequately protect workers and can create additional hazards (Document ID 0073).

Numerous commenters shared their personal experiences with the lack of properly fitting PPE. For example, one commenter (Document ID 0061) was the first woman hired on a jobsite and resorted to buying her own extra small and small gloves because her employer refused to provide her with anything other than gloves that were too large. After running out of gloves that properly fit her, she was forced to wear the improperly fitting larger gloves. While working on an air conditioning unit, the improperly fitting gloves became caught in a pulley, resulting in a wrist sprain, torn ligaments, fractured fingers, and nerve damage. If this commenter had been provided properly fitting PPE, these injuries might have been avoided. Another commenter, who stated that OSHA’s proposal “would directly improve my safety on the job,” shared that, as a woman who has been provided improperly fitting PPE, she has suffered “multiple injuries and near misses” because properly sized PPE often is not available (Document ID 0065). Another commenter explained how they have had to purchase their own gloves because they have been told it’s impossible to find gloves small enough to fit them (Document ID 0056). For fear of losing her job or not being paid, a commenter who has worked 18 years as a laborer described using tape

and raingear to protect herself while working in water because the only waders provided by the employer were too large and presented a drowning risk (Document ID 0080).

Many commenters raised concerns about being provided various items of improperly fitting PPE, with fall protection harnesses frequently cited as an item that often does not fit properly (Document ID 0031, 0035–0037, 0039, 0044, 0048, 0053, 0056, 0063, 0064, 0066, 0068, 0073, 0075–0077, 0080, 0081, 0084, 0087, 0090, 0093, 0098, 0108, 0112, 0113). Although harnesses come in various sizes and can be adjusted to some extent, many commenters describe receiving harnesses that were too large. There were commenters who mentioned receiving extra large harnesses that did not fit them appropriately because they were too long (Document ID 0076, 0081). When given larger harnesses, one commenter stated that the employer tells them to “shrink it down to make it fit” (Document ID 0068). A woman new to the construction industry commented that she has been dealing with ill-fitting PPE such as harnesses that are too loose on her and become a “safety HAZARD and a hinderance” (Document 0035). Several commenters noted that harnesses and other PPE designated as “unisex” are not truly appropriate for women (Document ID 0036, 0037, 0041, 0063, 0108).

Some commenters noted that the lack of properly fitting PPE can lead to a less inclusive workplace. According to Chicago Women in Trades and Allied Organizations (CWIT), “As a result, women struggle to secure consistent employment and find work on safe and respectful jobsites. In this sense, the disproportionate challenges tradeswomen face around accessing properly fitted PPE is a consequence of the way women are seen and valued in the construction industry” (Document ID 0098). Flatiron Construction added that the proposed rule is not only essential for preventing injuries in the workplace, but “having proper fitting PPE is also crucial to promoting a sense of belonging within the industry” and helping the construction industry attract and retain workers (Document ID 0106). Another commenter also argued that clarifying OSHA’s PPE requirement could lead to greater recruitment and retention of workers, specifically women (Document ID 0047). The International Painters and Allied Trades and the Signatory Wall and Ceiling Contractors Alliance (Painters et al.) added that “[i]f we are going to bring more women into the trades both the industry and the regulatory structure

that surrounds it must evolve to ensure the safety of women on the job. Establishing that an employer’s obligation to provide PPE in construction extends to providing properly fitting PPE is a critical part of this” (Document ID 0078). One commenter simply stated that putting workers at risk because they do not fit standard-size PPE is “inequitable and immoral” (Document ID 0059).

A few commenters mentioned efforts to address improperly fitting harnesses. NIOSH commented that they have conducted studies on fall protection harnesses that have resulted in “guidelines to develop improved sizing systems and strap lengths for whole body fall arrest harnesses” and “improved harness configuration to fit construction workers” (Document ID 0073). The ISEA notes that modern fall arrest harnesses, especially those with adjustable hip belts, are ergonomically designed to fit women, and some harnesses that are designed for women will also fit men. They recommended that “employers and their distributors should work with employees to identify a harness that fits properly and is designed to protect against the hazards at hand” (Document ID 0112). NABTU cited examples of harnesses that are designed to fit women, explaining that “harnesses designed to fit women aim to provide improved protection against fall hazards and increased comfort. They offer a range of features tailored for varied anthropometry, including hip and chest adjustability, increased hip and back support, vertical shoulder straps, comfort padding and more” (Document ID 0108).

In the NPRM, OSHA preliminarily determined that revising § 1926.95 to include clear and explicit language that PPE must fit properly would help ensure workers in the construction industry are protected from workplace hazards (81 FR 46711). OSHA requested comment on whether the inclusion of an explicit requirement in § 1926.95(c) would help clarify construction employers’ obligations to provide properly fitting PPE to their employees. Numerous commenters were supportive of OSHA’s clarifying language (Document ID 0024, 0028, 0029, 0031, 0034–0048, 0050–0068, 0071–0081, 0083–0088, 0091–0098, 0106–0108, 0110, 0112, 0113, 0115, 0116). Of these comments, many expressed the need for an explicit requirement in the standard to ensure that workers receive properly fitting PPE. Kentucky’s Department of Workplace Standards commended OSHA for proposing explicit language on properly fitting PPE, agreeing with OSHA that “providing clear and explicit

language in the construction PPE standard clarifies employers' responsibility to provide employees with properly fitting PPE, thereby ensuring employee protection" (Document ID 0095). CWIT commented that "[t]he rule clarification aids in reaffirming OSHA's existing interpretation of its current construction standard and clearly communicates to employers their obligations to provide properly fitting PPE" (Document ID 0098). California's Occupational Safety and Health Standards Board (Cal/OSHSB) responded that clarification of the PPE requirements is necessary and supported OSHA's proposed revision (Document ID 0107). The National Safety Council (NSC) commented that the clarifying language "will save lives and prevent injuries" (Document ID 0096). The American Society of Safety Professionals (ASSP) Chesapeake Chapter also supported the proposed revision (Document ID 0083).

Some commenters who support the proposed changes believe including explicit language that PPE must properly fit construction workers could spur the manufacture, distribution, and availability of PPE in more wide-ranging sizes and fits. A commenter who has "been too often confronted with the challenge of finding PPE scaled to fit smaller and female workers" supports the clarification and hopes it will create more of a market for PPE that fits smaller workers and women (Document ID 0031). One commenter likewise expressed hope that this clarification would "create the market demand for smaller PPE that merchants currently refuse to see" (Document ID 0046). Another commenter said it was imperative for women to get safety equipment that fits them correctly (Document ID 0113). After mentioning how it is difficult to find options of smaller sizes for various PPE, a commenter said that the proposal would "lead to more demand . . . and encourage manufacturers to make these products" (Document ID 0039).

To this point, OSHA mentioned in its proposed rule that The Center for Construction Research and Training (CPWR) and ISEA have a list of manufacturers of PPE specifically for women (81 FR 46711). In their comment to the proposed rule, ISEA also noted that "PPE manufacturers provide safety equipment in size ranges and adjustability to fit a vast majority of the construction workforce. ISEA members are willing to work with occupational safety stakeholders to make sure all workers have PPE that is required. . . ." (Document ID 0112).

A number of commenters stated that an explicit requirement for properly fitting PPE will not only ensure they have PPE to protect them from hazards but would increase their productivity. CWIT highlighted in their comment that "[w]hen PPE fits incorrectly, it can cause a disruption to a worker's . . . capacity to complete projects" (Document ID 0098). A commenter expressed how being asked to "make due [sic]" with improperly fitting PPE put them at risk of going home without pay or losing their job because they couldn't complete the assigned tasks. Properly fitting PPE would not just protect them but allow them to do complete tasks that would benefit their employer (Document ID 0045). Another commenter stated how the proposal would drastically change their productivity at work (Document ID 0048) while another explained how it is difficult to do their job when safety equipment does not fit correctly (Document ID 0054). These comments demonstrate how improperly fitting PPE not only affords the wearer inadequate protection from hazards but also hurts employers' productivity and makes it difficult for workers who need non-standard sizes of PPE⁴ to remain employed in the construction industry.

OSHA received two comments that questioned the necessity of the proposed revision and suggested that existing standards are sufficient. One commenter stated that OSHA could cite 29 CFR 1926.28(a), the general requirement that PPE be worn in hazardous conditions on construction worksites (Document ID 0026); another appeared to say that 29 CFR 1910.132(d), the general industry standard on which OSHA is modeling this revision to the construction standard, renders this revision unnecessary. That standard, however, applies only to general industry work, not construction work. And the general requirement for PPE in construction is inadequate because, as explained above, it is clear from the record that workers in the construction industry have either struggled to obtain properly fitting PPE or are still being provided PPE that does not fit. This often leaves these employees exposed to the hazards the PPE is meant to protect against and may be creating additional hazards. This is especially true for workers of larger and smaller stature, women in particular.

Based on the comments received and the information in the record, OSHA

⁴ OSHA uses the term "non-standard" to refer to sizes of PPE that are available on the market but that some construction employers may not routinely order or keep in stock.

reaffirms its finding that improperly fitting PPE is a hazard to workers in the construction industry and finds that an explicit requirement in § 1925.95 is appropriate to clarify employers' existing obligation to ensure PPE properly fits each employee.

B. Whether the Rule Would Effectuate the Purpose of the OSH Act Better Than Consensus Standards

Section 6(b)(8) of the OSH Act (29 U.S.C. 655(b)(8)) requires OSHA, in adopting a standard, to consider national consensus standards; where the agency decides to depart from the requirements of a national consensus standard, it must explain why the OSHA standard better effectuates the purposes of the OSH Act. OSHA has reviewed national consensus standards on PPE and determined that revising 29 CFR 1926.95 as proposed will better effectuate the purposes of the OSH Act than relying on the language of existing national consensus standards.

While there are many consensus standards that address PPE, there is no general consensus standard on PPE that incorporates a fit requirement. Instead, each standard focuses on a different type of equipment. For example, OSHA incorporates by reference American National Standards Institute (ANSI) Z87.1, Occupational and Educational Personal Eye and Face Protection Devices, and ANSI Z89.1, Head Protection, into its construction standards. However, there are several other PPE consensus standards that address not only different types of PPE, but also different uses for that PPE, such as NFPA 2113, Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire. Rather than adopting each PPE consensus standard and whatever language it may include on proper fit, OSHA is revising its existing construction standard to make it clear that all types of PPE used in the workplace must fit properly. OSHA believes that centralizing the requirement in the OSHA construction standard will make employers more aware of their responsibility to ensure that PPE used to protect workers from hazards must fit properly. This revision also makes clear that all PPE must fit properly, regardless of whether there is an applicable consensus standard.

Additionally, many consensus standards do not include mandatory language. For example, both ANSI standards discussed above include specific language concerning properly fitting PPE. However, while ANSI Z87.1 discusses the importance of properly

fitting eye and face protection, the standard does not include mandatory language regarding its use. Similarly, rather than including mandatory language, ANSI Z89.1 merely refers users of head protection equipment to the manufacturer for advice on proper fit. The revision to § 1926.95(c) in this final rule will clarify that properly fitting PPE is an enforceable requirement rather than the non-mandatory suggestions contained in those consensus standards. The agency believes that a clear and explicit requirement will help ensure that employers provide employees with properly fitting PPE.

OSHA requested comments on whether the proposed revision would effectuate the purpose of the OSH Act better than existing consensus standards. Several commenters agreed that it would (Document ID 0073, 0098, 0108, 0112). NABTU responded that the proposed revision would do so because “[w]hile some national consensus standards address fit, there is no requirement that employers follow consensus standards” (Document ID 0108). Similarly, CWIT stated that revisions to the OSHA standards would be better than “adopting each consensus standard, with varying language around type, use, and fit” and relying on “a non-mandatory suggestion as described in certain consensus standards” (Document ID 0098). NIOSH also supported revisions to the standard over reliance on consensus standards because “[p]roviding all the information in one place will ensure all PPE fitting guidelines are readily accessible and consistent” (Document ID 0073). AIHA also commented that this rule would effectuate the purpose of the OSH Act better than consensus standards because “[r]egulatory language is helpful for employers to have a better understanding of what is required and thresholds for compliance” (Document ID 0058). One commenter even identified an instance of a consensus standard obstructing their company’s efforts to develop a Class 3 safety vest for women (Document ID 0106).

ISEA, an organization whose members design, test, manufacture, and supply PPE and which serves as secretariat for several consensus standards on PPE, supports the new regulatory language, noting that while consensus standards ANSI/ISEA Z87.1–2020, Current Safety Standards for Safety Glasses and Z89.1–2019, Industrial Head Protection, effectuate the purpose of the OSH Act, “a requirement that PPE fit properly will help to make certain that workers get PPE that meets these standards and fits the wearer” (Document ID 0112).

Having evaluated the information relevant to this particular issue, OSHA concludes that revising the existing standard as proposed will better effectuate the purpose of the OSH Act than relying on the language of existing consensus standards.

C. The Appropriateness of the New Regulatory Text

OSHA requested comment on the wording of the agency’s proposed addition to 29 CFR 1926.95, which, as explained above, is substantially similar to the language in OSHA’s general industry and shipyards standards that require properly fitting PPE.

Some commenters suggested language for the regulatory text that would refer to manufacturers’ instructions regarding fit. A representative from Cook’s Excavating, LLC, commented that OSHA should adopt the language “[a]ll personal protective equipment shall properly fit the affected employee in accordance with the manufacturer’s recommendations” (Document ID 0034). The World Floor Covering Association also recommended relying on “manufacturer’s recommendations or specifications to determine proper fit” as well as suggesting that “PPE that meets applicable national consensus standards should also be deemed to properly fit” (Document ID 0114). Cal/OSHSB encouraged OSHA to adopt language similar to their standards, which provide that PPE be used according to the manufacturer’s instructions (Document ID 0107). NIOSH also recommended a reference to manufacturers’ recommendations for proper fit to provide additional guidance to stakeholders (Document ID 0073). One commenter, however, was skeptical of using manufacturers’ recommendations because “manufacturer’s instructions may not provide clear or accurate guidance on how to measure or adjust fit, especially for women’s sizes or models” (Document ID 0091).

OSHA believes that the manufacturer’s instructions and recommendations can be an important source of information concerning the proper fit of PPE. OSHA encourages employers to look to manufacturer’s instructions and recommendations for guidance on how an item of PPE should properly fit the wearer. However, the agency is not including it as a requirement in its construction standard because doing so would limit employers’ flexibility when finding and choosing PPE that meets the individual needs of their workers. In addition, the clarified requirement for employers to provide properly fitting PPE applies

regardless of whether the manufacturer of the PPE provides instructions or recommendations on proper fit. Where the manufacturer’s instructions or recommendations are silent on proper fit, the employer can often look to consensus standards for additional guidance on the appropriate fit of an item of PPE. Employers can also choose PPE products for which guidance on proper fit exists, either from the manufacturer or otherwise, over items where such information is lacking.

OSHA also requested comment on whether there was any confusion about what “properly fits” means for PPE used in the construction industry. In the NPRM, OSHA explained that “properly fits” means the PPE is the appropriate size to provide an employee with the necessary protection from hazards and does not create additional safety and health hazards arising from being either too small or too large. Most commenters expressed no confusion about what “properly fits” means, but some had additional suggestions for explaining the term. For example, the AIHA suggested an “operational definition . . . so that employers know what is meant and for proper compliance documentation The standard should point employers to specific actions per PPE item that can be taken” (Document ID 0058). NIOSH commented that they agree with OSHA’s interpretation of “properly fits” but that based on responses to the SIP–IV rulemaking, it is clear it is not “universally understood” (Document ID 0073). They suggested that OSHA define the phrase. CWIT endorsed OSHA’s interpretation of the term but noted that assessments of proper fit must take into account workers’ body changes during pregnancy (Document ID 0098).

Some comments requested additions to the proposed regulatory text. The ASSP Chesapeake Chapter asked for clarification of employer and employee responsibilities to “emphasize the gravity of the issue and encourage proactive measures in ensuring properly fitting PPE is available” (Document ID 0083). One commenter asked OSHA to “expound[] on ‘proper fit’ in the standard” (Document ID 0032), while another asked for “clarifications, specifications, or resources for the employers who are responsible to provide the properly fitting PPE in question” (Document ID 0033). The latter commenter also suggested that OSHA include a requirement for a qualified or competent person to determine the proper fit of PPE (Document ID 0033). The United Brotherhood of Carpenters & Joiners of America (UBCJA) suggested expanding

the regulatory text to add, “To properly fit personal protective equipment must be comfortable to wear, not pose a danger and provide effective protection” (Document ID 0074).

OSHA believes its explanation of “properly fits” provides employers with enough information that they can select PPE for their workers that will adequately protect them from the hazards of the worksite without creating additional hazards. Given the significant variety in types and models of PPE, the varied circumstances in which they are used, and the potential for new technology and new forms of PPE in the future, OSHA does not believe it is appropriate or necessary for the agency to prescribe specific fit criteria for all possible forms of PPE. Similarly, OSHA does not believe it is necessary for the agency to prescribe specific criteria for workers’ changing bodies, as the requirement for properly fitting PPE applies every time the PPE is used. Rather, the agency believes a performance-based approach is appropriate, just as the underlying requirement to identify and provide necessary PPE is performance-based (see 29 CFR 1926.95).

In the general industry and maritime sectors, OSHA has not needed to accompany the requirement for properly fitting PPE with specific directions regarding fit for each item of PPE or other details about what “properly fits” means; nor do those standards include a requirement that a designated competent person assess PPE fit. There is no indication that this has resulted in significant confusion among employers in those sectors. Indeed, as noted in the NPRM, OSHA issued only 51 citations for improperly fitting PPE in general industry and shipyards between the years 1994 and 2021, which suggests the vast majority of employers have been able to comply (88 FR 46712). Providing specific fit requirements for each individual type of PPE item also might undermine the manufacturer’s recommendations for a particular PPE item. Accordingly, OSHA is not convinced that further details within the regulatory text are necessary for the construction industry. In any event, OSHA can issue additional guidance in the future if the agency determines it is needed.

In the proposed rule, OSHA stated that “properly fits” means, in part, that the PPE “does not create additional safety and health hazards arising from being either too small or too large” (88 FR 46711). OSHA listed examples of the additional hazards to which workers can be exposed because of improperly fitting PPE (81 FR 46710–46711). These

examples demonstrate a few of the ways that improperly fitting PPE can create additional hazards, with a few examples coming directly from OSHA inspections. Commenters also submitted examples of how improperly fitting PPE can create additional hazards. The UBCJA agreed with OSHA’s emphasis on additional hazards, adding that “[e]ven a loose safety vest can pose a danger if it is unexpectedly caught in equipment” (Document ID 0074). NIOSH explained that “[s]afety glasses slipping off, loose gloves getting caught on machines or exposing skin, or blisters forming from ill-fitting safety boots make working more difficult and can adversely affect worker safety and job satisfaction” (Document ID 0073). The State Building and Construction Trades Council of California noted that “oversized protective clothing can lead to tripping hazards or get caught in machinery. . . . Poorly-fitted fall protection harnesses may lead to other injuries. . . . Gloves that are too big put a worker at risk of coming into contact with chemicals that can cause dermatitis or other skin diseases” (Document ID 0028). Another commenter mentioned how ill-fitting PPE could snag on scissor lifts (Document ID 0097) while a member of IBEW Local 48 commented that “[i]tems that are too large run the risk of becoming entangled in machinery. . . .” (Document ID 0040).

CISC raised concerns about OSHA’s discussion of additional hazards. They contend that “[w]ithout additional clarification on what ‘additional hazards’ employers must address in order to comply with the proposed rule, employers will be forced to re-evaluate every single piece of PPE they provide to their employees. Employers will be tasked with identifying additional hazards that could result from their PPE not ‘properly fitting’ in every situation” (Document ID 0109). CISC suggested OSHA “provide notice of specific hazards that are associated with PPE that does not properly fit” and “clarify what ‘additional hazards’ improperly fitting PPE may cause” (Document ID 0109).

It is neither necessary nor possible for OSHA to identify all hazards that might arise from improperly fitting PPE, just as the agency does not identify all hazards that might necessitate PPE in the first place (see 29 CFR 1926.95(a)). Given the many combinations of PPE that can be selected to protect workers from the multitude of workplace-specific hazards, employers are in the best position to identify what hazards exist at their particular worksite, the appropriate PPE to address those

hazards, and the proper fit of PPE that will not result in additional hazards. This is both because employers have the most knowledge of the work tasks involved and the hazards faced by employees at their worksite and because they have access to the people with the most direct knowledge about proper fit: the employees who must wear the PPE. In most cases, the affected employee will be able to indicate whether the provided PPE fits properly or whether it poses a hazard from their work tasks. The employer also knows the specific PPE involved in a given case and can refer to the manufacturer’s instructions for that specific item for additional guidance. Finally, to the extent that relevant national consensus standards address proper fit of particular PPE, employers may look to those standards for guidance as well.

The ASSP Chesapeake Chapter asked for clarification of how the proposed change affects the employer/employee relationship, stating that “[c]learly defined responsibilities for employers will emphasize the gravity of this issue and encourage proactive measures in ensuring properly fitting PPE is available” (Document ID 0083). This revision has no impact on the employer/employee relationship; it simply clarifies that every employer is responsible for ensuring that their workers have properly fitting PPE. Additional responsibilities employers have regarding PPE of their workers in the construction industry can be found in Subpart E—Personal Protective and Life Saving Equipment, 29 CFR 1926.95 through 1926.107.

D. Differences Between General Industry, Maritime, and the Construction Industry

OSHA requested comments on whether any differences between general industry and maritime and the construction industry impact whether OSHA should include “properly fits” in the construction standard as proposed in the NPRM. Commenters expressed support for language that reflects the requirements for properly fitting PPE in the general industry and maritime industries. NIOSH, for example, stated that “mirroring the language for general industry and maritime standards is appropriate because of the significant hazards and injury burden in the construction industry. The change will provide added emphasis on the documented need to ensure all PPE fits all workers well” (Document ID 0073). The AIHA noted that it knew of no differences between general industry, maritime, and construction that would impact OSHA’s inclusion of “properly

fits” in the construction standards (Document ID 0058). Painters et al. commented that “[t]here is nothing unique to the construction industry that would put an undue burden on employers to ensure that each worker has access to PPE that fits their size and shape properly and can be used for the purpose for which it was intended: to protect the worker from hazards of injury or illness” (Document ID 0078).

Some commenters suggested that it is inappropriate to align the language in the construction industry with the language of general industry and shipyards because the construction industry is different from general industry and shipyards. CISC argued that an important difference between the construction industry and other industries is the changing conditions of the worksite. “The construction industry does not operate in static, permanent worksites” with known hazards that “have long since been identified and documented” like in general industry and shipyards; rather, it is “dynamic” and “[w]hat PPE is needed and when, can vary from day to day . . .” (Document ID 0109). The National Demolition Association (NDA) made a similar argument, stating that construction worksites present different challenges and work conditions than other industries, but did not elaborate on what those differences are and how they would be impacted by OSHA’s proposal (Document ID 0111).⁵

OSHA does not find this argument persuasive. First, § 1926.95(a) requires construction employers to provide appropriate PPE to employees when necessitated by workplace hazards. This is true regardless of how dynamic the work activities are. Given that employers must already analyze the hazards on their worksites, no matter how dynamic, and provide necessary PPE, these commenters fail to explain why the dynamic nature of the activities warrants permitting employers to provide PPE that does not fit.

Moreover, although there are differences between the construction industry and other industries, many of the hazards that necessitate properly fitting PPE to protect workers are the same. In the NPRM, OSHA referenced citations in general industry and maritime for violation of the

requirement for properly fitting PPE. Many of those violations were for PPE that is also used in the construction industry, such as harnesses and gloves. As evidenced by the comments to the NPRM, several stakeholders’ primary concerns about properly fitting PPE involve these types of items (see, e.g., OSHA’s discussion of comments related to harnesses in B. Impact of Properly Fitting PPE). Neither CISC nor NDA identified examples of PPE that are unique to the construction industry.

OSHA also emphasizes that the Advisory Committee on Construction Safety and Health (ACCSH), which is composed of an equal number of employee and employer representatives along with representatives from State and Federal agencies and subject-matter experts (see 29 CFR 1912.3(b)), has on several occasions urged OSHA to align the language in the construction PPE standards with those in general industry and shipyards (Document ID 0002, 0003, 0020). Finally, as explained in Section VI, Technological Feasibility, OSHA finds that there are no technological barriers to providing construction employees with properly fitting PPE.

In sum, OSHA is not convinced any differences that exist between the construction industry and other industries warrant depriving construction employees of protection against the hazards posed or not prevented by improperly fitting PPE. Indeed, as discussed above, properly fitting PPE is already an implicit requirement under the construction standard for PPE and this final rule makes that requirement explicit. Accordingly, OSHA concludes that the proposed language is appropriate for inclusion in the standard.

E. The Adequacy of Guidance on PPE “Proper Fit” in Construction

Prior to the publication of the proposed rule, ACCSH recommended that OSHA provide additional guidance explaining what “proper fit” means for the construction industry. As described above, in the NPRM, OSHA explained that “‘properly fits’ means the PPE is the appropriate size to provide an employee with the necessary protection from hazards and does not create additional safety and health hazards arising from being either too small or too large” (88 FR 46711). OSHA also requested comment on whether existing OSHA guidance regarding PPE “proper fit” in construction is adequate and if it is not, what type of additional guidance OSHA should provide.

OSHA received a variety of comments in response to this request. While

NIOSH responded that existing guidance was not adequate, they commented that revising OSHA’s construction standards to explicitly state that PPE must properly fit would help address this concern. NIOSH also suggested that OSHA should define “properly fitting” (Document ID 0073). The NSC noted they have a PPE training that teaches that PPE should fit comfortably and not be too large or too small (Document ID 0096). CWIT suggested that OSHA develop an eTool to provide guidance on proper fit of PPE (Document ID 0098). Cal/OSHSB recommended that OSHA work with manufacturers and provide guidance on conformity assessments for all PPE (Document ID 0107). The ISEA, while agreeing with OSHA’s interpretation of proper fit, suggested that OSHA work with stakeholders to develop additional guidance such as FAQs to minimize any confusion about the requirement to provide properly fitting PPE.

OSHA is willing to work with construction industry stakeholders to develop specific guidance that will broadly address any confusion or concerns the industry has about providing PPE that properly fits workers. To do that, OSHA must first have clear and explicit language in its construction standards that communicates an employer’s obligations. After a review of the comments received in response to this proposed rule, OSHA believes that the proposed language accomplishes this goal.

F. Osha Enforcement of PPE Fit Requirements

In the NPRM, OSHA explained that enforcement of the requirement for properly fitting PPE in construction would be the same as it has been in general industry and maritime, relying on enforcement guidance the agency has already created for those industries and applying it to the construction industry. OSHA also provided citation data and examples of violations of the requirement to have properly fitting PPE to demonstrate how the agency has been enforcing this requirement in general industry and shipyards (88 FR 46711).

Some commenters requested additional information on how OSHA will enforce this requirement. CISC argued that the proposed rule “does not discuss how investigators will be evaluating PPE for compliance” resulting in “concern that employers will be held to subjective standards of whether PPE fits properly and what steps employers must take to ensure they are in compliance” (Document ID 0109). Other commenters who

⁵NDA also commented that State and local governments, rather than OSHA, should develop any regulations on properly fitting PPE (Document ID 0111). However, the OSH Act grants OSHA the authority to promulgate safety and health standards, including the construction standard that this final rule revises. Furthermore, OSHA sees no reason why a general requirement for properly fitting PPE would differ among different geographic areas.

supported the proposed rule overall agreed with this concern that enforcement could be subjective (Document ID 0088, 0091). Painters et al., on the other hand, noted that the proposed changes do not introduce new concepts. “[W]e think it is important to note that the uncertainty often associated with the revision of an OSHA standard does not pertain to this proposed rule. OSHA is adopting language it has long applied in the general industry and maritime standards” (Document ID 0078).

With regard to enforcement-related concerns, OSHA believes that this preamble adequately explains what OSHA expects from employers: to select PPE for their workers that is appropriately designed and sized to adequately protect them from hazards without creating additional hazards. OSHA believes this performance-based interpretation of “properly fits” provides sufficient specificity while maintaining flexibility to allow employers to select the PPE necessary to protect their workers on the job. Additionally, there is existing guidance that can assist employers in selecting properly fitting PPE. Several commenters pointed out that the manufacturer’s instructions are an important source of information on the proper fit of PPE (see Document ID 0034, 007, 0107, 0114). Although consensus standards do not carry mandatory obligations to meet their standards, they also can provide guidance on how various PPE items should fit.

One important aspect of determining what PPE should be provided to workers is comfort. OSHA stated in the proposed rule that improperly fitting PPE can be uncomfortable for the wearer, which in turn can lead workers to modify or disregard the PPE and become vulnerable to a hazard (81 FR 46711). Several commenters echoed this concern. Some commenters mentioned that ill-fitting, uncomfortable PPE could be dangerous (Document ID 0076, 0081). NIOSH stated that comfort is an important factor that can positively impact PPE use (Document ID 0073). Cal/OSHSB commented that “[m]aking sure that PPE not only fits but is comfortable is imperative to ensuring that employees wear the PPE throughout their shift” (Document ID 0107). UBCJA requested that OSHA adopt language stating that for PPE to properly fit, it must be comfortable to wear (Document ID 0074).

Some commenters expressed concern about whether comfort would be an indication of proper fit and, if so, how OSHA would address that from an

enforcement standpoint. CISC asked, “Is comfort important because it encourages employees to keep PPE on, or is it a citable offense even if ‘uncomfortable’ PPE is being worn?” (Document ID 0109). Similarly, the Wood Floor Covering Association asked, “Is simply finding the PPE to be uncomfortable sufficient to claim it does not properly fit even [if] the equipment provides full protection?” (Document ID 0114).

OSHA reaffirms its position that comfort is an important consideration for properly fitting PPE, both because more comfortable PPE is more likely to be worn by workers rather than discarded and unused and because discomfort in many cases can indicate improper fit. An employee’s expression of discomfort should be taken seriously by the employer, as it may signal that the PPE warrants further evaluation to ensure it will serve its protective purpose and will not create additional hazards.

At the same time, OSHA also recognizes that discomfort during the use of PPE may not always be the result of improper fit. Some PPE may be inherently uncomfortable, despite fitting properly. OSHA has explained in other contexts that personal discomfort alone does not give rise to a violation of the OSH Act’s General Duty Clause, absent a related recognized hazard that could cause death or serious physical harm (see *Reiteration of Existing OSHA Policy on Indoor Air Quality: Office Temperature/Humidity and Environmental Tobacco Smoke*, available at <https://www.osha.gov/laws-regs/standardinterpretations/2003-02-24>). The same is true with respect to PPE under 29 CFR 1926.95: OSHA cannot issue a citation simply because PPE that properly fits is uncomfortable.⁶ However, OSHA cautions that regardless of fit, employers have an independent duty to ensure that appropriate PPE is worn at all times when necessitated by a workplace hazard (29 CFR 1926.28). Because the record clearly indicates uncomfortable PPE is more likely to go unused, employers would be wise to take seriously employees’ concerns about discomfort.

Finally, a few commenters suggested that increased enforcement from OSHA and/or a “culture change” among employers would be more effective in achieving the goal of properly fitting PPE than changing the rule (Document ID 0026, 0027). While OSHA operates,

as always, with limited resources, the agency believes that the amended standard, by making employers’ responsibilities explicit, will encourage a more protective approach to PPE across the construction industry.

IV. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) (“the Act” or “the OSH Act”) is “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources” (29 U.S.C. 651(b)). To achieve this goal Congress authorized the Secretary of Labor (“the Secretary”) to promulgate standards to protect workers, including the authority “to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce” (29 U.S.C. 651(b)(3); see also 29 U.S.C. 654(a) (requiring employers to comply with OSHA standards), 655(a) (authorizing summary adoption of existing consensus and Federal standards within two years of the Act’s enactment), 655(b) (authorizing promulgation, modification or revocation of standards pursuant to notice and comment)), and 655(b)(7) (authorizing OSHA to include among a standard’s requirements labeling, monitoring, medical testing, and other information-gathering and information-transmittal provisions)). An occupational safety or health standard is a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes “reasonably necessary or appropriate” to provide safe or healthful employment and places of employment (29 U.S.C. 652(8)).

Section 6(b)(7) of the OSH Act (29 U.S.C. 655(b)(7)) authorizes OSHA to include requirements for protective equipment within a standard. It provides that, where appropriate, standards must prescribe suitable protective equipment and control or technological procedures to be used in connection with workplace hazards and must provide for monitoring or measuring employee exposure as necessary to protect employees (29 U.S.C. 655(b)(7)).

The OSH Act imposes several requirements OSHA must satisfy before adopting a safety standard. Among other things, the standard must provide a high degree of employee protection, substantially reduce a significant risk to workers, be technologically feasible, and be economically feasible (see 58 FR 16612, 16614–16 (Mar. 30, 1993); *UAW v. OSHA*, 37 F.3d 665, 668–69 (D.C. Cir.

⁶ OSHA notes that while discomfort may not alone establish improper fit, the converse is also true; a lack of employee discomfort does not alone establish proper fit.

1994)). OSHA need not make additional findings on risk for this final rule because the rule involves a clarification of an existing OSHA standard and does not create any new requirements for employers. Accordingly, OSHA is not required to conduct a significant risk analysis for the change to § 1926.95 (see *Edison Elec. Inst. v. OSHA*, 849 F.2d 611, 620 (D.C. Cir. 1988)).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that is reasonably expected to be developed (see *Am. Iron and Steel Inst. v. OSHA*, 939 F.2d 975, 980 (D.C. Cir. 1991)). Courts have also interpreted technological feasibility to mean that a typical firm in each affected industry or application group will reasonably be able to implement the requirements of the standard in most operations most of the time (see, e.g., *Public Citizen v. OSHA*, 557 F.3d 165, 170–71 (3d Cir. 2009); *United Steelworkers of Am. v. Marshall*, 647 F.2d 1189, 1272 (D.C. Cir. 1981)).

In determining economic feasibility, OSHA must consider the cost of compliance in an industry rather than for individual employers. In its economic analyses, OSHA “must construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms” (*Am. Iron and Steel Inst.*, 939 F.2d at 980, quoting *United Steelworkers of Am.*, 647 F.2d at 1272).

V. Final Economic Analysis and Regulatory Flexibility Act Certification

Introduction

OSHA has examined the impacts of this rule as required by Executive Order 12866, Regulatory Planning and Review (September 30, 1993); Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011); Executive Order 14094, Modernizing Regulatory Review (April 6, 2023) (hereinafter, the Modernizing E.O.); the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96354); section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4); and Executive Order 13132, Federalism (August 4, 1999).

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).⁷ The Modernizing E.O. amends section 3(f) of Executive Order 12866. As amended, section 3(f) defines a “significant regulatory action” as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$200 million or more in any 1 year (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in [the Modernizing E.O.], as specifically authorized in a timely manner by the Administrator of OIRA in each case.

OIRA has determined that this final rule is a significant regulatory action under E.O. 12866 (but not under section 3(f)(1)), and that it does not meet the criteria set forth in 5 U.S.C. 804(2) under the Congressional Review Act.

OSHA has prepared this Final Economic Analysis (FEA) which presents the agency’s estimates of the costs and benefits of the rulemaking.

Changes From the Proposal

As discussed above, OSHA is finalizing this rule with the same changes to the regulatory text that the agency proposed. Public comments received in response to the proposal generally support the need for the rule. A number of commenters gave examples of employers not providing them with properly fitting PPE. One commenter said “I buy my own PPE, i.e., glasses, gloves because no contractor ever has small of either. I’ve been in the trade 27 years and have never had a contractor have those for me” (Document ID 0094). Another stated that “[a]s an electrician since 2015, there have been years I have not been provided correctly fitting PPE.

Employers did not anticipate my pregnancy, so high-visibility coats were hard to find and expensive. . . . A coat for males had sleeves that were too long and got in the way of working” (Document ID 0115). However, public comments also support several changes to the economic analysis. Those changes are as follows.

For the proposal, OSHA estimated minimal costs to comply with the rule since it simply clarifies an existing requirement. OSHA did, however, request information from commenters about the impact of the rule on the provision of properly fitting PPE. Based on responsive comments in the record, OSHA has determined that it is appropriate to account for additional costs. In particular, OSHA has added costs for purchasing properly fitting harnesses and earplugs, which were not included in the proposal. In addition, OSHA has added ongoing annual costs for non-compliant employers to continue to provide properly fitting PPE to their employees after initially replacing it. OSHA has also added costs for rule familiarization time as well as the time for employers to assess, research, and identify properly fitting PPE for those workers who are not currently being provided with it. Where more recent economic data is available, OSHA has updated the data used for its analysis. Finally, OSHA is attributing (although not quantifying) health and safety benefits to this final standard based on evidence in the record that workers are being injured due to improperly fitting PPE. These updates are discussed in more detail later in this section.

A. Profile of Affected Establishments and Employees

1. Introduction

This final rule amends the construction standard at 29 CFR 1926.95—Criteria for Personal Protective Equipment, paragraph (c), to clarify that PPE must properly fit each employee. This revision clarifies an existing requirement and OSHA therefore concludes that the rule will impose only limited costs on employers that are not already providing their employees with properly fitting PPE. OSHA normally assumes full compliance with existing requirements when performing its analysis of costs related to a new or amended standard. However, in this case, the purpose of the final rule is to clarify an existing requirement about which there may have been confusion in the regulated community. Given the public comments indicating that some employees are not

⁷ While OSHA presents the following analysis under the requirements of Executive Orders 12866 and 13563, the agency ultimately cannot base its regulatory decisions on a simple maximization of net benefits due to the overriding legal requirements in the OSH Act.

being provided with PPE that properly fits, the record supports the need for changes in behavior among some employers. As a result, OSHA has estimated the costs for a portion of employers to come into compliance with the already-existing requirement to provide properly fitting PPE. This analysis demonstrates that the rule will be feasible to implement.

2. Background

On November 15, 2007, OSHA published its final rule on Employer Payment for Personal Protective Equipment (PPE Payment) (72 FR 64342). A brief description of this rulemaking is provided here because certain estimates and parameters used in the economic analysis for this rule are taken from the analysis accompanying that final rule. In the PPE

Payment rulemaking, OSHA identified the various types of PPE that are worn by employees, the percentage of employees who use PPE, and the numbers of employees that would typically use each type of PPE in the construction industries: NAICS 236 (Construction of Buildings), NAICS 237 (Heavy and Civil Engineering Construction), and NAICS 238 (Specialty Trade Contractors). Information on employee PPE use was derived from a statistically representative nationwide telephone survey of 3,722 employers conducted for OSHA. The survey was benchmarked to the whole working population based on employment data available at that time (see 72 FR 64391). For this rulemaking, OSHA developed assumptions about the types of PPE that are universal fit versus those that are not

universal fit and the types of PPE that are provided by the employer versus purchased by employees for reimbursement. When the economic analysis for the PPE Payment rule was performed, the most recent data available on number of employees were from the U.S. Census' 2004 *County Business Patterns*. Using that data, OSHA estimated the number of employees using PPE and the industries in which they worked. Total use of PPE in the construction industries as derived in the PPE Payment rule is presented in table 1. Note that only the types of PPE that are subject to replacement under this PPE Fit rule are presented. OSHA uses the values in table 1 as the basis for its updated 2022⁸ figures for PPE items used (see table 7).

TABLE 1—USE OF SELECTED PPE IN THE CONSTRUCTION INDUSTRIES, FROM THE PPE PAYMENT RULE

PPE provided by the employer	Total PPE items used by employees (2004) U.S.
Chemical Protective Clothing	358,089
Chemical Protective Footwear	211,871
Chemical Splash Goggles	584,797
Earmuffs	642,362
Face Shields	1,194,399
Gloves for Abrasion Protection	2,940,764
Gloves for Chemical Protection	896,173
Non-Prescription Safety Glasses	3,485,009
Safety Goggles	2,506,959
Splash Aprons	197,632
Total of PPE items used by construction employees	13,018,055

Source: OSHA, Office of Regulatory Analysis (ORA), based on PPE Payment rule (72 FR 64406). See Final Economic Analysis spreadsheet (Document ID 0118).

3. PPE Fit Rule—Affected Establishments and Employees

OSHA determined the number of establishments that would need to comply with this rule using County

Business Patterns (CBP) data for 2022. All establishments within NAICS 236 (Construction of Buildings), NAICS 237 (Heavy and Civil Engineering Construction), and NAICS 238 (Specialty Trade Contractors) are

considered to be within the scope of this rule. As shown in table 2, there are a total of 800,651 establishments in the affected Construction NAICS industry codes.

TABLE 2—AFFECTED CONSTRUCTION ESTABLISHMENTS BY NAICS INDUSTRY, 2022

NAICS	Establishments
236 (Construction of Buildings)	251,634
237 (Heavy and Civil Engineering Construction)	38,214
238 (Specialty Trade Contractors)	510,803
Total	800,651

Source: OSHA, ORA, based on U.S. Census Bureau, County Business Patterns, 2024. See Final Economic Analysis spreadsheet (Document ID 0118).

Overall employment and the number of employees using PPE in these NAICS industries—both broken out by sex—are

shown in table 3. Based on BLS Current Employment Statistics for 2022, the construction industry was made up of

about 86 percent men and 14 percent women. According to the CBP, there were 7,361,847 employees in the

⁸ As noted below, 2022 was the most recent year for which the County Business Patterns data were available at the time this analysis was performed.

construction industry in 2022. Taken together, these data indicate that employment in the construction industry is comprised of 6,313,488 men and 1,048,359 women. OSHA estimated in the PPE Payment rule that 79.85

percent of construction employees use PPE of any type. Using this percentage, the agency estimates that 5,041,402 men and 837,128 women in the construction industry use any type of PPE. OSHA used these parameters and this

methodology to identify employees by sex and PPE usage in the proposed rule and received no comment on this approach; OSHA therefore has maintained the same methodology for the final rule.

TABLE 3—ESTIMATED EMPLOYEES IN CONSTRUCTION INDUSTRIES BY SEX AND PPE USE, 2022

	% of employees	Total employees	% Using PPE	Total employees using PPE
Men	85.8	6,313,488	79.85	5,041,402
Women	14.2	1,048,359	79.85	837,128
Total		7,361,847		5,878,530

Source: OSHA, ORA, based on U.S. Census Bureau, 2024, and OSHA PPE Payment rule, 2007. See Final Economic Analysis spreadsheet (Document ID 0118).

B. Costs of Compliance

OSHA has determined that this rule could impose three main types of costs on establishments in the construction industry: (1) rule familiarization, (2) researching PPE, and (3) replacing PPE. The costs for researching properly fitting PPE for purchase and for replacing improperly fitting PPE will only be incurred by employers who are out of compliance with the already-existing requirement to provide workers with PPE that fits properly.

1. Rule Familiarization

Employers in some affected establishments will spend time

familiarizing themselves with the rule. OSHA estimates that rule familiarization will take ten minutes for a health and safety coordinator to complete⁹ and that 50 percent of the establishments in the three construction NAICS industries will take time to familiarize themselves with the rule. OSHA has assumed that only 50 percent of establishments will need familiarization time not only because this final rule is simply a clarification of an existing requirement, but because the rule aligns the construction regulatory text on PPE fit with the general industry requirement, with which many construction employers are likely

familiar. OSHA, therefore, believes that many employers already know that they must provide PPE that fits properly and will not need to spend time familiarizing themselves with this final rule. The loaded wages¹⁰ used to calculate the cost of rule familiarization time are taken from BLS' Occupational Employment and Wage Statistics (OEWS) dataset for 2023 (<https://www.bls.gov/oes/tables.htm>) for Occupational Health and Safety Specialists and Technicians.¹¹ Table 4 shows the costs of rule familiarization.

TABLE 4—TOTAL COSTS OF RULE FAMILIARIZATION
[2023\$]

NAICS	Establishments	50% of establishments	Unit burden (hours)	Wage	Total cost (2023\$)
236 (Construction of Buildings)	251,634	125,817	0.17	\$65.45	\$1,372,517
237 (Heavy and Civil Engineering Construction)	38,214	19,107	0.17	63.65	202,694
238 (Specialty Trade Contractors)	510,803	255,402	0.17	58.32	2,482,631
Total	800,651	400,326	NA	NA	4,057,842

Source: OSHA, ORA, based on U.S. Census Bureau, 2024, and BLS OEWS, 2024. See Final Economic Analysis spreadsheet (Document ID 0118).

2. Researching PPE for Purchase

For this final rule, OSHA is accounting for costs related to researching and finding non-standard-sized PPE. Some commenters said that it is difficult to locate PPE in certain non-standard sizes. For instance, one commenter said that it was challenging finding PPE, including protective footwear, to fit her smaller frame and that she hopes this final rule will

eliminate the need for “extensive searches for ‘small’ gear” (Document ID 0031). Another commenter said that “[h]igh-visibility coats that fit a pregnant belly are hard to find” (Document ID 0115), while a third commenter said that small size high visibility vests and boots are difficult to come by and that even proactive employers can encounter limited supply in non-standard sizes (Document ID 0079). Other commenters, however,

noted the availability of PPE to fit a wide range of worker body shapes and sizes (Document ID 0108, 0112; see also Document ID 0014, 0117). Based on these comments, OSHA has estimated that it may take some additional time for employers to find appropriate PPE in non-standard sizes for workers not

⁹ This is comparable to the five minutes estimated to be spent on familiarization in the FEA for OSHA's recent (and similarly brief) final rule on the Worker Walkaround Representative Designation Process (See 89 FR 22558, 22594 (April 1, 2024)).

¹⁰ The loaded wages include an industry specific base wage (BLS, 2024, OEWS), a 31.23 percent markup from base wages to account for employer provided fringe benefits (BLS, 2024, Employer Costs for Employee Compensation), and OSHA's standard

17 percent markup from base wages to account for overhead costs to the employer.

¹¹ OSHA used the BLS OEWS Standard Occupation Classification code 19–5010 for NAICS 236, 237, and 238.

currently wearing properly fitting PPE.¹²

In order to provide properly fitting PPE for the employees who need it, OSHA estimates that affected establishments will spend 10 minutes assessing the needs of their employees related to PPE (assessment) and another 10 minutes researching and identifying specific replacement PPE for employees (identification). The agency estimates that 184,935 construction employees might require non-standard sizes of PPE (see table 9) but recognizes that not all those employees are using improperly fitting PPE. This is especially true given that construction employers are already required to provide their employees with properly fitting PPE. OSHA assumes that up to 10 percent of those workers—or 18,494 workers—were being provided with incorrectly fitting

PPE prior to promulgation of this final rule. While it potentially overstates the number of employers who will need to assess PPE needs and spend time researching PPE in different sizes, OSHA assumes that each employee needing replacement PPE works at a different company, such that the number of employers that will need to research PPE equals the number of affected employees. A more detailed explanation of the estimated number of affected employees and thus employers is described in the next section and presented in tables 9 and 10.

OSHA calculated one-time, initial costs for the PPE needs assessment and identification of non-standard size PPE. OSHA also estimated annually recurring costs to identify properly fitting PPE for newly-hired employees who may need non-standard sizes of PPE. To calculate

the number of employers that would need to incur this cost annually, OSHA multiplies the estimated 18,494 workers mentioned above by the JOLTS annual hire rate within the construction sector for 2023, which is 55.7 percent (BLS JOLTS, 2024). For this analysis, OSHA uses the loaded wage rate for a purchasing manager¹³ based on BLS’ OEWS dataset for 2023 to estimate the costs for identifying the correct PPE, and the loaded wage rate for Occupational Health and Safety Specialists and Technicians¹⁴ for PPE assessment costs.¹⁵ Table 5 shows the initial costs for the assessment and identification of properly fitting PPE. Table 6 presents the ongoing, annual costs of identifying non-standard sizes of PPE for newly hired employees. The cost of the PPE itself is estimated in the next section.

TABLE 5—TOTAL COSTS OF INITIAL PPE RESEARCH

PPE research item	Affected establishments	Unit burden (hours)	Wage (weighted average)	Total cost (2023\$)
Assessment	18,494	0.17	\$60.82	\$187,457
Identification	18,494	0.17	91.64	282,454
Total Cost				469,911

Note: Using the figures presented here to perform the calculations in the table may not result in the same totals due to rounding.
Source: OSHA, ORA, based on BLS OEWS, 2024. See Final Economic Analysis spreadsheet (Document ID 0118).

TABLE 6—ANNUAL COST OF PPE IDENTIFICATION

Cost item	Affected establishments	Hire rate	Unit burden (hours)	Wage (weighted average)	Total cost (2023\$)
Identification	18,494	55.7%	0.17	\$91.64	\$157,327

Note: Using the figures presented here to perform the calculations in the table may not result in the same totals due to rounding.
Source: OSHA, ORA, based on BLS OEWS, 2024 and BLS JOLTS, 2024. See Final Economic Analysis spreadsheet (Document ID 0118).

3. Replacing PPE

As shown in table 7, the types of PPE used in construction fall into the following three categories: PPE provided by the employer and not of universal fit, PPE items purchased by the employee

and reimbursed by the employer, and PPE of universal fit. PPE items identified as universal fit are those that are adjustable and capable of fitting most people.¹⁶ OSHA assumes that PPE items purchased by the employee and

then reimbursed by the employer already fit properly, since the employee will select the size that fits them best. The remaining PPE items are those provided by the employer that are not universal fit.

TABLE 7—PPE USED IN THE CONSTRUCTION INDUSTRIES *

PPE items provided by the employer, not universal fit	PPE items purchased by employee and reimbursed by employer	PPE items of universal fit
Body Harnesses	Prescription Safety Glasses	Body Belts.
Chemical Protective Clothing	Protective Electrical PPE	Hardhats.
Chemical Protective Footwear	Protective Welding Clothing	Welding Helmets.

¹² As noted in the Technological Feasibility discussion, extensive lists of providers of non-standard-sized PPE are available online from multiple sources.

¹³ OSHA used the BLS OEWS Standard Occupation Classification code 11–3061 for NAICS 236, 237, and 238.

¹⁴ OSHA used the BLS OEWS Standard Occupation Classification code 19–5010 for NAICS 236, 237, and 238.

¹⁵ The loaded wages include an industry specific base wage (BLS, 2024, OEWS), a 31.23 percent markup from base wages to account for employer provided fringe benefits (BLS, 2024, Employer Costs for Employee Compensation), and OSHA’s standard 17 percent markup from base wages to account for overhead costs to the employer. The wages presented are weighted averages from the three NAICS codes affected by this rule.

¹⁶ In their comment, AIHA objected to the term “universal fit,” saying that “[n]o PPE is universal

fit, even the most adjustable PPE may not fit workers on the extremes of anthropometric data” (Document ID 0058). OSHA acknowledges that at the tail ends of the distribution of human variation, some adjustable PPE will not fit. For the purposes of this analysis, however, OSHA maintains that some items of PPE that come in standard, adjustable sizes will fit nearly all individuals working in the construction industry and so maintains this designation for a limited number of items in this analysis.

TABLE 7—PPE USED IN THE CONSTRUCTION INDUSTRIES *—Continued

PPE items provided by the employer, not universal fit	PPE items purchased by employee and reimbursed by employer	PPE items of universal fit
Chemical Splash Goggles	Safety Shoes with Metatarsal Guards.	
Earmuffs	Safety Shoes Without Metatarsal Guards.	
Earplugs	Welding Goggles.	
Face Shields	Welding Helmets.	
Gloves for Abrasion Protection.		
Gloves for Chemical Protection.		
Non-Prescription Safety Glasses.		
Safety Goggles.		
Safety Vests.		
Splash Aprons.		

* Respirators are not included in the table, as fit testing is already required in paragraph 1910.134(f) of the respiratory protection standard (29 CFR 1910.134(f)), which covers the construction industry (see 29 CFR 1926.103).

Note that Safety Vests were not included in the PPE Payment rule. Body harnesses and ear inserts have been moved from the Universal Fit column to the column for Provided by the Employer, not Universal Fit, as a result of comments indicating these items are not universal fit.

Source: OSHA, ORA.

In this analysis, the only PPE that OSHA is estimating may need replacement as a result of this final rule are the items that are provided by the employer and not universal fit. For these items, the standard size may not fit all workers. Therefore, in cases where employers have provided only standard-sized PPE, some workers may not have been provided properly fitting PPE.

OSHA derives the total number of PPE items currently used by employees by multiplying the number of PPE items used by employees in 2004 as estimated in the PPE Payment rule analysis by the employment growth rate in the construction industry from 2004 to 2022 per County Business Patterns data. Using currently available supply catalogs, the agency identified up to three cost estimates for “standard” sizes of each PPE item potentially requiring replacement, taking the average of those estimates for use in this analysis.¹⁷ OSHA then calculates the total costs of replacing all employer-supplied, non-universal fit PPE by applying these unit costs to the total number of PPE items used by all employees who wear PPE. Finally, to get the total one-time replacement costs related to this rule, OSHA estimates the number of employees needing replacement PPE and the average per-employee cost for replacing their PPE with non-standard sized PPE and multiplies them. A detailed description of this approach is provided in the following paragraphs.

In the PPE Payment rule, OSHA estimated that the total number of employer-provided, non-universal fit PPE items worn by construction employees in 2004 was about 13 million. However, that analysis did not include safety vests in the list of

necessary PPE. For this rulemaking, as presented in the proposal, the agency estimated the cost and use of safety vests, including them in the number of PPE items worn by construction workers in 2022, the unit cost, and the total cost.

In addition, in the proposed PPE Fit rule, OSHA treated body harnesses as universal fit, which was consistent with how body harnesses were treated in the PPE Payment rule. However, OSHA received a number of comments suggesting that standard body harnesses frequently do not fit women. One commenter stated, “[o]ur research suggests that there are a very limited number of harnesses available on the market that are truly ‘universal fit’ harnesses” (Document ID 0108). Several commenters pointed out that women’s bodies are shaped differently and that unisex harnesses are not properly adjustable to accommodate breasts, hips, leg length, and height; that use of improperly fitting harnesses could lead to bodily harm; and that use of unisex harnesses is uncomfortable for women (e.g., Document ID 0048, 0068, 0076, 0077, 0080, 0084, 0093, 0098). One commenter noted that in a fall, a traditional unisex harness could damage a woman’s pelvic region. That commenter pointed out that while there are harnesses that are designed specifically to accommodate women’s bodies, some employers think unisex is “good enough” (Document ID 0063). Another commenter said “Women have breasts so harnesses are not very comfortable when they are designed for men. There are, apparently, harnesses designed for women but I never to this day have even seen one” (Document ID 0066). Yet another commenter noted that “On more than one job I have had to use the generic one size fits all XL safety harness where leg straps on the tightest eyelet hang to my knees”

(Document ID 0090). Therefore, in the final rule, OSHA has added body harnesses to the list of PPE that are non-universal fit and might require replacement. As a result, they have been moved to the first column of table 7 above.

In addition, a comment from the ISEA indicated that earplugs (referred to as “ear inserts” in the proposal) “are designed and manufactured in multiple sizes and shapes to accommodate the wide range of sizes and shapes of ear canals” (Document ID 0112). NIOSH agreed, stating that earplugs “should be reclassified as ‘provided by the employer, not universal fit’ because earplugs are not completely adjustable and may not be capable of fitting every person” (Document ID 0073, attachment 2). Based on these comments, OSHA reclassified earplugs from universal fit to provided by the employer, not universal fit, and adjusted the cost model accordingly.

Based on the most recent data (2022) available from CBP (<https://www.census.gov/programs-surveys/cbp/data/tables.html>), employment in the construction industries has increased by 10.74 percent since 2004. OSHA applied this 10.74 percent increase to the agency’s estimates, in the PPE Payment rule, of the numbers of PPE items in 2004 that were employer-supplied and not universal fit. As described above, OSHA also added estimates for the use of several PPE items that were not included in that category in the PPE Payment rule (safety vests, body harnesses, and earplugs). Body harnesses and ear plugs were accounted for in the PPE Payment analysis as universal fit PPE, and their use was estimated there; thus, the estimates of current use of these items are derived from the PPE Payment analysis in the

¹⁷ Note that current prices are in 2024 dollars whereas this FEA uses 2023 dollars as its base year. As such, the prices may be somewhat overstated.

same way as use of the other items accounted for in PPE Payment.

Because safety vests were not included in the PPE Payment rule, OSHA estimated the number of safety vests used by construction workers using occupation-level employment data from BLS OEWS for 2023. A certain subset of the employees in the three affected NAICS industries is estimated to need safety vests based on general assumptions about the specific occupation. As an example, while all employees in occupations deemed in-scope for this rule in the Heavy and Civil Engineering Construction industry (NAICS 237) are assumed to need safety vests, Security Guards in the other two industries (Construction of Buildings, NAICS 236, and Specialty Trade

Contractors, NAICS 238) are considered to be employees who are not near roads and thus OSHA assumed only 5 percent of these employees would need safety vests.¹⁸

Based on the calculations described above, the agency estimates that the total number of non-universal fit PPE items worn by construction employees in 2022 was about 20.0 million. Dividing the total number of PPE items in use from table 8 (20,020,424) by the total number of construction workers in 2022 wearing PPE from table 3 (5,878,530) yields an estimate that each construction employee wearing PPE provided by the employer, and not universal fit, wears an average of 3.41 items of PPE.

Based on current pricing information, OSHA estimated a total cost of purchasing “standard” sizes of non-universal fit PPE of approximately \$262.0 million, including an estimated \$6.3 million for safety vests, \$147.3 million for body harnesses, and \$442,000 for earplugs. OSHA divided the total cost of PPE by the total number of items of PPE for an average per unit PPE cost of \$13.08. The agency then multiplied the per unit PPE cost by the average number of items of PPE per employee to calculate an average cost of \$44.56 ($\$13.08 \times 3.41$) to outfit a construction employee in their needed PPE, assuming that employee can use standard sizes.

TABLE 8—USE AND COST OF SELECTED PPE IN THE CONSTRUCTION INDUSTRIES

PPE provided by the employer, not universal fit	Total PPE items used by employees (2022)	PPE unit cost, standard size (2024\$)	Total cost (2024\$)
Body Harnesses ^a	2,004,783	\$73.48	\$147,311,472
Chemical Protective Clothing	396,561	7.71	3,059,075
Chemical Protective Footwear	234,634	12.86	3,018,178
Chemical Splash Goggles	647,626	10.07	6,521,590
Earmuffs	711,375	12.49	8,887,449
Earplugs ^a	2,761,510	0.16	441,658
Face Shields	1,322,723	15.79	20,890,200
Gloves for Abrasion Protection	3,256,712	10.63	34,607,992
Gloves for Chemical Protection	992,455	1.82	1,809,577
Non-Prescription Safety Glasses	3,859,430	3.87	14,923,130
Safety Goggles	2,776,301	4.60	12,761,729
Safety Vests ^b	837,448	7.49	6,275,277
Splash Aprons	218,865	6.60	1,443,772
Total PPE items used by construction employees	20,020,424	.....	261,951,099
Average per Unit PPE Cost (2024) .....	.....	.....	13.08

^a The PPE Payment analysis estimated the use of body harnesses and earplugs but considered them to be universal fit PPE items.

^b safety vests were not included in the PPE Payment analysis. OSHA, ORA, estimated their use in 2022 and their cost in 2024 dollars to be consistent how the agency derived the values for other types of PPE.

Source: OSHA, ORA, based on PPE Payment rule, ERG Cost Estimates, 2024. See Final Economic Analysis spreadsheet (Document ID 0118).

Finally, OSHA estimated the costs of purchasing replacement PPE for employees with improperly fitting PPE. Given the current lack of data on how many employees might be wearing improperly fitting PPE, OSHA estimated this parameter by combining sex specific construction employment data with general population height and weight distributions. The numbers of women and men in the construction industry who wear PPE is presented above in table 3.

To estimate the numbers of women and men who might require non-standard sizes of PPE, the agency relied on height and weight data for the general population in the Census Bureau’s 2010 National Health and Nutrition Examination Survey (NHANES) (<https://www2.census.gov/library/publications/2010/compendia/statab/130ed/tables/11s0205.pdf>).¹⁹ OSHA assumed, as shown in table 9, that women and men weighing above 300 pounds and women shorter than

five feet tall might require non-standard sizes of PPE and thus could currently be using improperly fitting PPE.^{20 21} OSHA acknowledges that this assumption results in only a rough estimate of workers who might be using PPE that fits improperly, for several reasons. First, using the general population height and weight distributions may not align precisely with the height and weight distributions for construction workers. For example, Hispanic males make up a greater proportion of the

¹⁸ As a result of these calculations, OSHA determined that, among the roughly 1.4 million construction workers considered, 837,448 of these workers would use safety vests.

¹⁹ This data source reflects the most recent publicly available data that can be used to estimate the percentage of construction employees who are

above a certain weight threshold or below a certain height threshold.

²⁰ The base figure for men shorter than five feet tall was too small to meet statistical standards of reliability of a derived figure.

²¹ OSHA’s analysis assumes that only construction workers who meet the specified height

or weight criteria may require non-standard sizes of PPE. OSHA then uses this universe of workers when calculating the number of workers using PPE that does not properly fit. OSHA’s analysis does not attempt to account for workers who wear standard-sized PPE but may nevertheless have been provided with improperly fitting PPE by their employers.

construction workforce than the population in general and are, on average, slightly shorter than, and weigh less than, non-Hispanic white males. Second, it is possible that there are fewer people who are much smaller or larger than average in the construction industry. Finally, OSHA acknowledges that this estimate is imprecise because it assumes that all workers who weigh more than 300 pounds and all female workers who are shorter than five feet

tall require PPE that is not standard sized; conversely, it assumes that standard-sized PPE is appropriate for all other workers, both male and female.²² Note that OSHA used an identical approach to this issue in its preliminary analysis and did not receive any comments on it. Therefore, the agency decided to retain this approach for the final analysis.

Due to data limitations and as a simplifying assumption for this

analysis, the agency also assumes that construction workers are distributed across age groups in the same proportions as the general population examined in the NHANES. The agency then multiplies the average percentages for each weight and height category by the total number of men, and the total number of women, in the construction industry that wear any type of PPE, as shown in table 9.

TABLE 9—CONSTRUCTION EMPLOYEES WHO MIGHT REQUIRE NON-STANDARD SIZES OF PPE

Construction employee characteristic	Ages					Average	Total employees
	20–29	30–39	40–49	50–59	60–69		
Men Above 300 pounds	2.5%	3.1%	1.9%	1.9%	2.2%	2.32%	116,961
Women Above 300 pounds	2.3%	1.6%	1.7%	0.6%	0.7%	1.38%	11,552
Women Under 5 foot tall	5.7%	6.0%	5.0%	8.0%	9.0%	6.74%	56,422
Total Employees Who Might Require Non-Standard Sizes of PPE							184,935

Source: OSHA, ORA, based on NHANES, 2010. See Final Economic Analysis spreadsheet (Document ID 0118).

The agency estimates that 184,935 construction employees might require non-standard sizes of PPE but recognizes that not all of those employees are using improperly fitting PPE. This is especially true given that construction employers are already required to provide their employees with properly fitting PPE. OSHA assumes that up to 10 percent of those workers—or 18,494 workers—were being provided with incorrectly fitting PPE prior to promulgation of this final rule. OSHA used the same assumption in the preamble to the proposed rule and received no comments on the estimate nor suggestions on a different estimate the agency should use; therefore, OSHA has maintained this methodology and simply updated the underlying data used for this final analysis.

OSHA received a number of comments on the issue of whether non-standard sizes of PPE are more expensive than standard sizes. For

example, some commenters expressed that “outlier sizes” tend to cost more and that because of this, employers are less likely to purchase them (Document ID 0038, 0047). Similarly, others said that employers’ “costs or compliance burdens” would increase because employers will have to purchase multiple sizes of PPE, purchase smaller quantities, or purchase from manufacturers with which they do not typically do business (Document ID 0082, 0107, 0112). Some commenters who asserted that the rule would increase costs for businesses cited very high PPE unit costs that OSHA could not corroborate or suggested employers would be required to amass inventories of PPE that the rule does not require (Document ID 0082, 0114).

Other commenters argued that the costs associated with purchasing properly fitting PPE will be minimal. For example, CWIT stated that this final rule should result in “[l]ittle economic burden” (Document ID 0098). NABTU

commented, “. . . over 90 percent of construction establishments employ less than 20 workers. As such, to the extent some construction employers are not already in compliance, the cost of doing so will not be substantial” (Document ID 0108). ISEA noted that while there may be costs for special orders of PPE in extremely small or large sizes, “the size ranges of current PPE are likely to be able to provide a proper fit to the vast majority of the nation’s construction workforce” (Document ID 0112).

To address these comments, OSHA estimates that larger and smaller sizes of PPE cost 15 percent more than the average size PPE of that type. OSHA thus calculated the average, per-person cost to issue replacement PPE in non-standard sizes by increasing the base price of \$44.56 by 15 percent, for an estimate of \$51.24. As indicated in table 10, OSHA estimates that replacing the PPE for 18,494 employees would cost roughly \$948,000 for the entire construction industry.

²² OSHA recognizes that the assumption that standard-sized PPE properly fits all workers who are above five feet tall and weigh less than 300 pounds is not accurate in some cases, especially given the comments noting that “unisex” fall protection harnesses do not fit many women properly. As the rulemaking record reflects, standard-sized PPE may not properly fit some

workers who are above five feet tall and weigh less than 300 pounds; at the same time, some workers who are shorter than five feet tall and/or weigh more than 300 pounds may be able to safely use standard sizes of PPE. Further, some individuals who are under five feet tall may also be over 300 pounds, meaning the data may potentially double count some individuals. Given this, it is important

to note that OSHA views the categories of women shorter than five feet tall and men and women weighing above 300 pounds as a proxy for all workers who might require non-standard sizes of PPE and therefore are more likely than others to be receiving PPE that does not fit them properly.

TABLE 10—POTENTIAL PPE REPLACEMENT COST
[2023\$]

Assumed percent of employees needing replacement PPE (2022)	Total affected employees	Average per-employee PPE cost, non- standard size	Total cost (2023\$)
10% Employees	18,494	\$51.24	\$947,696

Note: Using the figures presented here to perform the calculations in the table may not result in the same totals due to rounding.
Source: OSHA, ORA. See Final Economic Analysis spreadsheet (Document ID 0118).

In addition to the cost of initially replacing improperly fitting PPE for some employees, employers will need to continue providing these non-standard sizes of PPE to those employees on an ongoing basis. OSHA calculates the recurring annual costs of providing these non-standard sizes of PPE using the marginal cost of non-standard sizes

of PPE compared to the cost of standard sizes of PPE. As noted above, OSHA estimates this marginal cost increase is 15 percent. As shown in table 12, OSHA multiplies this marginal unit cost by the number of PPE items per employee for each PPE type, the total number of employees needing non-standard sizes of PPE, and the number of units of each

PPE type needed in a year. OSHA determined the average useful life for the PPE items being considered here, as presented in table 11, based on estimates the agency developed for the PPE Payment rule and adjusted according to comments in the record for this rulemaking.²³

TABLE 11—USEFUL LIFE OF SELECTED PPE

PPE provided by the employer, not universal fit	Useful life (yr.)
Body Harnesses	2.00
Chemical Protective Clothing	0.50
Chemical Protective Footwear	0.50
Chemical Splash Goggles	0.50
Earmuffs	0.40
Earplugs	0.005
Face Shields	1.00
Gloves for Abrasion Protection	0.15
Gloves for Chemical Protection	0.05
Non-Prescription Safety Glasses	1.00
Safety Goggles	0.20
Safety Vests	0.50
Splash Aprons	0.50

Source: OSHA based on PPE Payment FEA (72 FR 64342 (Nov. 15, 2007)).

The number of PPE items per employee presented in table 12 are calculated using the average number of items needed per employee (3.41) and

proportionally distributing that estimate based on the overall numbers of each PPE item compared to the total number of all PPE items (see table 8). The

number of units of each PPE type needed in a year is based on the useful life estimates presented in table 11.

TABLE 12—ANNUAL MARGINAL COST OF NON-STANDARD SIZE PPE
[2023\$]

PPE type	Items per employee	Employees	Items per year	Non-standard size marginal unit cost	Total items per year	Total marginal cost (2023\$)
Body Harnesses	0.34	18,494	0.5	\$11.02	3,153	\$34,758
Chemical Protective Clothing	0.07	18,494	2.0	1.16	2,495	2,887
Chemical Protective Footwear	0.04	18,494	2.0	1.93	1,476	2,849
Chemical Splash Goggles	0.11	18,494	2.0	1.51	4,075	6,155
Earmuffs	0.12	18,494	2.5	1.87	5,595	10,485
Earplugs	0.47	18,494	200.0	0.02	1,737,512	41,683
Face Shields	0.23	18,494	1.0	2.37	4,161	9,858
Gloves for Abrasion Protection	0.55	18,494	6.7	1.59	68,303	108,875
Gloves for Chemical Protection	0.17	18,494	20.0	0.27	62,444	17,078
Non-Prescription Safety Glasses	0.66	18,494	1.0	0.58	12,142	7,042
Safety Goggles	0.47	18,494	5.0	0.69	43,670	30,111
Safety Vests	0.14	18,494	2.0	1.12	5,269	5,923

²³ One commenter stated “The useful life in regards to the economic analysis for “Gloves for Abrasion Protection,” “Earmuffs,” and “Safety

Goggles” all seem too high. In my experience as a worker, I would imagine the earmuffs to be closer to 0.40, gloves to be 0.15, and safety goggles to be

0.20 or less on average” (Document ID 0069). OSHA has adjusted the useful life of these types of PPE accordingly.

TABLE 12—ANNUAL MARGINAL COST OF NON-STANDARD SIZE PPE—Continued
[2023\$]

PPE type	Items per employee	Employees	Items per year	Non-standard size marginal unit cost	Total items per year	Total marginal cost (2023\$)
Splash Aprons	0.04	18,494	2.0	0.99	1,377	1,363
Total	3.41	.....	N/A	N/A	1,951,673	279,065

Note: Using the figures presented here to perform the calculations in the table may not result in the same totals due to rounding.
Source: OSHA, ORA, based on PPE Payment rule, ERG Cost Estimates, 2024. See Final Economic Analysis spreadsheet (Document ID 0118).

As presented in table 13, the agency estimates that if 10 percent of employees who might require non-standard sizes of PPE are provided with properly fitting PPE as a result of this clarifying rule, 50 percent of employers

in the construction industry take time to familiarize themselves with the rule, and one establishment for each employee who requires new PPE spends time researching properly fitting PPE, the rule could have a one-time total cost

to the construction industry of \$5,475,450 plus \$436,392 in annual recurring costs. These estimated costs translate to an annualized cost of \$1,045,955 over 10 years using a 2 percent discount rate.

TABLE 13—TOTAL COSTS OF THE PPE RULE
[2023\$]

Requirement	Total one-time cost (2023\$)	Total annual cost (2023\$)	Total annualized cost (2023\$)	
			2%	0%
Rule Familiarization	\$4,057,842	\$0	\$451,746	\$405,784
PPE Research	469,911	157,327	209,640	204,318
PPE Replacement	947,696	0	105,504	94,770
Marginal Cost of Non-Standard Size PPE	0	279,065	279,065	279,065
Total	5,475,450	436,392	1,045,955	983,937

Note: Using the figures presented here to perform the calculations in the table may not result in the same totals due to rounding.
Source: OSHA, ORA. See Final Economic Analysis spreadsheet (Document ID 0118).

4. Sensitivity Analysis

The primary analysis above assumes that only 10 percent of the employees who may require non-standard sizes of PPE would need to have their PPE replaced as a result of this rule. For the first sensitivity analysis, the agency compared the assumed 10 percent of potentially affected employees with a lower rate of 5 percent and, alternatively, a higher rate at each quartile of the group (25, 50, and 100 percent). Additionally, as discussed above, OSHA has estimated that affected employees in construction wear an

average of 3.41 pieces of PPE of the type (provided by the employer, not universal fit) covered by OSHA's analysis; the primary analysis assumes they would all need to be replaced. In reality, for individual employees, some items might need to be replaced and not others. The second sensitivity analysis examines the cases where employees need replacements for 1, 2, 3, or 4 items of PPE, along with the 3.41 items used in the primary analysis.

In the first sensitivity analysis, OSHA multiplied the total number of employees who may require non-standard sizes of PPE (184,935) by the

various assumed non-compliance percentages. Table 14, below, presents a range of 5 percent to 100 percent non-compliance with the requirement to provide PPE for construction workers who may not be able to wear standard sizes of PPE. OSHA believes most companies want to act in the best interest of their employees and are already in compliance with the existing requirement to provide properly fitting PPE. As such, OSHA believes the actual non-compliance rate is towards the lower end of the range presented in table 14. At most, fewer than 200,000 employees might be affected.

TABLE 14—POTENTIALLY AFFECTED EMPLOYEES
[2022]

Percent of employees needing replacement PPE	Total employees
5	9,247
10	18,494
25	46,234
50	92,468
75	138,701
100	184,935

For the second sensitivity analysis, OSHA combined the different percentages of employees who might need replacement PPE with different

numbers of items of PPE that might need to be replaced for each affected employee. In table 15, OSHA calculated the total number of PPE items in the

affected construction industries that might need to be replaced based on employees needing 1, 2, 3, 4, or the average 3.41 pieces of replacement PPE.

TABLE 15—PPE ITEMS PER EMPLOYEE NEEDING REPLACEMENT

Percent of employees needing replacement PPE	Total PPE items needing replacement				
	1 Item	2 Items	3 Items	3.41 Items	4 Items
5	9,247	18,494	27,740	31,492	36,987
10	18,494	36,987	55,481	62,983	73,974
25	46,234	92,468	138,701	157,458	184,935
50	92,468	184,935	277,403	314,916	369,871
75	138,701	277,403	416,104	472,374	554,806
100	184,935	369,871	554,806	629,832	739,741

To complete the sensitivity analysis, OSHA multiplied the cost of the average piece of non-standard sized PPE,

calculated as \$15.05 per piece (\$51.24 cost per employee/3.41 items per employee), by the number of total items

of PPE needing replacement (displayed in table 15, above). The results are presented in table 16.

TABLE 16—TOTAL COST OF REPLACEMENT PPE, SENSITIVITY ANALYSIS RESULTS
[2023\$]

Percent of employees needing replacement PPE	Total cost for replacement PPE (2023\$)				
	1 Item	2 Items	3 Items	3.41 Items	4 Items
5	\$139,134	\$278,269	\$417,403	\$473,848	\$556,538
10	278,269	556,538	834,807	947,696	1,113,076
25	695,672	1,391,344	2,087,017	2,369,241	2,782,689
50	1,391,344	2,782,689	4,174,033	4,738,481	5,565,378
75	2,087,017	4,174,033	6,261,050	7,107,722	8,348,067
100	2,782,689	5,565,378	8,348,067	9,476,963	11,130,756
Per Employee Cost	15.05	30.09	45.14	51.24	60.19

Table 16 shows that, as a worst-case scenario, if no employers are providing properly fitting PPE to employees who may require non-standard sizes of PPE, and if each employee needs 4 items of replacement PPE (more PPE than the average of 3.41 PPE items), then the total one-time cost to industry to provide that properly fitting PPE would

be approximately \$11.1 million. Meanwhile, the cost to industry could be as low as about \$140,000 to replace improperly fitting PPE, assuming only 5 percent of employees need one replacement PPE item.
The percentage of employees needing replacement PPE and the number of PPE items each employee needs replaced also impact the estimated marginal cost

of providing properly fitting PPE on an ongoing basis. Table 17 presents the annual marginal costs associated with continuing to supply employees with non-standard size PPE after initial replacement, assuming varying percentages of employees needing this PPE and varying numbers of PPE items per employee.

TABLE 17—ANNUAL MARGINAL COST OF NON-STANDARD SIZES OF PPE, SENSITIVITY ANALYSIS RESULTS
[2023\$]

Percent of employees needing replacement PPE	Annual marginal cost of non-standard size PPE (2023\$)				
	1 Item	2 Items	3 Items	3.41 Items	4 Items
5	\$40,970	\$81,941	\$122,911	\$139,533	\$163,882
10	81,941	163,882	245,823	279,065	327,764
25	204,852	409,705	614,557	697,663	819,409
50	409,705	819,409	1,229,114	1,395,325	1,638,819
75	614,557	1,229,114	1,843,671	2,092,988	2,458,228
100	819,409	1,638,819	2,458,228	2,790,650	3,277,637

Table 18 shows that the total annualized cost of the rule could range from approximately \$718,000 to \$5.2

million when factoring in rule familiarization, PPE research, and the various PPE replacement scenarios

(assuming a 10-year time horizon and 2 percent discount rate).

TABLE 18—TOTAL ANNUALIZED COST OF PPE FIT RULE, SENSITIVITY ANALYSIS RESULTS
[2023\$]

Percent of employees needing replacement PPE	Total annualized cost of PPE fit rule (2023\$)				
	1 Item	2 Items	3 Items	3.41 Items	4 Items
5	\$717,846	\$774,305	\$830,765	\$853,670	\$887,225
10	774,305	887,225	1,000,145	1,045,955	1,113,064
25	943,685	1,225,984	1,508,283	1,622,808	1,790,582
50	1,225,984	1,790,582	2,355,180	2,584,230	2,919,779
75	1,508,283	2,355,180	3,202,078	3,545,652	4,048,975
100	1,790,582	2,919,779	4,048,975	4,507,073	5,178,171

OSHA also considered a sensitivity analysis that assumes a Purchasing Manager would spend 30 minutes instead of 10 minutes researching and identifying non-standard sizes of PPE for employees who do not currently have properly fitting PPE. This revised assumption increases the total annualized costs of the rule from \$1,045,955 to \$1,423,497 using a 2 percent discount rate over a ten-year period.

C. Economic Feasibility

The OSH Act requires that OSHA show the economic feasibility of standards. A standard is economically feasible when industry can absorb or pass on the costs of compliance without threatening the industry's long-term profitability or competitive structure (*American Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 530 n.55 (1981) (*Cotton Dust*)), or "threaten[ing] massive dislocation to, or imperil[ing] the existence of, the industry" (*United Steelworkers of Am. v. Marshall*, 647 F.2d 1189, 1272 (D.C. Cir. 1981)). "[T]he Supreme Court has conclusively ruled that economic feasibility [under the OSH Act] does not involve a cost-benefit analysis" (*Pub. Citizen Health Research Grp. v. U.S. Dept. of Labor*, 557 F.3d 165, 177 (3d Cir. 2009)). The OSH Act "place[s] the 'benefit' of worker health above all other considerations save those making attainment of this 'benefit' unachievable" (*Cotton Dust*, 452 U.S. at 509). Therefore, "[a]ny standard based on a balancing of costs and benefits by the Secretary that strikes a different balance than that struck by Congress would be inconsistent with the command set forth in" the statute (*Id.*). This case law arose with respect to

health standards issued under section 6(b)(5) of the OSH Act (29 U.S.C. 655(b)(5)), which specifically require a showing of feasibility; OSHA has also rejected the use of formal cost benefit analysis for safety standards, which are not governed by section 6(b)(5) (See 58 FR 16612, 16622–23 (Mar. 30, 1993) ("in OSHA's judgment, its statutory mandate to achieve safe and healthful workplaces for the nation's employees limits the role monetization of benefits and analysis of extra-workplace effects can play in setting safety standards.")).

OSHA historically has applied two threshold tests to examine economic feasibility for industries covered by the rule: whether the rule's average per establishment costs as a percentage of average per establishment revenues, for each industry sector, are below 1 percent, and whether those costs as a percentage of profits are below 10 percent.²⁴ However, as discussed in OSHA's recent proposed rule on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings (89 FR 70698, 70943 (Aug. 30, 2024)), the agency is no longer using costs as a percent of profits as a measure of feasibility because OSHA determined that the profit test is not a useful measure of the economic feasibility of a standard for a given industry. To determine whether there is a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, the threshold test examines whether the average costs for small entities are 1

percent of their average revenues or below.²⁵ These threshold tests are not a hard ceiling or determinative; instead, they provide guidelines the agency uses to examine whether there are any potential economic impact issues that require additional study.

Although this rule simply clarifies an existing requirement, OSHA has provided an estimate of the costs for a proportion of employers to come into compliance with the already-existing requirement to provide properly fitting PPE. As one commenter pointed out, the rule "should not cause any financial stress on any company unless they are providing ill-fitting PPE to employees currently" (Document ID 0034). Even assuming these estimated costs will be incurred by employers as a result of the rule, the rule easily passes OSHA's threshold tests for feasibility. As shown in table 19, the average construction industry employer has revenues of \$3.35 million annually and 9 employees. As a worst-case scenario, if such an employer had to conduct rule familiarization, research PPE, and replace all the PPE at issue in this rulemaking for all of their employees (*i.e.*, 3.41 items per employee for 9 employees), including new hires, and then continue to provide properly fitting PPE, it would cost an annualized \$258, which is much less than 0.1 percent of an average employer's revenues. More realistically, an employer might have to replace the PPE for one of its employees and the per-establishment costs would be substantially lower. Therefore, this rule is clearly economically feasible.

²⁴ For example, see p. VI–14 of the Final Economic Analysis supporting OSHA's rule on Respirable Crystalline Silica. Final Economic Analysis and Final Regulatory Flexibility Analysis for OSHA's Rule on Occupational Exposure to Respirable Crystalline Silica, Chapter VI (OSHA–2010–0034–4247).

²⁵ For example, see OSHA's Final Regulatory Flexibility Screening Analysis in support of the Hazard Communication rule (77 FR 17574, 17660 (March 26, 2012)).

TABLE 19—AVERAGE EMPLOYMENT AND REVENUES (2023\$) PER ESTABLISHMENT BY NAICS

NAICS	Establishments	Average employment per establishment	Average revenue (2023\$) per establishment
236 (Construction of Buildings)	251,634	6	\$3,825,160
237 (Heavy and Civil Engineering Construction)	38,214	26	9,892,428
238 (Specialty Trade Contractors)	510,803	9	2,078,011
Total Construction	800,651	9	3,347,121

Source: 2022 County Business Patterns (CBP). Available at <https://www.census.gov/data/datasets/2022/econ/cbp/2022-cbp.html>.

D. Regulatory Flexibility Screening Analysis and Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* (as amended)), OSHA examined the regulatory requirements of this rule to determine whether the requirement would have a significant economic impact on a substantial number of small entities.²⁶ While the rule simply clarifies an existing requirement, even when OSHA assumes that this rule leads to changes in employer behavior and associated costs, the costs are minimal. Given the number of workers OSHA estimates might be wearing improperly fitting PPE compared to the number of construction establishments covered by this rule, it is statistically unlikely that there will be more than one worker who might be wearing improperly fitting PPE at any given firm. For the following reasons, this rule will not impose significant costs (*i.e.*, costs that amount to more than one percent of revenues) on small employers:

- Replacement PPE costs are less than \$52 per employee;
- Establishments will incur less than \$36 to complete rule familiarization and PPE research upfront (plus another \$15 annually if they have a new hire requiring non-standard PPE); and
- The ongoing marginal cost of non-standard sized PPE is about \$7 per employee, on average.

To further illustrate this point, in order for a firm to experience impacts greater than 1 percent of revenues, firm-level revenues would need to be \$3,162 or lower.²⁷ According to the 2017

Statistics of U.S. Businesses (SUSB) dataset (<https://www.census.gov/data/datasets/2017/econ/susb/2017-susb.html>), Specialty Trade Contractors (NAICS code 238) has the lowest revenues per firm for the smallest size category (<5 employees) at \$365,018 (inflated to 2023\$), which is well above the \$3,162 needed for impacts to equal 1 percent of revenues. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Benefits

Although this rule is a clarification of employers' existing obligations, comments in the record suggest that not all employers are currently meeting their obligation to provide their employees with properly fitting PPE. The agency expects this clarification will improve compliance and thereby produce benefits to workers who were previously not receiving properly fitting PPE. However, due to lack of information about how many injuries, illnesses, and fatalities are caused by improperly fitting PPE, the agency is unable to estimate number of injuries, illnesses, and fatalities that may be averted by this final rule. While OSHA received a number of comments providing anecdotal evidence from individuals' personal experience, no commenter provided studies or data that would allow the agency to estimate the number of fatalities and non-fatal injuries and illnesses caused by improperly fitting PPE across the construction industry. This section discusses the evidence in the record regarding potential benefits, the difficulties in identifying PPE-related injuries in the available data, and potential benefits other than direct health and safety benefits that may result from this final rule. Finally, for informational purposes, OSHA

calculates how many fatalities or non-fatal injuries and illnesses would need to be prevented by this rule in order for it to have positive net benefits.²⁸

The comments OSHA received revealed two types of benefits likely to result from requiring properly fitting PPE. The first type comes from avoidance of injuries, illnesses, and fatalities. Several commenters reported that they were required to wear incorrectly fitting PPE on the job and that this made accidents more likely for them (Document ID 0079, 0081, 0097). Some reported having been injured due to improperly fitting PPE while others reported near misses. For example, one individual reported that a safety vest that was too big had gotten "caught on equipment and nearly caused falls" and that "[i]mproperly fitting gloves have been caught in equipment" (Document ID 0079). Another said that oversized gloves caused her hand to be caught in machinery, resulting in a serious and permanently debilitating injury (Document ID 0061). A comment from the United Brotherhood of Carpenters and Joiners of America (UBC) reported stories shared by their members, including two who suffered eye injuries due to improperly fitting safety glasses, one whose oversized fall protection harness got caught on equipment and caused a back injury, and two who suffered injuries to fingers when their oversized gloves were caught in machinery (Document ID 0074). These comments indicate that employees are being injured due to improperly fitting PPE.

However, specific numbers of injuries or fatalities directly attributable to improperly fitting PPE are difficult to identify in the available data. As shown above, improperly fitting PPE can cause a variety of types of injuries (*i.e.*, fractures, abrasions, sprains, cuts and punctures) in a number of ways (*i.e.*, by causing falls, getting caught in

²⁶ Small entity status is determined by the Small Business Administration's size standards. Construction entities are considered small based on their revenue, with the threshold ranging from less than \$19 million to less than \$45 million in annual revenue depending on which 6-digit NAICS industry the employer falls under (See <https://www.sba.gov/document/support-table-size-standards>).

²⁷ Rule familiarization cost per establishment of \$10.14, one time PPE needs assessment and research cost of \$25.41, annual research cost for new hires of \$15.27, and one time PPE replacement cost of \$51.24 for one employee, plus ongoing marginal cost of nonstandard sized PPE of \$6.68 for one employee annualized at a 2 percent discount

rate over 10 years yields a per employer cost of \$31.62. For a cost of \$31.62 to exceed one percent of revenues, the employer's revenues would need to be less than \$3,162 annually ($\$3,162 \times 0.01 = \$31.62$).

²⁸ By showing this break-even point, OSHA is not suggesting the agency is required to engage in formal cost-benefit analysis requiring that benefits exceed costs but instead presents it for informational purposes only.

machinery) and to a number of parts of the body. Data available from BLS are parsed by type of injury, cause of injury, or part of the body injured, and injuries that are reported in these categories may include injuries caused by improperly fitting PPE along with injuries resulting from other factors. The data collected do not specify whether PPE was being worn or whether it contributed to an accident or injury. Data from BLS reported that, in 2021, there were more than 37,000 sprains, strains, and tears, more than 18,000 cuts and lacerations, and 1,700 amputations that resulted in days away from work in the construction industry (BLS, 2023). The injuries reported by commenters and discussed above would fall within these categories (if they were reported appropriately). Based on this, it is entirely plausible that there are some injuries in these categories (as well as other categories of injuries not presented here) that are due to improperly fitting PPE and that could be avoided if employees wore properly fitting PPE.

In addition to the specific accounts of injuries detailed above, multiple commenters expressed doubt that the improperly fitting PPE they wear or had worn would keep them safe in the event an accident occurred; some worried that the poor fit of their PPE (e.g., fall protection harness) could lead to a fatal accident (Document ID 0085, 0081, 0084, 0090, 0108). Others reported that they felt they were putting themselves in danger by working while wearing improperly fitting PPE (Document ID 0080). Feeling unsafe at work has negative consequences for workers' mental health. The NSC conducted a survey to evaluate the correlation between workplace safety and negative mental health impacts. NSC reported that:

Respondents who felt unsafe at work were nearly three times more likely to report also experiencing depressive symptoms within the past two weeks compared to those who felt safe at work. In addition, respondents who felt unsafe at work were more than twice as likely to also report feeling symptoms of anxiety compared to those who felt safe at work.

Individuals with the highest level of concern for their safety at work were the most likely to report feeling depressed or anxious frequently enough to meet one of the criteria for clinical diagnosis of mental illness (NSC, 2022).

Consistent with the findings of the NSC survey, commenters reported feelings of anxiety and stress, loss of sleep, mental fatigue, and concern about discrimination or retaliation; they also worried about loss of income because of,

for example, being sent home due to a lack of properly fitting PPE or being laid off because they work slower due to PPE that is too big and makes tasks more difficult (Document ID 0045, 0074, 0087). Accordingly, the fit requirement of this final rule may yield benefits from reduced stress and other negative mental health effects.

The third type of benefit likely to result from this final rule is avoidance of work or production delays that occur when workers are wearing PPE that does not fit. The UBC noted that, among other benefits, "properly fitting PPE will result in less lost production" (Document ID 0074) and the ISEA likewise commented that the rule would yield a financial benefit by preventing injuries and fatalities (Document ID 0112). In its comment, NIOSH cited studies finding that workers had difficulty performing job tasks while wearing poorly fitting PPE, including one where study participants "reported that poorly fitting PPE interfered with work tasks and potentially affected their productivity" and another where participants reported that "[b]eing unable to perform some technical tasks while wearing standard issue gloves had a direct negative effect on productivity" (Document ID 0054). Commenters also reported that improperly fitting PPE made it difficult to do their jobs efficiently (Document ID 0073, 0079). Accordingly, workers who are provided with properly fitting PPE as a result of this final rule may experience increased productivity, which in turn benefits employers because employees can work faster and more efficiently.

Additional benefits that could accrue to employees as a result of this rule include not being denied work (e.g., Document ID 0061, 0114); not being sent home without pay (e.g., Document ID 0087); and not having to pay for their own PPE (e.g., Document ID 0056, 0060, 0067, 0094, 0115). Another commenter suggested that improved safety would help the construction industry "alleviate [. . .] risk and make working in the industry a good choice for women and other under-represented groups" which the commenter believed was necessary in order for the industry to meet the need for workers (Document ID 0074).

Based on the above, OSHA believes that this rule will result in health and safety benefits to workers, as well as benefits to employers due to increased worker efficiency and productivity. Although the agency is unable to quantify those benefits due to data limitations, the agency has calculated, for informational purposes, how many injuries and/or fatalities this final rule

would have to prevent to yield a net benefit. To do so, OSHA begins with the estimate that this final rule will impose annualized costs of about \$889,000 per year using a two percent discount rate and a ten year time frame. Next, OSHA monetizes the potential safety and health benefits of the rule. Monetization allows comparison of the benefits and costs of a rule in the same terms. When OSHA is able to estimate the number of injuries or fatalities prevented by a given rule, the agency monetizes these benefits.

If OSHA were to monetize fatalities potentially avoided by this final rule, the analysis would use the Department of Transportation (DOT) 2023 value-of-a-statistical-life (VSL) estimate of \$13.2 million per avoided fatality (DOT, 2024).²⁹ DOT relied on a selected set of nine recent economic studies that provided usable estimates of VSL for a broad cross-section of the population. Because economic theory and empirical evidence indicate that the value of reducing life-threatening and health-threatening risks (and the corresponding willingness of individuals to pay to reduce these risks) will increase as real per capita income increases, DOT adjusted its VSL estimate to reflect changes in real income over time, using an income elasticity of VSL of 1.0 (the percentage change in VSL in response to a 1% increase in real income). For its estimate of real gross domestic product (GDP) growth over the ten-year period for which OSHA estimates benefits, the agency uses a recent Congressional Budget Office (CBO) forecast of 1.7 percent per year (CBO, 2022).³⁰ Accounting for real GDP growth over a ten-year period, on an annualized basis using a 2 percent discount rate, OSHA's adjusted VSL is \$14.2 million.³¹ Although OSHA is unable to estimate the number of fatalities that will be prevented by this final rule, the agency can demonstrate based on this adjusted VSL, that this final rule will have positive net benefits if it prevents one

²⁹ The analysis is using 2023 as its reference dollar year for comparing costs and benefits, although given that the unit costs for PPE are using the latest available information from 2024, the costs might be slightly overstated for 2023.

³⁰ See Table 2–1 in <https://www.cbo.gov/publication/58147> (CBO, 2022).

³¹ Beginning with a baseline (\$2023) VSL of \$13.2 million, OSHA applied an annual income growth rate of 1.7% (Year 0 = 100.0%, Year 1 = 101.7%, Year 2 = 103.4%, Year 3 = 105.2%, Year 4 = 107.0%, Year 5 = 108.8%, Year 6 = 110.6%, Year 7 = 112.5%, Year 8 = 114.4%, Year 9 = 116.4%) and a discount rate of 2% to derive a present value income growth rate of 107.7%. Multiplying the baseline VSL times the present value income growth rate (\$13.2 × 107.7%) yields an adjusted VSL value of \$14,217,770, or after rounding, \$14.2 million.

fatality about every 14 years (\$14,200,000/\$1,045,955 = 13.6) based on avoided fatalities alone regardless of avoided non-fatal injuries.

Similarly, OSHA typically monetizes the benefits of avoided nonfatal injuries and illnesses based on the value of a statistical injury (VSI) and, if monetizing benefits for this final rule, would use the midpoint of the range of the values cited in Viscusi and Gentry (2015) converted to 2023 dollars using the GDP deflator, or \$116,588 per injury. Based on this VSI, if this rule prevented about 9 (\$1,045,955/\$116,588 = 8.97) nonfatal injuries or illnesses a year, it would have positive net benefits regardless of avoided fatalities.

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VI. Technological Feasibility

This final rule amends § 1926.95(c) to make explicit construction employers’ existing obligation to ensure PPE worn by employees properly fits each employee. In the NPRM, OSHA explained that this revision would improve clarity for the construction sector and would ensure consistency between the construction PPE standards and existing OSHA standards for general industry and shipyards. OSHA further stated that because the requirement for properly fitting PPE already exists in the construction industry, the agency believed that providing properly fitting PPE is already common practice among construction employers. Therefore, OSHA preliminarily concluded that the proposed rule would be technologically feasible.³²

In response to the NPRM, no commenter identified any technological barriers to providing construction employees with properly fitting PPE. Instead, as one commenter stated, “PPE is readily available for the wide range of worker anthropometrics” (Document ID 0108). According to another, “PPE is available in different sizes. In addition, most PPE is adjustable, and available in a range of sizes, meaning the wearer can achieve a proper fit” (Document ID 0112). General industry and shipyard employers have been able to comply with the comparable requirements in 29 CFR 1910.132(d)(1)(iii) and 1915.152(b)(3), providing further evidence of technological feasibility, especially given that no commenter

identified any PPE that is unique to construction work (see Document ID 0078). OSHA has also identified industry resources that demonstrate the availability of PPE designed for many different body types, such as the list of PPE for all genders and sizes compiled by CPWR (see Document ID 0117) and ISEA’s List of Female PPE Manufacturers (Document ID 0014).

Although some commenters did indicate they had difficulty obtaining properly fitting PPE in the past (Document ID 0031, 0046), these comments do not demonstrate a technological feasibility issue, but rather a market supply issue. As one commenter noted, “[s]maller sizes exist for many types of PPE, but only larger sizes are stocked by sellers” (Document ID 0046). These same commenters also expressed hope that this final rule would increase availability by spurring demand (Document ID 0031, 0046). As one commenter stated, “[t]here could be experiences of longer lead times for certain PPE items; however, as employers increase the demand for manufacturers to produce more size variations, this problem should be alleviated” (Document ID 0098). After reviewing the comments received and the evidence in the record, OSHA finds that this final rule is technologically feasible.

VII. Paperwork Reduction Act

This final rule contains no information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320. The PRA defines a collection of information as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.” (44 U.S.C. 3502(3)(A)).

VIII. Federalism

OSHA reviewed this final rule in accordance with Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)), which, among other things, is intended to “ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies.” The E.O. provides for preemption of State law where there is clear evidence that Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. The E.O. directs agencies to limit any such preemption to the extent possible. The E.O. also

³² As explained in the NPRM, because the revision in this final rule is simply a clarification of an existing requirement, the agency is not required to perform a new technological feasibility analysis for this rulemaking. Nonetheless, OSHA is including a discussion of technological feasibility for informational purposes.

requires that agencies consult with states on rules that have “federalism implications,” which are those 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.”

This final rule complies with E.O. 13132. The hazards addressed by this final rule and its goal of protecting construction workers are national in scope and the final rule does not include “federalism implications” as defined in the E.O. Under section 18 of the OSH Act, 29 U.S.C. 651 *et seq.*, Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards (29 U.S.C. 667); OSHA refers to these OSHA-approved, State-administered occupational safety and health programs as “State Plans.” Occupational safety and health standards developed by State Plans must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards (29 U.S.C. 667). Subject to these requirements, State Plans are free to develop and enforce under State law their own requirements for occupational safety and health standards. The choice to become a State Plan is part of the statutory scheme and is not mandatory, so there are no federalism implications for States that choose to adopt a State Plan. The effect of this final rule on States and territories with OSHA-approved occupational safety and health State Plans is discussed in Section IX, State Plans.

In States without OSHA-approved State Plans, the States are not employers under the OSH Act and the final rule would therefore not have a substantial direct effect on them (29 U.S.C. 652(5)).

IX. State Plans

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, States with their own OSHA-approved occupational safety and health plans (“State Plans”) must either amend their standards to be identical to, or “at least as effective as,” the new standard or amendment, or show that an existing State Plan standard covering this issue is “at least as effective” as the new Federal standard or amendment (29 CFR 1953.5(a)). State Plans’ adoption must be completed within six months of the promulgation date of the final Federal rule.

OSHA has determined that by including in 29 CFR 1926.95 an explicit

requirement that PPE must fit properly, this final rule will increase protection afforded to employees in the construction industry by clarifying employers’ obligations under the standard. Accordingly, within six months of the rule’s final promulgation date, State Plans are required to review their standards and adopt amendments to those standards that are identical to, or “at least as effective” as, this rule, unless they demonstrate that such amendments are not necessary because their existing standards are already “at least as effective” in protecting workers. To avoid delays in worker protection, the effective date of the State standard and any of its delayed provisions must be the date of State promulgation or the Federal effective date, whichever is later. The Assistant Secretary may permit a longer time period if the State timely demonstrates that good cause exists for extending the time limitation (29 CFR 1953.5(a)).

Of the 29 States and Territories with OSHA-approved State Plans, 22 cover public and private-sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The remaining seven States and Territories cover only State and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands.

X. Unfunded Mandates Reform Act

OSHA reviewed this final rule according to the Unfunded Mandates Reform Act of 1995 (“UMRA”; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (58 FR 58093 (Oct. 28, 1993)). Section 202 of the UMRA, 2 U.S.C. 1532, requires agencies to assess the anticipated costs and benefits of a rule that includes a Federal mandate “that may result in expenditures in any one year by state, local, and tribal governments, in the aggregate, or by the private sector,” of at least \$100 million, adjusted annually for inflation. This provision does not generally apply to a duty arising from participation in a voluntary Federal program (2 U.S.C. 658(5)).

As discussed above in Section V. Final Economic Analysis and Regulatory Flexibility Act Certification, the agency has preliminarily determined that compliance with this final rule will require expenditures of less than \$100 million (adjusted annually for inflation, which would now amount to more than \$180 million) per year by all affected

entities. Accordingly, this proposal is not a significant regulatory action within the meaning of the UMRA.

This rule does not place a mandate on State or local government for purposes of the UMRA. As explained above in Section IX, State Plans, those States with OSHA-approved State Plans voluntarily choose to adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. Thus, to the extent they are required to comply with OSHA standards, it is the result of their voluntary decision, not a Federal mandate. In States without OSHA-approved State Plans, the States and their political subdivisions are not employers under the OSH Act (29 U.S.C. 652(5)). Thus, the final rule does not impose costs on them.

The OSH Act does not cover Tribal governments in the performance of traditional governmental functions, but it does cover Tribal governments when they engage in activities of a commercial or service character (see *Menominee Tribal Enterprises v. Solis*, 601 F.3d 669 (7th Cir. 2010); *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174 (2d Cir. 1996)). However, the cost of the revisions in this final rule for these covered activities by a Tribal government would not meet the threshold established in UMRA. OSHA certifies that this rule would not mandate that State, local, or Tribal governments adopt new, unfunded regulatory obligations of, or increase expenditures by the private sector by, more than \$100 million in any year, as documented in the Final Economic Analysis.

XI. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249 (Nov. 9, 2000)) and determined that it would not have “tribal implications” as defined in that order. The clarification to 29 CFR 1926.95 does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

XII. Protecting Children From Environmental Health and Safety Risks

Executive Order 13045, Protecting Children from Environmental Health and Safety Risks (62 FR 19885 (April 23, 1997)), as amended by Executive Orders 13229 and 13296, requires that Federal agencies provide additional evaluation

of economically significant regulatory actions that concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children. As explained elsewhere in this preamble, OSHA has determined that this final rule is not an economically significant regulatory action. In addition, this rule is intended to protect workers of all ages, and OSHA has no information that children comprise a disproportion share of the affected workforce. To the extent older children are employed in the construction industry, this final rule will have a protective effect on these older children by ensuring that they are provided properly fitting PPE. OSHA has therefore determined that this rule will not disproportionately affect children or have any adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires no further agency action or analysis.

XIII. Environmental Impacts

OSHA has reviewed the final rule according to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500 *et seq.*), and the Department of Labor’s NEPA procedures (29 CFR part 11).

Pursuant to 29 CFR 11.10 and consistent with CEQ regulations, the promulgation, modification, or revocation of any safety standard is categorically excluded from the requirement to prepare an environmental assessment under NEPA absent extraordinary circumstances indicating the need for such an assessment. OSHA finds that this final rule presents no such extraordinary circumstances.

List of Subjects in 29 CFR Part 1926

Construction, Personal protective equipment, Occupational safety and health.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this document under the authority granted by sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 5 U.S.C. 553, Secretary of Labor’s Order No. 8–2020 (85 FR 58393), and 29 CFR part 1911.

Signed at Washington, DC.
Douglas L. Parker,
Assistant Secretary of Labor for Occupational Safety and Health.

Final Regulatory Text
Amendments to Standards

For the reasons stated in the preamble, OSHA amends 29 CFR part 1926 to read as follows:

PART 1926—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart E—Personal Protective and Life Saving Equipment

■ 1. The authority citation for subpart E is revised to read as follows:

Authority: 40 U.S.C. 3701 *et seq.*; 29 U.S.C. 653, 655, 657; Secretary of Labor’s Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), 1–2012 (77 FR 3912), or 8–2020 (85 FR 58393), as applicable; and 29 CFR part 1911.

■ 2. Amend § 1926.95 by revising paragraph (c) to read as follows:

§ 1926.95 Criteria for personal protective equipment.

* * * * *

(c) *Design and selection.* Employers must ensure that all personal protective equipment:

- (1) Is of safe design and construction for the work to be performed; and
- (2) Is selected to ensure that it properly fits each affected employee.

* * * * *

[FR Doc. 2024–29220 Filed 12–11–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–1055]

RIN 1625–AA00

Safety Zone, Lower Mississippi River, Natchez, MS

AGENCY: Coast Guard, DHS.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Lower Mississippi River from mile marker 364.4 to mile marker 365.5. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by

waterborne fireworks display with a fallout zone of approximately 350 feet around the barge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Lower Mississippi River.

DATES: This rule is effective December 31, 2024, from 6 p.m. through 7 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–1055 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MST1 Peter Buczakowski, U.S. Coast Guard; telephone 901–208–0311, email Peter.L.Buczakowski@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone by December 31, 2024, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because action is needed to respond to the potential safety hazards associated with the waterborne fireworks displays on December 31, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Lower Mississippi River (COTP) has determined that potential hazards associated with a waterborne fireworks display will be a safety concern for anyone located on the Lower Mississippi River mile markers 364.4 to mile marker 365.5. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the operation of the waterborne fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on December 31, 2024, from 6 p.m. through 7 p.m. The safety zone will cover all navigable waters on the Lower Mississippi River from mile marker 364.4 to mile marker 365.5. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the operation of the waterborne fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. This temporary safety zone will temporarily restrict navigation on the Lower Mississippi River from mile marker 364.4 to mile marker 365.5, in the vicinity of Natchez, MS, on December 31, 2024, from 6 p.m. through 7 p.m.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting only one hour that will prohibit entry on the Lower Mississippi River from mile marker 364.4 to mile marker 365.5. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protestors. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

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

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

■ 2. Add § 165.T08–1055 to read as follows:

§ 165.T08–1055 Safety Zone; Lower Mississippi River, Natchez, MS

(a) *Location.* The following area is a temporary safety zone: All navigable waters on the Lower Mississippi River from mile marker 364.4 to mile marker 365.5 in the vicinity of Natchez, MS.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM channel 16 or by telephone at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 6 p.m. through 7 p.m. on December 31, 2024.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety

Marine Information Broadcasts, as appropriate.

Dated: December 03, 2024.

Kristi L. Bernstein,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2024–29089 Filed 12–11–24; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2005–6]

Statutory Cable, Satellite, and DART License Reporting Practices

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office (“Office”) is issuing a final rule governing royalty reporting practices of cable operators, and the Statement of Account form and filing requirements. This final rule makes regulatory changes regarding procedures for cable system operators. In some areas, similar changes are being made to the regulations governing statutory licenses for satellite carriers and digital audio recording devices or media.

DATES: Effective January 27, 2025.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at mef@copyright.gov, or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Section 111 of the Copyright Act (“Act”), title 17 of the United States Code, provides cable operators with a statutory license to retransmit a performance or display of a work embodied in a “primary transmission” made by a television station licensed by the Federal Communications Commission (“FCC”). Cable operators that retransmit broadcast signals in accordance with this provision are required to pay royalty fees to the Copyright Office (“Office”), among other requirements. The royalty amounts are determined based on a specified percentage of cable operators’ reported gross receipts collected for secondary transmissions, as well as additional amounts for any distant signal equivalent (“DSEs”) carried by

the cable system.¹ These royalty fees are remitted semi-annually to the Office, which invests the royalties in United States Treasury securities pending distribution to copyright owners eligible to receive a share of the royalties.²

In conjunction with their royalty payments, cable operators must complete and file statements of account (“SOAs”), which provide a record regarding their retransmissions and associated royalty payments to “promote uniform and accurate reporting, assist cable operators in meeting their obligations under the Act and regulations, and aid copyright owners, the Copyright Office, and the Copyright [Royalty Judges] in reviewing and using the information provided.”³ Section 111 identifies a variety of information that must be reported to the Copyright Office on the SOA, including the number of channels by which the system made secondary transmissions, the names and locations of all primary transmitters used, and, as particularly relevant here, the “total number of [cable system] subscribers” and the “gross amounts” paid to the cable system by these subscribers “for the basic service of providing secondary transmissions of primary broadcast transmitters.”⁴

Section 111 tasks the Register of Copyrights (“Register”) with prescribing the specific requirements for the SOA by regulation.⁵

B. Regulatory Background

As directed by section 111, the Office has adopted regulations to implement the statute’s reporting requirements⁶ as well as the design of the SOA form.⁷ In 1977, to address the law’s requirement that the “number of subscribers” and “gross amounts” paid to cable operators be reported,⁸ the Office “proposed . . . that the number of subscribers be accompanied by certain related information concerning subscriber categories and charges in order reasonably to accomplish this

¹ 17 U.S.C. 111(d)(1)(B).

² *Id.* at 111(d)(2). The Office distributes those royalties in accordance with periodic distribution orders issued by the Copyright Royalty Board (“CRB”). *Id.*

³ *Compulsory License for Cable Systems*, 42 FR 61051, 61054 (Dec. 1, 1977) (explaining benefits of using a standard SOA form, referencing the Copyright Royalty Tribunal, a precursor to the current Copyright Royalty Judges system). *See* 17 U.S.C. 111(d)(1)(A).

⁴ 17 U.S.C. 111(d)(1)(A).

⁵ 17 U.S.C. 111(d)(1).

⁶ 37 CFR 201.17(e)(6) and (7).

⁷ *Id.* § 201.17(d). The SOA forms are available in PDF and Excel format on the Office’s website at https://www.copyright.gov/licensing/sec_111.html.

⁸ 17 U.S.C. 111(d)(2) (1977).

purpose.”⁹ In the subsequent 1978 final rule, which adopted regulatory language almost identical to the present § 201.17(e)(6), the Office noted that “although this information ‘will not provide a definitive or detailed comparison with the reported gross receipts,’ it will be useful for at least a rough comparison with the reported gross receipts, and gives meaning to the statutory requirement that the ‘number of subscribers’ be given.”¹⁰ The Office has consistently followed this approach in its subsequent rulemakings in this area.

The Office’s current regulations require the following information, among other data, to be reported on SOAs by cable operators: “[t]he designation ‘Area Served’, followed by the name of the community or communities served by the system”; “[a] brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters”; “[t]he number of subscribers to the cable system in each such subscriber category”; and “[t]he charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions.”¹¹ The SOA form organizes this information into specific areas, several of which are relevant to this rulemaking. Space D of the SOA (titled “Area Served”) requests information identifying “each separate community served by the cable system.” Space E (titled “Secondary Transmission Service: Subscribers and Rates”) requests information that “should cover all categories of secondary transmission service of the cable system,” including “the number of subscribers to the cable system, broken down by categories of secondary transmission service,” and the “rate charged for each category of service.”¹² Space K (titled “Gross Receipts”) requires cable operators to “[e]nter the total of all amounts (gross receipts) paid to [the] cable system by subscribers for the system’s secondary transmission service (as identified in Space E) during the accounting period.”¹³ Finally, Space F (titled “Services Other Than Secondary Transmissions: Rates”) requires cable operators to list rate

information “with respect to all . . . services that were not covered in space E, that is, those services that are not offered in combination with any secondary transmission service for a single fee.”¹⁴

C. Procedural Background

This rulemaking began after the Motion Picture Association of America, Inc. (“MPA”) ¹⁵ filed a petition on behalf of its member companies and other producers and/or distributors of movies and television series (hereinafter “Program Suppliers”) asking the Office to address a number of issues relating to the SOA reporting practices of cable operators under section 111.¹⁶ The Program Suppliers expressed concerns that the subscriber and rate information reported by cable operators under the Office’s regulations failed to provide sufficient data to support the intended “rough comparison” copyright owners should be able to conduct between subscriber information and gross receipts. Their concerns focused on the relationship between the information provided in Space E and Space K.¹⁷ They asked the Office to “require greater congruity between the ‘gross receipts’ information and the subscriber and rate information provided on the SOAs,” and “greater detail concerning the nature of revenues that a cable operator includes and excludes in its ‘gross receipts.’”¹⁸

After reviewing the Petition, the Office published a notice of inquiry (“NOI”) seeking comment on the regulatory proposals and recommendations raised by the Program Suppliers.¹⁹ Multiple parties submitted responsive comments and reply comments.²⁰ After the NOI’s publication, Congress took action that addressed some of the issue raised by

the Office. The Satellite Television Extension and Localism Act of 2010 (“STELA”), followed by the STELA Reauthorization Act of 2014 (“STELARA”),²¹ made amendments to section 111, including the royalty rate calculations for cable operators and addressing the transition to digital television broadcasts.²² STELA also added a right for copyright owners to conduct confidential audits to verify the information provided on the SOAs.²³ The Register of Copyrights was directed to issue regulations establishing the procedure by which copyright owners could pursue a confidential audit to “confirm the correctness of the calculations and royalty payments reported” on SOAs commencing on or after January 1, 2010.²⁴ These regulations were enacted in 2014.²⁵

In 2017, the Office published a notice of proposed rulemaking (“NPRM”) on the NOI issues that remained open after the intervening statutory and regulatory changes.²⁶ In addition, the rulemaking proposed revisions to SOA forms and/or the Office’s related regulations to streamline administration of SOAs. The responses to the NPRM²⁷ reflected agreement on some proposals, but also raised a number of issues for the Office to consider and address before finalizing this rule. The Office convened multiple *ex parte* meetings with groups of stakeholders to discuss these issues and to attempt to narrow areas of disagreement.²⁸ Having reviewed and considered the feedback received in response to the NOI and NPRM, the Office is issuing a final rule that adopts certain of its proposals, withdraws others, and makes some modifications.²⁹

II. Summary of Final Rule

After careful consideration of the comments and the record as a whole, the Office is adopting several changes to

¹⁴ Short Form SOA at 2, Space F; Long Form SOA at 2, Space F. See 37 CFR 201.17(e)(8).

¹⁵ The Motion Picture Association of America is now known as the Motion Picture Association, or MPA.

¹⁶ The petition can be found at <https://www.copyright.gov/rulemaking/section111/petition20050607.pdf> (the “Petition”).

¹⁷ Program Suppliers Initial NOI Comment at 6. Broadcast Music, Inc., The American Society of Composers, Authors and Publishers, Broadcast Music Inc., and SESAC, Inc. (collectively, “Music Claimants”) submitted their own comments in response to the NOI, stating that “as a general matter, [they] support MPAA’s comments and proposed revisions to the SOAs.” Music Claimants Initial NOI Comment at 2.

¹⁸ Petition at 3; see also Program Suppliers Initial NOI Comment at 5–7.

¹⁹ 71 FR 45179 (Aug. 10, 2006).

²⁰ The Office received six comments and three reply comments to the NOI. The initial and reply comments to the NOI have been posted on the Office’s website at <https://copyright.gov/rulemaking/section111>.

²¹ See Satellite Television Extension and Localism Act of 2010, Public Law 111–175, 124 Stat. 1218 (2010); STELA Reauthorization Act of 2014, Public Law 113–200, 128 Stat. 2059 (2014).

²² 17 U.S.C. 111(d)(1)(B) through (F), (f)(4).

²³ *Id.* at 111(d)(6). See 37 CFR 201.16.

²⁴ 17 U.S.C. 111(d)(6); 37 CFR 201.16(h), (1), (o).

²⁵ *Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers*, 79 FR 68628 (Nov. 18, 2014).

²⁶ *Statutory Cable, Satellite, and DART License Reporting Practices*, 82 FR 56926 (Dec. 1, 2017).

²⁷ The comments are posted on the Office’s website at <https://copyright.gov/rulemaking/section111>.

²⁸ The majority of the *ex parte* meetings occurred in 2019 and 2020. The Office requested additional input in late 2022. The letters reflecting the *ex parte* discussions can be found at <https://copyright.gov/rulemaking/section111/ex-parte-communications>.

²⁹ The Office has adopted the organization and section headings in the NPRM for consistency.

⁹ 42 FR at 61054.

¹⁰ 43 FR 958, 959 (Jan. 5, 1978).

¹¹ 37 CFR 201.17(e)(4), (6)(i) through (iii).

¹² Paper Form SA1–2 at 2, Space E (“Short Form SOA”); Paper Form SA3 at 2, Space E (“Long Form SOA”).

¹³ Short Form SOA at 6, Space K; Long Form SOA at 7, Space K; see also 37 CFR 201.17(e)(6) and (7) (describing corresponding SOA requirements).

the regulations governing SOAs. First, the Office is revising the regulatory definition of “gross receipts” to clarify that equipment fees (formerly called “converter” fees) and broadcast fees must be included and reported in Space E. Second, the final rule removes the regulatory provision requiring remitters to provide information regarding “Services Other Than Secondary Transmissions: Rates” in Space F, and eliminates all references to Grade B contour in § 201.17 and on the cable SOAs. Third, the final rule revises reporting requirements related to the name of the community or communities served by requiring cable system operators to provide “county” information in Space D. Fourth, while the Office is withdrawing proposals to amend the regulatory definition of the phrase “cable system” and to require more detailed reporting of subscriber and rate information in Space E, it is amending Space E to require that operators fill in the spaces requesting information regarding categories of service.

Finally, the final rule makes several technical amendments and revises certain reporting practices that are also pertinent to the filing of SOAs for other statutory licenses. For example, it clarifies that cable system operators must use the SOA form prescribed by the Office, and include any and all information requested in the instructions for the SOA, as well as the information required by the regulations. The final rule also includes the technical changes proposed in the NPRM relating to the processing of refunds, supplemental or amended payments, and calculation of interest, as well as case management procedures. These latter changes will be reflected in parallel amendments to regulations for satellite carrier and digital audio recording equipment and media.

The amendments to the regulations reflected in this rule require the development of new SOA forms, which the Office is preparing. Until new forms are developed, cable service operators should use the most current forms posted on the Office’s website while complying with the new regulatory requirements regarding the information to be reported.

III. Section 111—Specific Changes

A. Program Suppliers’ Request for Greater Congruity Between Reported Subscriber and Rate Information (Space E) and Gross Receipts (Space K)

In response to the Program Suppliers’ original request that cable operators provide more detailed information on

the SOA, the NPRM proposed a number of changes to the information sought in Space E regarding subscribers. Having reviewed and considered all of the comments received, the Office has been persuaded not to make the majority of the proposed changes and only to make minor adjustments to accommodate its conclusions about reporting equipment fees and broadcast fees. Its specific findings and conclusions are explained below.

1. Proposed Requirement To Provide More Detailed Reporting of Subscriber and Rate Information (Space E)

37 CFR 201.17(e)(6) currently requires remitters to provide in Space E “[a] brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters.”³⁰ The regulation further states that “[e]ach entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) . . . shall be considered one subscriber”³¹ subject to charges by the cable system for the basic service of providing secondary transmissions. These requirements are intended to complement the regulatory definition of “gross receipts,” which includes “the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees.”³²

In response to the request for more granularity, the NPRM proposed to update the subscriber and rate information required in Space E to require remitters to break out subscription data into separate tiers of service and list the per-tier rate or range of rates. The intent was to provide copyright owners with more information when deciding whether to make use of the audit right included in section 111.

In its initial comments to the NPRM, AT&T disagreed with the Office’s proposal.³³ It stated that the availability of audits after passage of STELA, through which companies make their books available for inspection by copyright owners, rendered unnecessary the additional information proposed in the NPRM. In addition, AT&T noted that compliance with the proposed

regulations would result in significant extra work and expense for cable companies.³⁴ NCTA—The Internet and Television Association (“NCTA”) also opposed the proposal. It stated that, due to the bundling of services and “promotional discounts,” providing the information proposed in the NPRM would be onerous and could lead to the disclosure of the cable companies’ proprietary information.³⁵

In their initial comments, the Copyright Owners observed that “the disparities [between Space K and Space E] seem to rest largely, though not fully, on a disconnect between (1) the monthly rate that subscribers must *actually* pay to receive broadcast signals and (2) the monthly service fees that cable operators report in Space E.”³⁶ They questioned whether the NPRM’s Space E proposal would provide “rough comparability” with Space K “unless the rate information reflects what subscribers actually pay to receive broadcast signals.”³⁷ They suggested instead that cable operators report “each category of service that includes retransmitted broadcast signals, with the number of subscribers in each group, the published rate card fee for each, and average monthly fee actually paid.”³⁸ In its reply comments, NCTA opposed the Copyright Owners’ proposed requirement for reporting monthly subscriber information. Instead, it suggested reducing the number of categories of service reported on Space E.³⁹

In subsequent *ex parte* meetings with the Office, NCTA and MPA jointly proposed that the current Space E requirements be replaced with requirements that cable operators report aggregated average number of monthly subscribers for the six-month accounting period and average monthly per subscriber fees collected during that period.⁴⁰ In response to the joint NCTA–MPA proposal, the Copyright Owners,⁴¹

³⁴ *Id.* at 3–6.

³⁵ NCTA Initial NPRM Comments at 6–7.

³⁶ Copyright Owners I Initial NPRM Comments at 5. In their initial NPRM comments, the Copyright Owners included the MPA, Joint Sports Claimants, the National Association of Broadcasters (“NAB”), Public Broadcasting Service, Settling Devotional Claimants, and Canadian Claimants Group (“Copyright Owners I”).

³⁷ *Id.* at 6.

³⁸ *Id.* at 6–7.

³⁹ NCTA Reply NPRM Comments at 11–12, 14–15.

⁴⁰ Letter from Mary Beth Murphy, Vice Pres. & Dep. Gen. Coun. NCTA to Regan A. Smith, Gen. Coun. & Assoc. Register of Copyrights, U.S. Copyright Office, May 20, 2020, attachment at 2 (“NCTA–MPA *Ex Parte* Letter #1”).

⁴¹ As referenced here, the Copyright Owners no longer include the MPA. However, they have stated that they collectively received approximately 78%

³⁰ 37 CFR 201.17(e)(6)(i). As a result of other changes made in this rule, § 201.17(e)(6) will be renumbered as § 201.17(e)(2).

³¹ *Id.* § 201.17(e)(6)(iii)(B).

³² *Id.* § 201.17(e)(6)(i).

³³ AT&T Initial NPRM Comments at 2–5.

in a separate *ex parte* meeting, stated that section 111 permits the Office to require reporting of “other data,” and is not limited to an aggregated six month report.⁴² They further stated that reporting monthly averages, as opposed to a six-month aggregate, would not be “unduly burdensome.”⁴³ Responding to these statements, NCTA and MPA expressed concern that by providing monthly data, instead of a six-month average, “competitors could use that information to their competitive advantage by closely tracking the operator’s relative success and failure under discrete promotional campaigns.”⁴⁴

The Office appreciates the inputs from stakeholders, including their efforts to narrow their differences. It is apparent from the comments of the parties, and their statements at *ex parte* meetings, that they do not support the NPRM proposal to provide more detail in Space E. The Office is therefore withdrawing its proposal. At the same time, it declines to adopt the NCTA–MPA proposal to limit Space E reporting to a six-month aggregation of subscribers and average rates. It concludes that this proposal would not provide sufficient information to allow the Copyright Owners to make the “rough comparison” between the gross receipts reported in Space K and the subscriber information reported in Space E. Therefore, except as described below, the Office is not changing the requirements of Space E at this time. It will continue to monitor the issue of comparability between Space E and Space K going forward.

The final rule includes several changes to Space E that were either raised by the NPRM or introduced during the comment process and fully considered by stakeholders during the rulemaking proceeding. Specially, the Office is revising the regulatory definition of “gross receipts” to make clear that equipment fees (formerly called “converter” fees) and broadcast fees must be included in gross receipts and reported in Space E. The Office will

revise its Section E instructions for the SOA accordingly. The rationale for these amendments is discussed in Section 3 below.

In addition, as discussed in the NPRM, the Office will require that spaces on the SOA seeking information regarding categories of service not be left blank.⁴⁵ If a cable operator does not serve a specific category, a “zero” or a “N/A” (not applicable) must be reported in the appropriate space. These revisions are intended to facilitate the review of cable SOAs by the Office’s Licensing Division; they will be implemented in the instructions to Space E in the SOA and do not require amending the regulations.

2. Reporting of Bundled Services in Gross Receipts (Space K)

The NPRM also addressed how gross receipts should be reported when cable services are offered by cable operators as part of a “bundle” of services to subscribers. For example, many cable operators now offer video services plus internet and/or voice services together at a price that is less than what a subscriber would pay to subscribe to each service separately (so-called “double play” and “triple play” bundles).⁴⁶ Noting that the Office receives questions on how gross receipts for cable services should be reported when sold as part of a bundle, the NPRM stated that it was “considering whether to amend its regulations to provide specific guidance on how remitters should report cable television services sold as a bundled service.” It proposed the addition of the following new language in its regulatory definition of “gross receipts” to address bundled services: when cable services are bundled with non-cable services, “gross receipts shall not include any fees collected from subscribers for the sale of internet services or telephony services when such services are bundled together with cable service.” “[I]nstead, when cable services are sold as part of a bundle of other services, gross receipts shall include fees in the amount that would have been collected if such subscribers received cable services as an unbundled stand-alone product.”⁴⁷ The Office sought public comment on the proposed definition and “on how cable operators currently report the price of cable television service in gross receipts on their SOAs when it is sold as part of a bundle of services, and whether the

Office’s regulations should be amended to provide more guidance.”⁴⁸

The NPRM proposal is consistent with the Office’s decades-long interpretation of “gross receipts” in section 111 as requiring reporting of all subscription fees collected by a cable operator when its service includes broadcast stations. For example, when a video service tier includes both broadcast and non-broadcast stations, the Office requires the cable operator to report all of the revenues from the broader tier to be included in gross receipts, not just the revenues that would have been garnered from a broadcast-only tier. This interpretation of gross receipts, barring proration of mixed cable channel tiers, was issued in 1984.⁴⁹ In other words, cable operators are not permitted to prorate gross receipts within tiers of service that contain broadcast channels according to the ratio of broadcast to non-broadcast channels in a given tier.

In their initial comments, NCTA agreed that the exclusion of internet and voice services in the proposed rule was proper.⁵⁰ At the same time, however, it suggested that the Office substantively change its approach to the reporting of revenue in this circumstance. It asked the Office to recognize generally accepted accounting principles, or GAAP, as the method for determining the amount of revenue to be reported for bundled services.⁵¹ It suggested that employing GAAP would be a more appropriate standard for reporting the video portion of the bundled revenue than the proposed rule and pointed out that other compulsory licenses use GAAP in their analyses.⁵² NCTA criticized the proposed rule on the grounds that it purportedly assigns the discount for the bundled services to the non-video services and therefore allows royalty payments to be computed against revenue from services that do not include broadcast video.⁵³

In support of its comments, NCTA submitted the declaration of Professor William Holder, which states that GAAP is the method recognized as the most authoritative for businesses to prepare their financial statements.⁵⁴ As explained by Prof. Holder, the

of the royalty fees distributed in the most recent distribution by the CRB. Letter from Daniel A. Cantor, Esq., Arnold & Porter, to Anna B. Chauvet, Esq., Assoc. Gen. Coun., U.S. Copyright Office, Sept. 16, 2020, at 1 (“Copyright Owners II *Ex Parte* Letter #5”).

⁴² Letter from John I. Stewart, Jr., Crowell & Moring, to Regan A. Smith, Gen. Coun. & Assoc. Register of Copyrights, U.S. Copyright Office, June 18, 2020, at 2–3 (“Copyright Owners II *Ex Parte* Letter #4”).

⁴³ *Id.* at 3.

⁴⁴ Letter from Mary Beth Murphy, Esq., NCTA, and Dennis Lane, Esq., Stinson, LLP, to Regan A. Smith, Gen. Coun. & Assoc. Register of Copyrights, U.S. Copyright Office, July 30, 2020, at 7 (“NCTA–MPA *Ex Parte* Letter #3”).

⁴⁵ 82 FR at 56930.

⁴⁶ *Id.* at 56931.

⁴⁷ *Id.* at 56937.

⁴⁸ *Id.* at 56931.

⁴⁹ See 49 FR 13029, 13035 (1984).

⁵⁰ NCTA Initial NPRM Comments at 12.

⁵¹ *Id.* at 10–18.

⁵² *Id.* at 13–14 & n.37.

⁵³ *Id.* at 14–15. NCTA stated that, under GAAP, the discount for the bundle would be assigned in a manner proportionate to the unbundled prices of the separate services. *Id.* at 14.

⁵⁴ Declaration of Prof. William Holder, October 3, 2018, at 5, attached as Exhibit A to NCTA Initial NPRM Comments (“Holder Declaration”).

application of GAAP by the Financial Accounting Standards Board (“FASB”) is intended to provide financial information that is relevant and a “faithful representation” of the financial status of the business that is neutral and non-biased.⁵⁵ His declaration states that several regulatory bodies require businesses to present their financial statements in accordance with GAAP.⁵⁶ According to Prof. Holder, applying the principles of GAAP, the FASB has created a method of allocating the revenue received in a bundled discount arrangement.⁵⁷ In his view, this allocation is “based on the relative proportion of each element in the arrangement to the total consideration that is expected to be received.”⁵⁸ He concludes that using a GAAP approach would allocate the discount in the bundled price to each element according to its relative percentage of the unbundled price of the group of discounted goods or services.⁵⁹

In their initial comments, Copyright Owners I, whose members then included the MPA, Joint Sports Claimants, the National Association of Broadcasters (“NAB”), Public Broadcasting Service, Settling Devotional Claimants, and Canadian Claimants Group,⁶⁰ stated that there was disagreement among the group as to the proper method of reporting bundled services.⁶¹ They agreed with the Office that internet and voice services should not be included in gross receipts⁶² and noted that the language of the proposed rule appeared to track “prior Office and judicial guidance concerning the meaning of the term Gross Receipts.”⁶³ In their first reply comments responding to NCTA’s proposal, they stated that they “do not have a common position on the issue” and indicated that they would file separate comments.⁶⁴

In their second reply comments, the Copyright Owners II—representing the same groups as before *except* for the MPA—stressed that the Office’s proposed rule “is consistent with (and indeed mandated by) the Office’s longstanding interpretation of the term Gross Receipts.”⁶⁵ They stated that “where CSOs [cable service operators] offer bundled products or services that include broadcast signals, they must include in Gross Receipts the full amount that they charge subscribers to receive the Basic Service alone.”⁶⁶ They suggested that NCTA’s proposal would be contrary to the *Cablevision* decision, in which the court upheld the Office’s interpretation of gross receipts as including the total revenues from any tier of video services that includes broadcast services.⁶⁷ They took the position that, whatever the merits of GAAP in various other contexts, the statutory mandate of section 111 was to the contrary.⁶⁸ From their perspective, employing GAAP would permit greater subjectivity in the reporting of revenues than was implied by NCTA’s comments,⁶⁹ and would be unfair to copyright owners.⁷⁰ For example, different bundles offered by a single cable operator might contain a variety of different video services, not all of which would have a stand-alone price.⁷¹

Copyright Owners II submitted a declaration from Sam D. Wild, CPA, in response to Prof. Holder’s declaration submitted by NCTA.⁷² Mr. Wild stated that although it is appropriate to use GAAP in financial reporting, “calculating royalties is different than and distinct from preparing financial statements.”⁷³ He stated that royalties are calculated according to contracts or statutory mandates, which may differ from the requirements of GAAP.⁷⁴ He also stated that GAAP would not

provide an easy answer if each service in the bundle does not have a separate stand-alone price; he asserted that in such a circumstance, using GAAP would increase the subjectivity of the calculation.⁷⁵

In its reply comments, NCTA repeated its suggestion that GAAP provides the proper method for reporting revenues from bundled services.⁷⁶ It reiterated that the proposed rule would apply the bundle discount to the non-video services only, which NCTA claimed would result in royalties being paid on non-video revenues.⁷⁷ It suggested that using GAAP aided consumers by allowing cable operators to offer bundles in a competitive market, giving consumers additional choices at a variety of price levels.⁷⁸ NCTA again stated that GAAP is a well-recognized method of accounting for revenues, and that it is used by the government, including the Office, in other contexts.⁷⁹

In their separate reply comments, Program Suppliers also supported the use of GAAP for reporting bundled revenues. They stated that the circumstances in the cable industry today are significantly different from those in 1988, when *Cablevision* was decided and when the Office issued regulations implementing that decision.⁸⁰ They took the position that the bundling of non-video with video services at a single price is not the same as combining broadcast and non-broadcast channels in a single tier at a single price.⁸¹ They stated that the changed circumstances “demonstrates that the Office *could* adopt a new gross receipts interpretation to allow use of GAAP methodology, . . . but still leaves open the question of whether adoption of the GAAP methodology would be consistent with Section 111’s purpose and intent.”⁸² Program Suppliers stated that the use of GAAP “represents a change from how gross receipts were calculated under the 1988 Notice’s policy,” but argued that GAAP now represents the more appropriate method of reporting bundled revenues.⁸³

⁵⁵ Holder Declaration at 6.

⁵⁶ *Id.* at 7.

⁵⁷ *Id.* at 9. Prof. Holder’s declaration further states that this methodology is not limited to cable service bundling; it is applicable generally to businesses offering a group of products or services at a discounted price from the sum of their separate prices. *Id.*

⁵⁸ *Id.*

⁵⁹ Thus, if the unbundled prices of cable, internet, and voice services were \$10, \$10, and \$5 per month respectively, and the bundled price was \$20 per month for all three, the cable portion would be allocated at 40% of the bundled price (\$10/\$25), or \$8. The proposed rule, by contrast, would require reporting of \$10 per month in the gross receipts.

⁶⁰ As noted below, in later comments the MPA sided with NCTA on this issue.

⁶¹ Copyright Owners I Initial NPRM Comments, at 7–8.

⁶² *Id.* at 8.

⁶³ *Id.*

⁶⁴ Copyright Owners I NPRM Reply Comments, at 7.

⁶⁵ Copyright Owners II NPRM Reply Comments at 2.

⁶⁶ *Id.* at 3. Copyright Owners II also dispute the assertion in the Holder Declaration that cable operators “generally” use GAAP when reporting gross receipts for bundled services. Rather Copyright Owners II assert that their audits have found that “while some CSOs improperly utilize what they interpret to be GAAP, other CSOs properly follow the Office’s existing rules and have included in Gross Receipts the subscriber revenues as required by precedent and not GAAP.” *Id.* at 4.

⁶⁷ Copyright Owners II NPRM Reply Comments at 3. See *id.* at 4–8 (discussing the applicability of *Cablevision*).

⁶⁸ *Id.* at 10–11.

⁶⁹ *Id.* at 4, 11–14.

⁷⁰ *Id.* at 14.

⁷¹ *Id.* at 12–13.

⁷² Declaration of Sam D. Wild, CPA, October 24, 2018, attached as Exhibit 1 to Copyright Owners II Reply Comments (“Wild Declaration”).

⁷³ Wild Declaration at 2.

⁷⁴ *Id.*

⁷⁵ *Id.* at 3.

⁷⁶ NCTA Reply NPRM Comments at 2–6.

⁷⁷ *Id.* at 3.

⁷⁸ *Id.*

⁷⁹ *Id.* at 5–6.

⁸⁰ Reply Comments of Program Suppliers at 2–3 (Oct. 25, 2018).

⁸¹ *Id.* at 5.

⁸² *Id.* at 4 (emphasis in original).

⁸³ *Id.* at 7–8. The 1988 Notice refers to the Office’s Notice of Policy Decision, issued on January 28, 1988. See *Compulsory License for Cable Systems, Reporting of Gross Receipts*, 53 FR 2493 (Jan. 28, 1988). In subsequent *ex parte* meetings with the Office, the parties reiterated their positions relating to the applicability of GAAP. See Letter from Mary Beth Murphy, Esq., NCTA and Dennis Lane, Esq.,

The Office appreciates the efforts of the commenters to assist its decision-making through their comments and by supplying declarations of accounting experts.⁸⁴ After careful consideration of the comments and declarations, as well as *ex parte* meetings held in 2020 and 2022 which are publicly captured in *ex parte* letters provided to the Office, the Office has decided that its proposal in the NPRM is most consistent with its longstanding interpretation of gross receipts under section 111, which it has applied consistently. On the current record, the Office believes that its proposed rule reflects the appropriate interpretation of the statute and is not persuaded that GAAP necessarily leads to a simpler and more appropriate calculation of the value of the video services in a bundle in the context of section 111 and congressional intent. To the contrary, the Office concludes that changing its interpretation of gross receipts at this time is not supported by the record or by the statute.

For example, Professor Holder's implementation of GAAP in his declaration assumes that consumer preferences and valuation of the constituent services in a bundle are accurately measured by the proportionate "rack rate" of each service sold separately. But that assumption is not necessarily correct.⁸⁵ Bundling may be a reflection of the cable operator's desire to maximize revenue, with the understanding that consumers may not value the other services in the bundle (e.g., internet and/or voice) enough to pay the full asking price, and that a discounted bundle that includes those other services at a price slightly higher than the video alone, maximizes cable system revenue. The record does not provide information on this issue, nor is it clear that the calculation would be the same for every bundle of services. Moreover, there is no evidence in the record about the cost of including the additional services in the bundle; if the marginal cost of including internet and voice services is very small, then a revenue maximizing cable system could increase revenue and profit by including

those services at just above their marginal cost.⁸⁶ Finally, the record does not supply information about the extent to which bundled services are available as stand-alone offerings. Thus, it is difficult for the Office to determine whether the use of GAAP in these circumstances would be an appropriate measure of the value of the video services that must be included in gross receipts. Moreover, it is not clear that GAAP must be interpreted as Professor Holder's example indicates. If GAAP is more subjective than his example suggests—for example, because the bundled services are not all available at a stand-alone price—then one of the goals of section 111, namely, simplicity of calculating gross receipts, would be undermined.⁸⁷ As noted by the Program Suppliers, the use of GAAP is not mandated by the statute, and using GAAP would represent a change from the Office's existing interpretation of the statute.

The Office believes that including the full, non-bundled value of the video services is consistent with Congress' intent that the "gross receipts" reported serve as the baseline against which royalties are calculated, and further concludes that its proposal is consistent with Congress' intent for gross receipts to be calculated simply (and, by implication, audited simply).

3. Reporting of Equipment Fees, Broadcast Fees, and Franchise Fees in Gross Receipts (Space E)

a. Equipment Fees

The current regulations require cable operators to include "converter" fees in their gross receipts. In the NPRM, the Office proposed to change the terminology in the definition of gross receipts from "converter" fees to "equipment" fees, in recognition that the latter is a more accurate description of what is currently sold or leased to

cable subscribers.⁸⁸ The Office viewed this proposal as a technical one "intended to modernize regulatory terminology" to align with cable operator's current practices.⁸⁹

In initial comments to the NPRM, NCTA expressed no opposition to the proposal.⁹⁰ At the same time, Copyright Owners I, which includes the MPA, supported the Office's technical change, while adding more broadly that "if the cable operator charges subscribers for its use, and subscribers use the converter/equipment/app/device to obtain the basic service of providing retransmitted broadcast signals, the subscriber revenues should be included in gross receipts."⁹¹ In its reply comments, NCTA opposed the inclusion of any equipment fees in gross receipts, arguing that "equipment fees are not service fees" under section 111.⁹² It contended that such fees are becoming less important as more cable operators offer free apps to allow subscribers to view broadcast and video services on different devices.⁹³

In subsequent *ex parte* meetings with the Office, NCTA and the MPA announced that, as part of a compromise of their previous disagreements related to the rulemaking's proposals, they now jointly opposed the inclusion of equipment fees in gross receipts, while Copyright Owners II continued to express support for including them.⁹⁴ Specifically, NCTA and MPA argued that, if a subscriber is given the option of accessing video services (including broadcast signals) through a free software application on the subscriber's television, and the subscriber still chooses to receive video services through equipment provided by the cable operator, then the equipment fees should not be included in gross receipts.⁹⁵

Consistent with its long-held view, the Office believes that, regardless of the descriptor used, equipment fees are properly included in gross receipts. The Office's approach in this area is well-established.⁹⁶ It requires the fees

Stinson, LLP, to Regan A. Smith, Gen. Coun. & Assoc. Register of Copyrights, U.S. Copyright Office, May 22, 2020, at 4–5 ("NCTA–MPA *Ex Parte* Letter #2"); NCTA–MPA *Ex Parte* Letter #3, at 4–6; Letter from Daniel A. Cantor, Esq., Arnold & Porter, to Regan A. Smith, Esq., Gen. Coun., U.S. Copyright Office, June 10, 2020, at 2–3 ("Copyright Owners II *Ex Parte* Letter #2"); Copyright Owners II *Ex Parte* Letter #5 at 3–4.

⁸⁴ See generally Holder Declaration; Wild Declaration.

⁸⁵ See also *Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Ratio Services*, 82 FR 56725, 56734 (CRB, Nov. 30, 2017) (discussing the economic effect of bundling certain types of audio services).

⁸⁶ To be sure, if a consumer highly valued internet services and placed little value on video services, the calculation would work in reverse; the revenue maximizing cable operator would want to sell the internet services to that consumer at close to full price and add the other services at closer to their marginal cost. However, the record also does not contain information about the marginal cost of providing video services in addition to internet and/or voice services.

⁸⁷ See *Cablevision Systems Development Co. v. Motion Picture Association of America, Inc.*, 836 F.2d 599, 611 (D.C. Cir. 1988) ("Congress never contemplated a precise congruence of the royalties paid and the amount of distant non-network programming actually carried. Instead, Congress picked a *convenient* revenue base and used the DSEs to discount it in a reasonable manner.") (emphasis in original); *id.* at 612 ("Congress . . . chose an easily calculable revenue base and used the DSEs to approximate the value received by the cable companies.").

⁸⁸ 82 FR at 56930.

⁸⁹ *Id.*

⁹⁰ See generally NCTA Initial NPRM Comment.

⁹¹ Copyright Owners I Initial NPRM Comments at 7.

⁹² NCTA Reply NPRM Comment at 6–7, 8–11.

⁹³ *Id.* at 10.

⁹⁴ E.g., NCTA–MPA *Ex Parte* Letter #2, at 3–4 (opposing inclusion of equipment fees); Copyright Owners II *Ex Parte* Letter #2, at 1, 2 (supporting inclusion of equipment fees); Copyright Owners II *Ex Parte* Letter #5, at 2–3 (supporting inclusion of equipment fees).

⁹⁵ NCTA–MPA *Ex Parte* Letter #4, at 4.

⁹⁶ Since 1978, the Office's regulations have incorporated the concept that equipment fees—or

charged to subscribers for the equipment necessary to access broadcast services be included in gross receipts.⁹⁷ Due to a concern that some cable operators may be uncertain as to whether the regulations' current reference to "converter fees" includes modern equipment fees, the NPRM proposed amended language to eliminate that confusion.

NCTA and MPA's position would eliminate equipment fees from gross receipts reported by a cable operator regardless of the amount of equipment fees that cable operators continue to collect from subscribers who choose the equipment option to access broadcast channels. The record does not support this result.

Having fully considered all comments and *ex parte* submissions, the Office concludes that, when a cable operator offers to provide video services through a free software application, but a subscriber opts to forego the software application in favor of a cable box, then that equipment is no less necessary to the subscriber's ability to receive broadcast signals than before.⁹⁸ Thus, gross receipts shall include all equipment charges collected for any equipment used to access broadcast signals. If the cable operator charges a fee for the use of a software application to be used in lieu of physical equipment used to receive broadcast services, then that fee should be included in gross receipts and the final rule so indicates.⁹⁹

b. Broadcast Fees/Surcharges and Franchise Fees

As background, the Office is aware that many cable operators separately itemize various fees in their bills to subscribers. In particular, many include separate charges for what are often termed a "Broadcast fee," or a "Broadcast Surcharge," as well as a "Franchise fee." Broadcast surcharges represent some portion of fees paid by cable operators to broadcasters for permission to retransmit their signals. Franchise fees represent fees paid to local governments for permission to

operate a cable television service in a particular area.

The NPRM did not address broadcast fees or franchise fees. However, questions about whether these fees should be included in gross receipts were raised by commenters during the rulemaking proceeding and all parties had an opportunity to be heard on the question. The Office accordingly addresses the treatment of these fees in this final rule.

The question of whether broadcast fees should be included within the definition of gross receipts was raised by Copyright Owners I in their initial comments to the NPRM.¹⁰⁰ In written comments, NCTA initially expressed no opinion on broadcast surcharges.¹⁰¹ However, in subsequent *ex parte* meetings with the Office, NCTA and the MPA stated that they agreed to the inclusion of franchise fees and broadcast fees in gross receipts as part of their agreement referenced above.¹⁰² The Copyright Owners, for their part, stated that they believe broadcast fees (as well as equipment fees and franchise fees) should be included in gross receipts.¹⁰³

After careful consideration, the Office has determined that broadcast fees (whether denominated "broadcast fees," "broadcast surcharges," or other similar descriptions) should be included in gross receipts. By their very nature, broadcast fees are charges for the service of providing broadcast transmissions. Subscribers cannot receive broadcast transmissions without paying those charges. Thus, they fit comfortably within the scope of charges that traditionally have been included in gross receipts.

The treatment of franchise fees was also raised by Copyright Owners I in their initial comments.¹⁰⁴ As noted above, franchise fees are fees paid to local governments for the privilege of operating a cable service franchise within the territory of that government. As stated by NCTA, franchise fees could

be described as a kind of tax levied on cable operators.¹⁰⁵ While a tax or assessment imposed on cable operators that is passed on to all subscribers, and that subscribers must pay regardless of their tier of service, could fit within the traditional bounds of the definition of gross receipts, franchise fees do not appear to be directly linked to the service of broadcast transmissions in the same way that broadcast fees are linked. Thus, the Office concludes that, on the current record, franchise fees should not be included in gross receipts.

4. Elimination of Space F in the SOA

In the NPRM, the Office invited "suggestions on streamlining or otherwise improving reporting practices for the section 111 license."¹⁰⁶ In response, NCTA suggests eliminating Space F, stating that the information collected "does not relate to the provision of secondary transmissions of broadcast service and thus its collection is neither mandated by Section 111(d)(1)(A) of the Act nor relevant to cable operators' payments of royalties pursuant to the compulsory license."¹⁰⁷ Space F of the SOA, titled "Services Other Than Secondary Transmissions: Rates," requires cable operators to list rate information "with respect to all . . . services that were not covered in space E, that is, those services that are not offered in combination with any secondary transmission service for a single fee."¹⁰⁸ The Office of the Commissioner of Baseball, Public Broadcasting Service, and attorneys Dennis Lane, Philip Hochberg, John Stewart, Ann Mace, Dustin Cho, John Beiter, Brian Coleman, Matthew Maclean, and Benjamin Sternberg (collectively, "Owner Representatives") agreed that Space F can be eliminated¹⁰⁹ and Copyright Owners I commented they "do not object" to NCTA's proposal.¹¹⁰ In light of these comments, the Office has determined that eliminating Space F would help streamline reporting practices for cable

"converter fees"—would be included in gross receipts if they were necessary to access basic secondary transmissions. 43 FR 27827, 27832 (June 27, 1978).

⁹⁷ Letter from Dorothy Schrader, Gen. Coun., to James F. Ireland, Cole, Raywid & Braverman, October 11, 1989, attached as Exhibit A to NCTA Reply NPRM Comments.

⁹⁸ See Copyright Owners II *Ex Parte* Letter #5, at 3.

⁹⁹ The Office notes that the record does not include information regarding whether cable operators offering subscribers a free software application for video services condition access to the application on the purchase of internet service, or other services, from the cable operator.

¹⁰⁰ See Copyright Owners I Initial NPRM Comments at 10 (urging the Office to include broadcast surcharges in gross receipts "[b]ecause cable subscribers cannot receive broadcast signals without paying the broadcast surcharge (where imposed)").

¹⁰¹ NCTA Reply NPRM Comments at 7–8.

¹⁰² NCTA–MPA *Ex Parte* Letter #2, at 3. See NCTA–MPA *Ex Parte* Letter #3, at 1–2 (noting that their agreement to include franchise fees and broadcast fees in gross receipts was predicated on an overall settlement of the other issues in the rulemaking).

¹⁰³ Copyright Owners II *Ex Parte* Letter #2, at 2.

¹⁰⁴ See Copyright Owners I Initial NPRM Comments at 10 (urging the Office to include franchise in gross receipts "[b]ecause franchise fees are part of the total amount cable subscribers pay to receive broadcast signals").

¹⁰⁵ See NCTA Reply NPRM Comments at 7 (describing the franchise fee as "an indirect tax for rights-of-way").

¹⁰⁶ 82 FR at 56927.

¹⁰⁷ NCTA Initial NPRM Comment at 10; NCTA *Ex Parte* Letter Jan. 24, 2019 at 2; NCTA & MPA *Ex Parte* Letter May 22, 2020 at 8 ("[T]he Office should not only delete Space F (and all references thereto) from the SOA forms, but also remove Section 201.17(e)(8) from its rules.").

¹⁰⁸ Short Form SOA at 2, Space F; Long Form SOA at 2, Space F. See 37 CFR 201.17(e)(8).

¹⁰⁹ Owner Representatives *Ex Parte* Letter Aug. 15, 2019 at 2.

¹¹⁰ Copyright Owners I Reply NPRM Comment at 6. See NCTA & MPA *Ex Parte* Letter May 22, 2020 at 10 (stating that commenting parties agree Space F can be eliminated); see NCTA & MPA *Ex Parte* Letter May 20, 2020 Ex. at 3 (same).

operators. The final rule thus eliminates the regulatory provision requiring remitters to provide information regarding “Services Other Than Secondary Transmissions: Rates,”¹¹¹ and Space F will be removed from the cable SOA forms.¹¹²

B. Definition of Phrase “Cable System”

The Office has maintained a consistent interpretation of the statutory definition of a cable system for many years, *i.e.*, that cable systems are limited to systems providing only localized retransmissions of limited availability and that internet-based retransmission services are excluded from the section 111 compulsory license. This interpretation has been included in testimony before Congress, as well as policy reports issued by the Office.¹¹³ It also has been accorded deference by courts examining whether satellite carriers and internet-based services are eligible for the section 111 license.¹¹⁴

In the NPRM, the Office proposed amending its regulatory definition of the phrase “cable system” to specifically reflect this position.¹¹⁵ In their comments, stakeholders expressed

reservations about the proposed change. Copyright Owners I, while agreeing that the proposed language comported with the Office’s longstanding interpretation of the statute, stated that they “do not believe that an amendment is needed to give full effect to that consistent interpretation.”¹¹⁶ NCTA also opposed implementation of the proposed change. It stated that the proposed change “may inadvertently create a new target for [people] to try to invent around in ways not intended by the Copyright Office.”¹¹⁷

After reviewing the comments to the NPRM, the Office concludes that, while its interpretation of section 111 has not changed, amendment of the phrase “cable system” in its regulations at this time may create unintended confusion regarding the Office’s position. To avoid any unintended consequences, it therefore has decided not to memorialize its longstanding interpretation in the regulations as part of this rulemaking.

C. Interpretation of Community and Reporting of Area Served (Space D)

1. Cable Headend Location

Remitters are currently required to identify only the community or communities in which they operate and not the location of the headend(s) serving those communities.¹¹⁸ While the Program Suppliers’ original petition requested that Space D be revised to require cable operators to identify the location of each headend and the specific communities served from that headend,¹¹⁹ the Office declined to include this change in the NPRM, concluding that it was not clear that artificial fragmentation by cable systems seeking to avoid paying a higher royalty rate was a pressing concern.¹²⁰ In response to the NPRM, Copyright Owners I and NCTA agreed that headend location information is not necessary to be reported on cable SOAs.¹²¹ Accordingly, the final rule does not require remitters to include headend location information in Space D.

2. County Information

The Office’s regulations currently require a cable operator to report the name of the community or communities served by its cable system in Space D of

the SOA.¹²² A cable operator must identify the communities it serves, listing the “city or town” and “state” served, but not the county in which the given community is located (although some operators report counties on a voluntary basis). In response to a request by Program Suppliers, the Office proposed revising Space D to require “county” information, noting that a regulatory change would not be necessary to implement this update to the SOA, but sought comment on whether this proposed change remained desirable to stakeholders.¹²³ Copyright Owners I supported this proposed change,¹²⁴ and AT&T and NCTA stated that they did not object.¹²⁵ Accordingly, the Office will adopt this change by updating the instructions for filling out the SOA to require county information be included.

3. Definition of the Term “Community”

Under the Copyright Act and the Office’s regulations, two or more cable systems constitute a single cable system for purposes of section 111 if, as relevant here, they are under common ownership or control and are located in the same or “contiguous communities.”¹²⁶ Where common ownership of cable systems is established, defining the “community” served is important to determine whether two or more cable facilities operate in “contiguous communities,” and whether those facilities should file as a single cable system, preventing artificial fragmentation of large cable systems into smaller systems and avoiding the higher royalty payments that Form 3 cable systems¹²⁷ pay under section 111.¹²⁸ The Office’s existing regulations state that a cable system’s “community,” for purposes of section 111, is the same geographic area as that specified under the definition of “community unit” as defined in the FCC’s rules and regulations.¹²⁹ FCC regulations define “community unit” as “[a] cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or

¹¹¹ See 37 CFR 201.17(e)(8).

¹¹² As noted above, cable operators may continue to use the Office’s existing SOA forms until the Office’s new forms without Space F have been made publicly available. Until the new SOA forms are provided, cable operators need not complete Space F.

¹¹³ See, *e.g.*, Register of Copyrights, *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals* 97–99 (1997), <https://www.copyright.gov/reports/study.pdf>; Copyrighted Webcast Programming on the Internet: Hearing Before the H. Subcomm. on Courts and Intell. Prop., 106th Cong. 5–6 (2000) (statement of Marybeth Peters, Register of Copyrights and Dir., U.S. Copyright Office); Register of Copyrights, *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report* 193–94 (2008), <http://www.copyright.gov/reports/section109-final-report.pdf> (“Section 109 Report”); Register of Copyrights, *Satellite Home Viewer Extension and Localism Act Section 302 Report* 47–49 (2011), <https://www.copyright.gov/reports/section302-report.pdf>.

¹¹⁴ *E.g.*, *Fox Television Stations, Inc. v. Aereo, Inc.*, 851 F.3d 1002, 1013–15 (9th Cir. 2017) (finding the Office’s view concerning the ineligibility of internet services under section 111 to be longstanding, consistent, and “persuasive” and deferring to the Office’s interpretation); *WPXI, Inc. v. iwi, Inc.*, 691 F.3d 275, 283–84 (2d Cir. 2012) (deferring to the Office’s interpretation regarding internet-based services and eligibility for section 111 license); *Satellite Broad. & Comm’n Ass’n of Am. v. Oman*, 17 F.3d 344, 346–48 (11th Cir. 1994) (upholding the Office’s determination that satellite carriers are ineligible for section 111 license).

¹¹⁵ 82 FR at 56931–32; see, *e.g.*, *Fox Television Stations, Inc. v. Aereo, Inc.*, 851 F.3d 1002, 1007 n.1 (9th Cir. 2017) (noting that seven other federal courts held that “internet-based transmission services” did not qualify as a “cable system” under the Copyright Act); *WPXI, Inc. v. iwi, Inc.*, 691 F.3d 275, 276 (2d Cir. 2012); *Fox Television Stations, Inc. v. FilmOn X, LLC*, 150 F. Supp. 3d 1, 7 (D.D.C. 2015).

¹¹⁶ Copyright Owners I Initial NPRM Comments at 11.

¹¹⁷ NCTA Initial NPRM Comments at 19.

¹¹⁸ See 37 CFR 201.17(e)(4); Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

¹¹⁹ Petition at 10–11.

¹²⁰ 82 FR at 56932.

¹²¹ NCTA Initial NPRM Comments at 20; Copyright Owners I Initial NPRM Comments at 14.

¹²² 37 CFR 201.17(e)(4).

¹²³ 82 FR at 56933.

¹²⁴ Copyright Owners I Initial NPRM Comments at 14.

¹²⁵ NCTA Initial NPRM Comments at 21; AT&T Initial NPRM Comments at 8.

¹²⁶ 17 U.S.C. 111(f)(3); 37 CFR 201.17(b)(2).

¹²⁷ Form 3 cable systems are cable systems that use the Long Form SOA.

¹²⁸ See 43 FR 958 (Jan. 5, 1978) (“[T]he legislative history of the Act indicates that the purpose of this sentence [in section 111(f)] is to avoid the artificial fragmentation of cable systems.”).

¹²⁹ 37 CFR 201.17(e)(4); see also Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).¹³⁰

In their original petition, Program Suppliers had requested that the Office amend the regulatory definition of “community” so that a cable operator’s “franchise area” would be the *de facto* regulatory boundary for defining communities, rather than the FCC’s community unit definition.¹³¹ However, based on comments received in response to the NOI, the Office explained in the NPRM that it was not proposing to replace the regulatory definition, because “the facts and the law [did] not support replacing the community unit definition with a franchise area definition,”¹³² noting that it was not aware of a practice of fragmentation, but inviting public comments on whether this issue was still significant to stakeholders.¹³³ In its comments, NCTA stated that the Office was correct in its decision not to amend the regulations to reflect a franchise area,¹³⁴ and Copyright Owners I did not object.¹³⁵ Accordingly, the Office declines to amend the regulatory definition of the term “community.”

D. Grade B Contour Versus Noise-Limited Contour

In the NPRM, the Office noted that parts of the Long Form SOA referencing the “Grade B contour” appeared to be obsolete given the advent of digital television signals and the new “noise-limited service contour”¹³⁶ standard. It proposed two changes described below to delete these references.

As background, section 111 defines the “local service area of a primary transmitter.” The definition establishes the difference between “local” and “distant” signals and “therefore the line between signals which are subject to payment under the compulsory license [under section 111] and those that are not.”¹³⁷ It originally relied on an FCC construct, referred to as the “Grade B contour” construct, used to determine the local service area of certain signals. Adopted in 1976, the Grade B contour applies to analog television stations.¹³⁸

In connection with the advent of digital television signals, the FCC has established a new “noise-limited service contour”¹³⁹ standard. In 2010, as part of STELA, the definition of local service area in section 111 was amended to incorporate this new standard.¹⁴⁰

Under the FCC’s old “market quota” rules, which were incorporated by reference into section 111, a cable operator could carry a certain number of distant signals based upon a complex scheme involving the type of television market and signal available. A cable operator, however, could carry more signals than its market quota of distant signals if the station was considered “permitted” by the FCC’s 1976-era rules. The concept of “permitted” stations was imported into the section 111 license. Under section 111, an operator that carries a non-permitted signal above its market quota is generally subject to a 3.75% fee for carriage of that signal, in lieu of the minimum royalty rate.¹⁴¹ There are several bases of “permitted” carriage, however, for which retransmission will not trigger the 3.75% fee. One of these bases—basis “G”—includes carriage of commercial UHF stations within a Grade B contour.¹⁴² On cable SOAs, permitted signals, including those under basis “G,” must be reported in Part 6, Block B, or be subject to the 3.75% fee calculation in Part 6/Block C.¹⁴³

In the NPRM, the Office explained that, post-STELA, this area would include the area within the noise limited service contour;¹⁴⁴ thus, the noise limited service contour would be the proper standard by which to measure the reach of digital television signals with respect to the section 111 license, including digital UHF signals.¹⁴⁵ It proposed revising Part 6, Block B of the Long Form SOA which asks for information related to “permitted” UHF signals carried by a cable operator for purposes of calculating royalties paid under a 3.75% fee. The NPRM’s proposal would eliminate the option in Block B of Part 6 on the cable SOAs for commercial UHF stations within a Grade B contour

(referred to as permitted basis “G”).¹⁴⁶ Because royalty rates under the section 111 license are calculated based on the “secondary transmission of any non-network television programming carried by a cable system in whole or in part *beyond the local service area of the primary transmitter* of such programming,”¹⁴⁷ and because any digital signals within the noise-limited service contour are “local” and thus are not subject to the section 111 royalty rate, the Office concluded that “there is no need to treat any station within the noise limited contour as ‘permitted,’ because locally retransmitted stations do not count against the market quota in the first place.”¹⁴⁸

In addition, the Office noted that permitted basis “G” in Part 6/Block B is rarely, if ever, used, and that in the few cases where cable operators have reported the permitted basis of carriage category “G,” cable operators “may have used the noise-limited contour (for digital signals) interchangeably with the Grade B contour (for analog signals) because they historically reported ‘G’ in the all-analog world (prior to the mandated FCC digital conversion in 2009), and continue to report the ‘G’ permitted basis out of habit.”¹⁴⁹

Second, the Office invited public comment on whether Part 7, Block B of the cable SOA—which allows for calculation of a syndicated exclusivity surcharge for the carriage of any commercial VHF station that places a Grade B contour, in whole or in part, over the cable system that would have been subject to the FCC’s syndicated exclusivity rules in effect on June 24, 1981—should be amended, and whether, more generally, the Office’s related regulations should be amended to remove references to a Grade B contour.¹⁵⁰ It explained that based on database queries of submitted SOAs, “the last time Part 7 of the cable SOA [had been] used (*i.e.*, Computation of the Syndicated Exclusivity Charge) was in 2013, on a single SOA.”¹⁵¹

The comments received in response to these proposed changes were generally positive. While NCTA initially expressed concern that the Office’s proposal “might have more significant substantive ramifications,” such as eliminating the ability to rely on a station’s Grade B contour in assessing local and distant signals, it later acknowledged that the Office’s

¹³⁰ 47 CFR 76.5(dd).

¹³¹ Petition at 19.

¹³² 82 FR at 56933.

¹³³ *Id.*

¹³⁴ NCTA Initial NPRM Comments at 20.

¹³⁵ Copyright Owners I Initial NPRM Comments at 14. (In their initial comments, the Copyright Owners included the MPA.)

¹³⁶ 82 FR at 56934.

¹³⁷ H.R. Rep. No. 94–1476, at 99 (1976), as reprinted in 1976 U.S.C.C.A.N. 5659, 5714.

¹³⁸ 17 U.S.C. 111(f)(4).

¹³⁹ 82 FR at 56934.

¹⁴⁰ STELA at sec.104, 124 Stat. at 1235; 17 U.S.C. 111(f)(4).

¹⁴¹ See 37 CFR 387.2.

¹⁴² See Long Form SOA at 13.

¹⁴³ See *id.* All cable systems filing Long Form SOAs must pay at least the minimum fee which is 1.064% of gross receipts. The cable system pays either the minimum fee or the sum of the base rate fee and the 3.75% fee, whichever is larger, and a Syndicated Exclusivity Surcharge, as applicable. Long Form SOA at 10.

¹⁴⁴ See STELA at sec.104, 124 Stat. at 1235; 17 U.S.C. 111(f)(4).

¹⁴⁵ 82 FR at 56934.

¹⁴⁶ *Id.*

¹⁴⁷ 17 U.S.C. 111(f)(5) (emphasis added).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

proposed changes “would only eliminate from the rules and the Form SA3 a handful of specific Grade B references, to which NCTA is not opposed.”¹⁵² NCTA and MPA supported “eliminat[ing] references to the ‘Grade B contour’ in Sections 201.17(i)(1)(ii) and 201.17(i)(2)(ii) and, with respect to the DSE Schedule in Form SA3, references to the ‘Grade B contour’ in Parts 7 and 9 (and the instructions for those Parts) and the ‘G’ category in Part 6, Block B.”¹⁵³ Both commenters asked, however, for the Office to clarify that “in the unlikely event a cable operator needs to continue relying on a station’s Grade B contour to establish its ‘permitted’ status, the operator may report that reliance under the existing ‘O—Other’ designation in Part 6, Block B.”¹⁵⁴ For their part, Copyright Owners I supported eliminating basis “G” in Part 6 and “amend[ing] Part 7 (and the accompanying regulations) to remove references to a Grade B contour.”¹⁵⁵

After carefully considering these comments, the Office will eliminate the permitted basis “G” in Part 6/Block B on the cable SOAs (*i.e.*, commercial UHF stations within a Grade B contour), and if a cable operator needs to continue relying on a station’s Grade B contour to establish its “permitted” status, it may report that reliance under the existing “O—Other” designation. The Office will also eliminate references to the “Grade B contour” in §§ 201.17(i)(1)(ii) and 201.17(i)(2)(ii) and, with respect to the DSE Schedule in Form SA3, references to the “Grade B contour” in Parts 7 and 9 (and the instructions for those Parts).

E. Changes to SOA Due to Copyright Royalty Board’s Rule Relating to the Retransmission of Sports Programming

The NPRM noted that in response to the repeal of the FCC’s Sports Blackout

Rule, the CRB had issued a notice of proposed settlement and proposed rule to require covered cable systems to pay a separate per-telecast royalty (a “Sports Surcharge”) in addition to the other royalties that they must pay under section 111.¹⁵⁶ The Office stated that “[a]ssuming the CRB’s rule is adopted, the Office intends to amend its cable SOA forms to account for the new Sports Surcharge for semi-annual accounting periods,” and that “[n]o amendments to the Office’s regulations [would be] needed to accommodate this change.”¹⁵⁷

Effective January 1, 2019, the CRB adopted a final rule under which certain cable systems may be required to pay the Sports Surcharge.¹⁵⁸ To facilitate Sports Surcharge payments, the Office created a Sports Surcharge Addendum for remitters to complete, if necessary, in addition to their SOAs.¹⁵⁹ Because no regulatory amendments were necessary to implement the Sports Surcharge Addendum, the Office considers this issue closed for purposes of this rulemaking.

F. Removing Outdated References to STELA

In the NPRM, the Office proposed amending § 201.17 by deleting outdated references to STELA, and adding language directing remitters to contact the Licensing Division for instructions should they need to file SOAs for accounting periods further back than the last five years.¹⁶⁰ The Office received no comments on this proposal. Accordingly, the proposed amendments are included in the final rule.

¹⁵⁶ NPRM, 82 FR at 56934–35; *Adjustment of Cable Statutory License Royalty Rates*, 82 FR 24611 (May 30, 2017).

¹⁵⁷ NPRM, 82 FR at 56935.

¹⁵⁸ 83 FR 62714 (Dec. 6, 2018). See 37 CFR 387.2(e). The Sports Surcharge is calculated separately for each community in which a cable system carried one or more Sports Surcharge triggering programs during an accounting period (*i.e.*, live, non-network broadcasts of sports events on a distant television station carried by the cable system that would have been subject to blackout under the FCC’s sports exclusivity rule prior to its repeal in 2014 and that meet certain other requirements established by the CRB). To calculate the Sports Surcharge, the system multiplies the gross receipts attributable to each such community by the number of Sports Surcharge triggering programs carried in the community by the Sports Surcharge rate of 0.025 percent (.00025). 37 CFR 387.2(e).

¹⁵⁹ The Sports Surcharge Addendum is available through pay.gov at www.copyright.gov/licensing/sec_111.html, or directly at pay.gov/public/form/start/584643809. Instructions for the Sports Surcharge Addendum are available at www.copyright.gov/licensing/111/sports-addendum-instructions.

¹⁶⁰ 82 FR at 56935.

G. Technical Amendments

The NPRM proposed several technical amendments. Because certain regulatory provisions are duplicative of information provided on cable operator SOA forms and/or on the Office’s website, the proposed rule would remove these duplicative provisions. In addition, the Office’s current regulations instruct which information must be provided as part of the electronic funds transfer (“EFT”) to pay royalty fees. The Office proposed removing this language and incorporating it into the instruction for the SOA forms. There were no comments on either of these proposed changes. The final rule will include these changes.

The final rule makes additional nonsubstantive changes to § 201.17 of the CFR. It clarifies the introductory language in § 201.17(e), which is not intended as a substantive change, and corrects references in § 201.17(i)(3), and (k)(3). It reorders parts of § 201.17(c), and adopts the technical changes of the proposed rule, by adding provisions to give guidance to remitters when a cable operator ceases to operate or when a cable operator is sold during an accounting period.

Finally, the Office is developing a new enterprise information technology system (the “Enterprise Copyright System” or “ECS”) that will improve its administration of the section 111 license. To accommodate the planned technological improvements and integration into ECS, the final rule modifies language in § 201.17(d) to make clear that remitters must use the Statement of Account forms provided by the Office on its website when the new forms have been adopted. The final rule also updates the references to various provisions in § 201.17 that are contained in § 201.16, to conform to the changes being made to § 201.17, and makes technical changes to § 201.17 to correct issues within the regulation and update references to other regulations.

These changes are intended to update the references and improve the readability and understanding of existing regulations and do not represent substantive changes in policy.

IV. Reporting Practices—Cable, Satellite, and DART

The NPRM proposed a number of regulatory changes, detailed below, relating to cable SOA reporting practices that are also pertinent to the filing of SOAs for other statutory licenses. After reviewing all comments, the Office is issuing a final rule amending certain reporting requirements for cable operators (under § 201.17), satellite

¹⁵² NCTA & MPA *Ex Parte* Letter May 22, 2020 at 9; see NCTA Initial NPRM Comment at 21–23; NCTA Reply NPRM Comment at 15. See also Copyright Owners I Reply NPRM Comment at 6–7 (noting that contrary to NCTA’s initial interpretation, the Office did not propose “eliminating use of the Grade B contour in determining whether a signal is distant or local for Section 111 purposes,” but rather proposed “only two discrete, very limited places where the Grade B contour reference would be eliminated”).

¹⁵³ NCTA & MPA *Ex Parte* Letter May 22, 2020 at 9.

¹⁵⁴ *Id.* at 9 n.41.

¹⁵⁵ Copyright Owners I Reply NPRM Comment at 6. See NCTA & MPA *Ex Parte* Letter May 20, 2020 Ex. at 3 (stating none of the commenting parties opposed “the Office’s proposal to eliminate references to the use of the Grade B contour in the SOA, subject to the clarification that cable operators may continue to rely on the Grade B contour to determine the status of a broadcast signal to the same extent as is currently allowed”); NCTA & MPA *Ex Parte* Letter May 22, 2020 at 9 (similar).

carriers (under § 201.11), and digital audio recording equipment manufacturers and importers (under §§ 201.27 and 201.28), where applicable, so that there are parallel requirements for all three licenses in the Office's regulations. The final rule also deletes references in the proposed rules to payment by "a single" EFT to reflect the elimination of that requirement in 2018.¹⁶¹ In addition, each of the following changes are reflected in the regulatory language below.

A. Closing Out Statements of Account

To streamline the administrative process and encourage timely responses to Office inquiries, the NPRM proposed closing out SOA examination if a filer fails to reply to an Office correspondence request after 90 days from the date of the last correspondence with the Office. After the SOA is closed, it will be placed with other publicly available SOA records. At that point, a cable operator wishing to submit a reply or pay additional royalties or make necessary corrections will need to file an amended SOA along with a filing fee as prescribed in 37 CFR 201.3(e). To be clear, operators failing to respond within the prescribed 90-day window will forfeit any potential refund of an overpayment associated with any issue with the SOA identified by the Office in its correspondence.

AT&T and Copyright Owners I supported this proposal.¹⁶² There were no other comments on this issue.¹⁶³ After reviewing all comments, the Office adopts these changes in the final rule.

B. Royalty Refunds

The NPRM proposed that royalty refunds for amounts of \$50.00 or less would issue only where the refund is specifically requested before the SOA is closed and made available for public inspection. It further proposed that, if a refund is not requested before the SOA is closed, the amount will be added to the relevant royalty pool. The Office proposed harmonizing this practice across the regulations affecting royalty refunds for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers.

AT&T and Copyright Owners I submitted comments agreeing with

these proposals.¹⁶⁴ There were no other comments on this issue.¹⁶⁵ Accordingly, these changes are adopted into the final rule.

C. Payment of Supplemental Royalty Fees and Filing Fees by EFT

The NPRM proposed that all payments of supplemental royalty fees and filing fees by cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers be made only by EFT.¹⁶⁶ In its comments, AT&T supported the Office's proposal.¹⁶⁷ NCTA was generally supportive, but suggested that operators filing Form 1 and Form 2 be allowed to request a waiver of the EFT requirement.¹⁶⁸ The Office's records indicate that almost no Form 1 and Form 2 cable operators have insisted on remitting payment by other than EFT. Moreover, the use of EFT has proven to be a more efficient and effective means for the Office to receive and invest payments than payment by check or other means. Therefore, in the final rule, the Office has decided to retain the original proposal and require all payments to be made by EFT.

D. Interest Assessment

In the NPRM, the Office proposed harmonizing the regulations relating to the assessment of interest for late payments or underpayments of royalties among cable operators, satellite carriers, and digital audio equipment manufacturers and importers, including the specification of the relevant Current Value of Funds Rate. Interest payments shall not be required if the interest charge is less than \$5.00.

Only NCTA and AT&T submitted comments in response to this proposal and supported the Office's proposals.¹⁶⁹ As there were no other comments on this proposal, the final rule adopts the proposed changes.

List of Subjects in 37 CFR Part 201

Cable television, Copyright, Recordings, Satellites.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 201 as follows:

¹⁶⁴ AT&T Initial NPRM Comments at 8; Copyright Owners I Initial NPRM Comments at 14; Copyright Owners I Reply NPRM Comments at 3.

¹⁶⁵ See NCTA-MPA *Ex Parte* Letter #1, attachment at 3 (all parties support this proposal).

¹⁶⁶ 82 FR at 56936.

¹⁶⁷ AT&T Initial NPRM Comments at 9.

¹⁶⁸ NCTA Initial NPRM Comments at 24.

¹⁶⁹ *Id.* at 23; AT&T Initial NPRM Comments at 9. See NCTA-MPA *Ex Parte* Letter #1, attachment at 3 (stating that all parties agree to the Office's proposal).

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

■ 2. Amend § 201.11 by:

■ a. Revising paragraph (f)(1).

■ b. Revising paragraph (h)(3)(iv).

■ c. Adding paragraph (h)(3)(vii).

■ d. Adding paragraphs (h)(5) and (6).

The revisions and additions read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(f) * * *

(1) All royalty fees, including supplemental royalty payments, must be paid by electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Satellite carriers must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * * *

(h) * * *

(3) * * *

(iv) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(vii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the satellite carrier owner named in the Statement of Account without regard to the time limitations provided for in paragraph (h)(3)(i) of this section.

* * * * *

(5) Royalty fee payments submitted as a result of late or amended filings shall

¹⁶¹ See 83 FR 51840 (Oct. 15, 2018).

¹⁶² AT&T Initial NPRM Comments at 8; Copyright Owners I Initial NPRM Comments at 14; Copyright Owners I Reply NPRM Comments at 3.

¹⁶³ In an *ex parte* letter, NCTA and MPA listed this as an undisputed issue. NCTA-MPA *Ex Parte* Letter #1, attachment at 3.

include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the satellite carrier statutory license for secondary transmissions for private home viewing and viewing in commercial establishments occurring within that accounting period. The accrual period shall end on the date the full payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as posted on the Treasury Department's website and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Satellite carriers wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(6) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

* * * * *

§ 201.16 [Amended]

■ 3. Amend § 201.16 by:

■ a. Removing “201.17(m)” from paragraph (b)(8), and adding in its place “201.17(l)”;

■ b. Removing “§ 201.17(e)(9)(iv)” from paragraph (e)(2), and adding in its place “§ 201.17(e)(4)(iv)”;

■ c. Removing “§ 201.17(e)(9)(iv)” from paragraph (h)(1), and adding in its place “§ 201.17(e)(4)(iv)”;

■ d. Removing “201.17(m)” from paragraph (j)(1), and adding in its place “201.17(l)”;

■ e. Removing “201.17(m)(4)(i)” and adding in its place “201.17(l)(4)(i)” and removing “201.17(m)(4)” and adding in its place “201.17(l)(4)” in paragraph (j)(2).

■ 4. Amend § 201.17 by:

■ a. Revising paragraph (b)(1);

■ b. Revising the heading to paragraph (c) and paragraph (c)(3);

■ c. Redesignating paragraph (c)(4) as paragraph (c)(5) and adding a new paragraph (c)(4);

■ d. Revising paragraph (d) and the introductory text of paragraph (e);

■ e. Removing paragraphs (e)(1), (2), (3), (4), (8), (10), (12), and (13);

■ f. Redesignating paragraphs (e)(5), (6), (7), (9), (11), and (14) as paragraphs (e)(1) through (6), respectively;

■ g. Removing ““Secondary Transmission Service: Subscribers and Rates,”” and adding in its place ““Secondary Transmission Service: Subscribers and Rates,”” in the newly redesignated paragraph (e)(2);

■ h. Adding “or, in the case of a cable system ceasing operations during the accounting period, the facts existing on the last day of operations” after the word “Statement” in the newly redesignated paragraph (e)(2)(iii)(A);

■ i. Removing ““Gross Receipts,”” and adding in its place ““Gross Receipts,”” in the newly redesignated paragraph (e)(3) introductory text;

■ j. Removing “Television,”” and adding in its place “Television,”” and removing “(e)(11)” and adding in its place “(e)(5)” in the newly redesignated paragraph (e)(4) introductory text;

■ k. Revising the newly redesignated paragraphs (e)(4)(iv) and (vi);

■ l. Removing “(e)(9), paragraphs (v) through (viii) of this section” and adding in its place “paragraphs (e)(4)(v) through (viii) of this section” in newly redesignated paragraph (e)(4)(ix);

■ m. Revising newly redesignated paragraphs (e)(5) introductory text, (e)(5)(i), and (e)(5)(ii) introductory text;

■ n. Removing paragraphs (g)(2) and (4);

■ o. Redesignating paragraph (g)(3) as paragraph (g)(2);

■ p. Revising paragraphs (i)(1)(ii) and (i)(2)(ii);

■ q. Removing “37 CFR 308.2(c)” from paragraph (i)(3) introductory text and adding in its place “37 CFR 387.2(c)”;

■ r. Revising paragraphs (k)(1) and (2);

■ s. Removing “(i)(1)” from paragraph (k)(3) and replacing it with “(k)(1)”;

■ t. Removing “satellite carrier” and adding in its place “cable operator” in paragraph (k)(4).

■ u. Revising paragraph (l)(1);

■ v. Removing “(m)(4)” and adding in its place “(l)(4)” in paragraph (l)(2) introductory text;

■ w. Removing “, for any reason except that mentioned in paragraph (m)(2)(iii) of this section,” from paragraph (l)(2)(ii);

■ x. Removing “(m)(2)” and adding in its place “(l)(2)” in paragraph (l)(4) introductory text;

■ y. Removing “(m)(2)(i)” and adding in its place “(l)(2)(i)” in paragraph (l)(4)(iii)(A);

■ z. Removing “(m)(2)(ii)” and adding in its place “(l)(2)(ii)” in paragraph (l)(4)(iii)(B);

■ aa. Revising paragraph (l)(4)(iv);

■ bb. Removing “(m)” and adding in its place “(l)” and removing “(e)(14)” and adding in its place “(e)(6)” in paragraph (l)(4)(v);

■ cc. Removing “(m)(4)(i)” and adding in its place “(l)(4)(i)” in paragraph (l)(4)(vi);

■ dd. Adding paragraph (l)(4)(vii);

■ ee. Redesignating paragraph (l)(5) as (l)(7);

■ ff. Adding new paragraph (l)(5) and paragraph (l)(6); and

■ gg. Removing “(m)” and adding in its place “(l)” in newly redesignated paragraph (l)(7).

The revisions and additions read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(b) * * *

(1) Gross receipts for the “basic service of providing secondary transmissions of primary broadcast transmitters” include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals. For these purposes, the full amount of such service fees includes separately itemized fees, such as broadcast fees or broadcast surcharges, that are directly related to the provision of basic service and that a subscriber is required to pay to the cable operator in order to receive secondary transmissions of television or radio broadcast signals. Gross receipts also include fees for non-broadcast tier(s) of services if such purchase is required to obtain tiers of services with broadcast signals, and fees for any other type of equipment, device, or software necessary to receive broadcast signals that is supplied by the cable operator, even if the cable operator offers to provide services through a free software application. In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission. All such gross receipts shall be aggregated and the distant signal equivalent (DSE) calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, franchise fees, separate charges for security, alarm or facsimile services, charges for late

payments, or charges for pay cable or other program origination services: Provided that, the origination services are not offered in combination with secondary transmission service for a single fee. In addition, gross receipts shall not include any fees collected from subscribers for the sale of internet services or telephony services when such services are bundled together with cable service; instead, when cable services are sold as part of a bundle of other services, gross receipts shall include fees in the amount that would have been collected if such subscribers received cable service as an unbundled stand-alone product.

* * * * *

(c) *Submission of Statement of Account, accounting periods, and deposit.*

* * * * *

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office except for cases where the cable system has ceased operation before the account period closes. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

(4) A cable system that changes ownership during an accounting period is obligated to file only a single Statement of Account at the end of the accounting period. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

* * * * *

(d) *Statement of Account forms and submission.* Cable systems shall submit each Statement of Account using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. To file a Statement of Account for an accounting period that includes dates prior to five years from submission of the form, please contact the Licensing Division for instructions.

(e) *Contents.* In addition to the information requested by the instructions for completion and submission provided on the Office's website or the form itself, each Statement of Account shall contain the following information:

* * * * *

(4) * * *

(iv) A designation as to whether that primary transmitter is a "network station," an "independent station," or a "noncommercial educational station."

* * * * *

(vi) If that primary transmitter is a "distant" station, a specification of whether the signals of that primary transmitter are carried:

(A) On a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; or

(B) On any other basis. If the signals of that primary transmitter are carried on a part-time basis because of lack of activated channel capacity, the Statement shall also include a log showing the dates on which such carriage occurred, and the hours during which such carriage occurred on those dates. Hours of carriage shall be accurate to the nearest quarter-hour, except that, in any case where such part-time carriage extends to the end of the broadcast day of the primary transmitter, an approximate ending hour may be given if it is indicated as an estimate.

* * * * *

(5) A special statement and program log, which shall consist of the information indicated below for all nonnetwork television programming that, during the period covered by the Statement, was carried in whole or in part beyond the local service area of the primary transmitter of such programming under:

(i) Rules or regulations of the FCC requiring a cable system to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission; or

(ii) Rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting a cable system, at its election, to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission:

* * * * *

(i) * * *

(1) * * *

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. The surcharge will not apply if the signal is exempt from the

syndicated exclusivity rules in effect on June 24, 1981.

(2) * * *

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. The surcharge will not apply if the signal is exempt from the syndicated exclusivity rules in effect on June 24, 1981.

* * * * *

(k) * * *

(1) All royalty fees, including supplemental royalty fees, must be paid by electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Cable systems must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form and on the Office's website.

(2) A copy of the remittance advice shall be attached to the Statement(s) of Account. In addition, if payment is not made by *pay.gov*, a copy of the remittance advice shall be emailed or sent by facsimile to the Licensing Division.

* * * * *

(l) * * *

(1) To amend or request a refund relating to a Statement of Account for an accounting period that includes dates prior to five years from submission of the form, please contact the Licensing Division for instructions.

* * * * *

(4) * * *

(iv) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, and all requests that a supplemental royalty fee payment be received for deposit under this paragraph (l) must be accompanied by a remittance in the full amount of such fee, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(vii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part

of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the cable system owner named in the Statement of Account.

* * * * *

(5) Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the cable statutory license occurring within that accounting period. The accrual period shall end on the date the payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as posted on the Treasury Department website, in effect on the first business day after the close of the filing deadline for that accounting period. Cable operators wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(6) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

* * * * *

- 5. Amend 201.28 by:
 - a. Revising paragraph (e)(7);
 - b. Revising paragraph (h)(1);
 - c. Revising paragraph (j)(3)(v);
 - d. Adding paragraph (j)(3)(viii); and
 - e. Adding paragraphs (j)(4) and (5).
- The revisions and additions read as follows:

§ 201.28 Statement of Account for digital audio recording devices or media.

* * * * *

(e) * * *

(7) *Oath and signature.* (i) Each Statement of Account shall include a

legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of an authorized officer, principal, or agent of the filing party. The signature shall be accompanied by:

(A) The printed or typewritten name of the person signing the quarterly Statement of Account;

(B) The date the document is signed;

(C) The following certification:

I, the undersigned, hereby certify that I am an authorized officer, principal, or agent of the “manufacturing or importing party” identified in Space B.

(ii) Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

* * * * *

(h) * * *

(1) All royalty fees, including supplemental royalty fee payments, must be paid by electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Remitters must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * * *

(j) * * *

(3) * * *

(v) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(viii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the manufacturing or importing party named in the Statement of Account.

(4) Interest on late payments or underpayments. Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the

first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the digital audio recording obligation occurring within that accounting period. The accrual period shall end on the date the payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as posted on the Treasury Department website, in effect on the first business day after the close of the filing deadline for that accounting period. Manufacturers or importing parties wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(5) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

Dated: December 3, 2024.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2024–28984 Filed 12–11–24; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2022–0771; FRL–11912–02–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (22–4.5e)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for certain chemical substances that were

the subject of premanufacture notices (PMNs) and are also subject to an Order issued by EPA pursuant to TSCA. The SNURs require persons to notify EPA at least 90 days before commencing the manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use in the SNUR. The required notification initiates EPA's evaluation of the conditions of that use for that chemical substance. In addition, the manufacture or processing for the significant new use may not commence until EPA has conducted a review of the required notification; made an appropriate determination regarding that notification; and taken such actions as required by that determination.

DATES: This rule is effective February 10, 2025. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (EST) on December 26, 2024.

ADDRESSES: The docket for this action, identified under docket identification (ID) number EPA-HQ-OPPT-2022-0771, is available online at <https://www.regulations.gov> or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket) in the Environmental Protection Agency Docket Center (EPA/DC). Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information: Jennise Armstead, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-1486; email address: armstead.jennise@epa.gov.

For general information on SNURs: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-4163; email address: wysong.william@epa.gov.

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

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

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a

“significant new use.” EPA must make this determination by rule after considering all relevant factors, including the factors in TSCA section 5(a)(2).

B. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for the chemical substances identified in Unit III. These chemical substances were the subject of PMNs and are also subject to an Order issued by EPA pursuant to TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4). The SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use in the SNURs to notify EPA at least 90 days before commencing that activity.

Previously, EPA proposed SNURs for these chemical substances in the **Federal Register** of June 11, 2024 (89 FR 49121 (FRL-11912-01-OCSPP)). The docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the comments received as discussed in Unit II.E.

C. Does this action apply to me?

1. General Applicability

This action applies to you if you manufacture, process, or use the chemical substances identified in Unit III. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

2. Applicability to Importers and Exporters

This action may also apply to certain entities through pre-existing import certification and export notification requirements under TSCA (<https://www.epa.gov/tsca-import-export-requirements>).

Chemical importers are subject to TSCA section 13 (15 U.S.C. 2612), the

requirements in 19 CFR 12.118 through 12.127, 19 CFR 127.28, and 40 CFR part 707, subpart B. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including regulations issued under TSCA sections 5, 6, 7 and Title IV.

Pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance identified in Unit III. are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

D. What are the incremental economic impacts of this action?

EPA has evaluated the potential costs of establishing SNUN reporting requirements for potential manufacturers and processors of the chemical substances identified in Unit III. This analysis, which is available in the docket, is briefly summarized here.

1. Estimated Costs for SNUN Submissions

A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. If a SNUN is submitted, costs are an estimated \$45,000 per SNUN submission for large business submitters and \$14,500 for small business submitters. These estimates include the cost to prepare and submit the SNUN (including registration for EPA's Central Data Exchange (CDX)), and the payment of a user fee. Businesses that submit a SNUN would be subject to either a \$37,000 user fee required by 40 CFR 700.45(c)(2)(ii) and (d), or, if they are a small business as defined at 13 CFR 121.201, a reduced user fee of \$6,480 (40 CFR 700.45(c)(1)(ii) and (d)). These estimates reflect the costs and fees as they are known at the time of this rulemaking.

2. Estimated Costs for Export Notifications

EPA has also evaluated the potential costs associated with the pre-existing export notification requirements under TSCA section 12(b) and the implementing regulations at 40 CFR part 707, subpart D. For persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical, depending on the number of required notifications (i.e., the number of countries to which the chemical is

exported). While EPA is unable to make any estimate of the likely number of export notifications for the chemical substances covered by these SNURs, as stated in the accompanying economic analysis, the estimated cost of the export notification requirement on a per unit basis is approximately \$106.

II. Background

A. General Information About SNURs

Unit II. of the proposed rule provides general information about SNURs, and additional information about EPA's new chemical program is available at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca>.

B. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. As discussed in Unit II.E. of the proposed rule, EPA concluded that the proposed significant new uses were not ongoing. If EPA subsequently determines that such a use was ongoing as of the date of publication of the proposed rule and did not cease prior to issuance of the final rule, EPA will not designate that use as a significant new use in the final rule. EPA has no information to suggest that any of the significant new uses identified in this rule are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376 (FRL-3658-5)), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. The objective of EPA's approach is to ensure that a person cannot impede finalization of a SNUR by initiating a significant new use after publication of the proposed rule but before the effective date of the final rule. Uses arising after the publication of the proposed rule are distinguished from uses that are identified in the final rule as having been ongoing on the date of publication of the proposed rule. The former would be new uses, the latter ongoing uses, except that uses that are identified as ongoing as of the publication of the proposed rule would not be considered ongoing uses if they have ceased by the date of issuance of a final rule.

In the unlikely event that before a final rule becomes effective a person begins commercial manufacturing (including importing) or processing of the chemical substances for a use that is designated as a significant new use in that final rule, such a person would

have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until all TSCA prerequisites for the commencement of manufacture or processing have been satisfied.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at <https://www.epa.gov/tsca-inventory>.

C. Important Information About SNUN Submissions

1. SNUN Submissions

SNUNs must be submitted on EPA Form No. 7710-25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E-PMN software is available electronically at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca>.

2. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (e.g., generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, TSCA Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. To assist with EPA's analysis of the SNUN, submitters are encouraged, but not required, to provide the potentially useful information as identified for the chemical substance in Unit III.C. of the proposed rule.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to

reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce>.

The potentially useful information described in Unit III. may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information about human exposure and environmental release that may result from the significant new use of the chemical substances.

D. Public Comments on Proposed Rule and EPA Responses

EPA received public comments on the proposed SNURs, and prepared a Response to Comment document that provides the Agency responses. The comments and the Response to Comment document are available in the docket. As described in the Response to Comment document, EPA is finalizing these SNURs with the following changes:

- For PMN P-21-56 (40 CFR 721.11868), EPA has reviewed the new test data submitted by the PMN submitter and no longer has the concern for skin sensitization based on the weight of available scientific evidence. The explanation is provided in the revised human health risk assessment, which has been added to the docket. EPA is modifying the significant new use terms included in the final SNUR. Two significant new uses, manufacturing the substance beyond 24 months and the requirement that the substance be classified as a skin sensitization risk on labels and the Safety Data Sheets, are not included in the final SNUR, and the company's

consent order is being modified accordingly.

- EPA inadvertently assigned the same CFR number to several proposed SNURs and has updated the CFR numbering for those SNURs. The proposed CFR numbering ranged from §§ 721.11860 through 721.11890, and the corrected CFR numbering ranges from §§ 721.11863 through 721.11893.

III. Chemical Substances Subject to These SNURs

A. What is the designated cutoff date for ongoing uses?

EPA designates the date of publication of the proposed rule as the cutoff date for determining whether the new use is ongoing, *i.e.*, June 11, 2024 (89 FR 49121 (FRL–11912–01–OCSPP)). This designation is explained further in Unit II.B.

B. What information is provided for each chemical substance?

In Unit III.C. of the proposed rule, EPA provided the following information for each chemical substance subject to these SNURs:

- PMN number (the CFR citation assigned in the regulatory text section of this document).
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service Registry Number (CASRN) or Accession Number (if assigned for non-confidential chemical identities).
- Basis for the SNUR (*e.g.*, Effective date of and basis for the TSCA Order).
- Potentially useful information.

The regulatory text section of this document specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated, may be claimed as CBI.

In addition, as discussed in Unit III.B. of the proposed rule, these SNURs include PMN substances that are subject to orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). Those TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. As such, the SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be

found at <https://www.epa.gov/laws-regulations-and-executive-orders>.

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

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to SNURs have already been approved by OMB pursuant to PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per submission. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

EPA always welcomes your feedback on the burden estimate. Send any comments about the accuracy of the burden estimate, and any suggested methods for improving the collection instruments or instruction or minimizing respondent burden, including through the use of automated collection techniques.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a “significant new use.” Because these uses are “new,” based on all

information currently available to EPA, EPA has concluded that no small or large entities presently engage in such activities.

A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was 7 in Federal fiscal year (FY) 2020, 13 in FY2021, 11 in FY2022, and 15 in FY2023, and only a fraction of these were from small businesses.

In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$37,000 to \$6,480. This lower fee reduces the total reporting and recordkeeping cost of submitting a SNUN to about \$14,500 per SNUN submission for qualifying small firms. Therefore, the potential economic impacts of complying with these SNURs are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more (in 1995 dollars) in any one year as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by SNURs, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by these SNURs. In addition, the estimated costs of this action to the private sector do not exceed \$183 million or more in any one year (the 1995 dollars are adjusted to 2023 dollars for inflation using the GDP implicit price deflator). The estimated costs for this action are discussed in Unit I.D.

E. Executive Order 13132: Federalism

This action will not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it is not expected to have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the requirements of Executive Order 13132 do not apply to this action.

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

This action will not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 do 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), because it does not concern an environmental health or safety risk. Since this action does not concern a human health risk, EPA's 2021 Policy on Children's Health also does not apply. Although the establishment of these SNURs do not address an existing children's environmental health concern because the chemical uses involved are not ongoing uses, SNURs require that persons notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of the identified chemical substances for an activity that is designated as a significant new use by the SNUR. This notification allows EPA to assess the intended uses to identify potential risks and take appropriate actions before the activities commence.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

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

EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns in accordance with Executive Orders 12898 (59 FR 7629, February 16, 1994) and 14096 (88 FR 25251, April 26, 2023). Although this action does not concern human health or environmental conditions, the notifications required by these SNURs allows EPA to assess the intended uses to identify potential disproportionate risks and take appropriate actions before the activities commence.

K. Congressional Review Act (CRA)

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

List of Subjects*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

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

Dated: December 6, 2024.

Kevin DeBell,

Acting Director, Office of Pollution Prevention and Toxics.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and

(e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Amend the table in § 9.1 by adding entries for §§ 721.11863 through 721.11893 in numerical order under the undesignated center heading "Significant New Uses of Chemical Substances" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
721.11863	2070–0038
721.11864	2070–0038
721.11865	2070–0038
721.11866	2070–0038
721.11867	2070–0038
721.11868	2070–0038
721.11869	2070–0038
721.11870	2070–0038
721.11871	2070–0038
721.11872	2070–0038
721.11873	2070–0038
721.11874	2070–0038
721.11875	2070–0038
721.11876	2070–0038
721.11877	2070–0038
721.11878	2070–0038
721.11879	2070–0038
721.11880	2070–0038
721.11881	2070–0038
721.11882	2070–0038
721.11883	2070–0038
721.11884	2070–0038
721.11885	2070–0038
721.11886	2070–0038
721.11887	2070–0038
721.11888	2070–0038
721.11889	2070–0038
721.11890	2070–0038
721.11891	2070–0038
721.11892	2070–0038
721.11893	2070–0038

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

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

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

■ 4. Add §§ 721.11863 through 721.11893 to subpart E to read as follows:

- Sec.
* * * * *
- 721.11863 1,2-Ethanediamine, N-(1-methylethyl)-N-[2-[(1-methylethyl)amino]ethyl]-.
- 721.11864 Fatty acids, polymers with substituted carbomonocycles, dialkanolamine, alkyl substituted alkanediamine and halo-substituted heteromonocycle, formates (salts) (generic).
- 721.11865 Alkanesulfonic acid, 2-[(2-aminoethyl)heteroatom-substituted]-, sodium salt (1:1), polymer with .alpha.-[2,2-bis(hydroxymethyl)butyl]-.omega.-methoxypoly(oxy-1,2-ethanediyl) and 1,1'-methylenebis[4-isocyanatocyclohexane], acrylic acid-dipentaerythritol reaction products-and polypropylene glycol ether with pentaerythritol (4:1) triacrylate-blocked (generic).
- 721.11866 Alkanoic acid, hydroxy-(hydroxyalkyl)-alkyl-, polymer with .alpha.-[(hydroxyalkyl)alkyl]-.omega.-alkoxypoly(oxy-alkanediyl), (haloalkyl)oxiane polymer (alkylalkylidene)bis[hydroxy-carbomonocycle] alkenoate and isocyanate-alkyl-carbomonocycle, hydroxyalkyl acrylate-blocked (generic).
- 721.11867 1,4-Benzenedicarboxylic acid, bis[2-(2-butoxyethoxy)ethyl] ester (9CI).
- 721.11868 Isocyanic acid, polyalkylenepolyarylene ester, polymer with alkyl-hydroxyalkyl-alkanediol, alkoxyalcohol and alkoxyalcohol-blocked (generic).
- 721.11869 Substituted alkanoic acid, compound with aminoalkylalkyl-aminoalkylalkoxy-polyoxyalkylalkanediyl, polymer with haloalkyl-epoxide and alkylalkylidene-cycloarylalcohol (generic).
- 721.11870 Bisphenol A epichlorohydrin polymer with alkylpolyalkene-polyarylene-hydroxypolyoxyalkyldiyl reaction products with alkylalkylidenealkylalkylidene-aminoalkyl-alkanepolyamine and alkylaminoalkanol (generic).
- 721.11871 Sulfur based acid, compds. with modified bisphenol A-epichlorohydrin-polyalkylene polyol ether with bisphenol A polymer-N-dialkylalkylidene-N-(dialkylalkylidene)aminoalkyl-alkanepolyamine-alkylaminoalkanol reaction products (generic).
- 721.11872 1,2-Alkanediol, 3-aryloxy, mono phosphate ester (generic).
- 721.11873 Metalloxanes, alkyl, alkyl group-terminated, reaction products with dihalo-dialkylalkylaryl-alkyl-polycyclic-ylidene(dialkylsilylene)-dialkylalkylaryl-alkylalkyl-polycyclic-ylidene, metal oxide and nonmetallic oxide (generic).
- 721.11874 Alkenoic acid, reaction products with pentaerythritol, polymers with diisocyanatoalkane and heteromonocycle homopolymer esters with alkanolic acid-pentaerythritol reaction products (generic).
- 721.11875 Carbopolycycle octa-alkene, halo (generic).
- 721.11876 2-Propenoic acid, (polyhydro-1,3-dioxo-2H-isoindol-2-yl)alkyl ester (generic).
- 721.11877 Heteromonocycle, polymer, [2-[(1-oxo-2-propen-1-yl)oxy]alkyl]ester (generic).
- 721.11878 Hydrocarbons linear and branched, light alkylate (generic).
- 721.11879 Hydrocarbons linear and branched, light catalytic cracked (generic).
- 721.11880 Hydrocarbons linear and branched, heavy catalytic cracked (generic).
- 721.11881 Hydrocarbons linear and branched, light hydrocracked (generic).
- 721.11882 Hydrocarbons linear and branched, isomerization (generic).
- 721.11883 Hydrocarbons linear and branched, heavy catalytic reformed (generic).
- 721.11884 Hydrocarbons linear and branched, hydrotreated light (generic).
- 721.11885 Hydrocarbons linear and branched, hydrotreated light paraffinic (generic).
- 721.11886 Hydrocarbons linear and branched, light catalytic cracked (generic).
- 721.11887 Hydrocarbons linear and branched, heavy hydrocracked (generic).
- 721.11888 Hydrocarbons linear and branched, heavy catalytic cracked (generic).
- 721.11889 Hydrocarbons linear and branched, heavy hydrocracked (generic).
- 721.11890 Hydrocarbons linear and branched, light hydrocracked (generic).
- 721.11891 Imidazole-carboxylic acid, substituted (generic).
- 721.11892 Multi-walled carbon nanotubes (generic).
- 721.11893 Multi-walled carbon nanotubes (generic).
- * * * * *
- § 721.11863 1,2-Ethanediamine, N-(1-methylethyl)-N-[2-[(1-methylethyl)amino]ethyl]-.**
- (a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,2-ethanediamine, N-(1-methylethyl)-N-[2-[(1-methylethyl) amino]ethyl]- (PMN P-18-398; CASRN 10507-06-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.
- (2) The significant new uses are:
- (i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50.
- (ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity; specific target organ toxicity; reproductive toxicity; skin corrosion; serious eye damage; skin sensitization. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.
- (iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).
- (b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).
- (1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.
- (2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.
- § 721.11864 Fatty acids, polymers with substituted carbomonocycles, dialkanolamine, alkyl substituted alkanediamine and halo-substituted heteromonocycle, formates (salts) (generic).**
- (a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids, polymers with substituted carbomonocycles, dialkanolamine, alkyl substituted alkanediamine and halo-substituted heteromonocycle, formates (salts) (PMN P-19-49) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).
- (2) The significant new uses are:
- (i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes

of § 721.63(b), the concentration is set at 1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; reproductive toxicity; specific organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture or process the substance in any manner that generates a vapor, mist, or aerosol. It is a significant new use to use the substance in any manner that generates a vapor, mist, or aerosol that results in inhalation to industrial or commercial workers. It is a significant new use to manufacture the substance to contain the confidential residual identified in the TSCA Order for this substance at greater than 0.1%.

(iv) *Release to Water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=114.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11865 Alkanesulfonic acid, 2-[(2-aminoethyl)heteroatom-substituted]-, sodium salt (1:1), polymer with .alpha.-[2,2-bis(hydroxymethyl)butyl]-.omega.-methoxypoly(oxy-1,2-ethanediyl) and 1,1'-methylenebis[4-isocyanatocyclohexane], acrylic acid-dipentaerythritol reaction products- and polypropylene glycol ether with pentaerythritol (4:1) triacrylate-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkanesulfonic acid, 2-[(2-aminoethyl)heteroatom-substituted]-, sodium salt (1:1), polymer with .alpha.-[2,2-bis(hydroxymethyl)butyl]-.omega.-methoxypoly(oxy-1,2-ethanediyl) and 1,1'-methylenebis[4-isocyanatocyclohexane], acrylic acid-dipentaerythritol reaction products- and polypropylene glycol ether with pentaerythritol (4:1) triacrylate-blocked

(PMN P-19-160) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3) and (c).

When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), and (g)(1) and (5). For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; serious eye damage; skin sensitization; respiratory sensitization; reproductive toxicity; specific organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(iv) *Release to Water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=302.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11866 Alkanoic acid, hydroxy-(hydroxyalkyl)-alkyl-, polymer with .alpha.-[(hydroxyalkyl)alkyl]-.omega.-alkoxypoly(oxy-alkanediyl), (haloalkyl)oxiane polymer (alkylalkylidene)bis[hydroxy-carbomonocycle] alkenoate and isocyanate-alkyl-carbomonocycle, hydroxyalkyl acrylate-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as alkanoic acid, hydroxy-(hydroxyalkyl)-alkyl-, polymer with .alpha.-[(hydroxyalkyl)alkyl]-.omega.-

alkoxypoly(oxy-alkanediyl), (haloalkyl)oxiane polymer (alkylalkylidene)bis[hydroxy-carbomonocycle] alkenoate and isocyanate-alkyl-carbomonocycle, hydroxyalkyl acrylate-blocked (PMN P-20-101) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely cured.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity; skin irritation; eye irritation; respiratory sensitization; skin sensitization; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture or process the substance with greater than 20% (by weight) oligomer content below 1,000 daltons (i.e., low molecular weight species). It is a significant new use to use the substance in a manual spray application.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

§ 721.11867 1,4-Benzenedicarboxylic acid, bis[2-(2-butoxyethoxy)ethyl] ester (9CI).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,4-benzenedicarboxylic acid, bis[2-(2-butoxyethoxy)ethyl] ester (9CI) (PMN P-20-182; CASRN 90430-63-0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.01 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin sensitization; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=4.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11868 Isocyanic acid, polyalkylenepolyarylene ester, polymer with alkyl-hydroxyalkyl-alkanediol, alkoxyalcohol and alkoxyalkoxyalcohol-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as isocyanic acid, polyalkylenepolyarylene ester, polymer with alkyl-hydroxyalkyl-alkanediol, alkoxyalcohol and alkoxyalkoxyalcohol-blocked (PMN P-21-56) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50 or 1,000 if spray applied. For purposes of § 721.63(b), the concentration is set at 1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1) and (5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: acute toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11869 Substituted alkanolic acid, compound with aminoalkylalkyl-aminoalkylalkoxy-polyoxyalkylalkanediyl, polymer with haloalkyl-epoxide and alkylalkylidene-cycloarylalcohol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted alkanolic acid, compound with aminoalkylalkyl-aminoalkylalkoxy-polyoxyalkylalkanediyl, polymer with haloalkyl-epoxide and alkylalkylidene-cycloarylalcohol (PMN P-21-58) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 50.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11870 Bisphenol A epichlorohydrin polymer with alkylpolyalkene-polyarylene-hydroxypolyoxyalkyldiyl reaction products with alkylalkylidenealkylalkylidene-aminoalkyl-alkanepolyamine and alkylaminoalkanol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as bisphenol A epichlorohydrin polymer with alkylpolyalkene-polyarylene-hydroxypolyoxyalkyldiyl reaction products with alkylalkylidenealkylalkylidene-aminoalkyl-alkanepolyamine and alkylaminoalkanol (PMN P-21-60) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 0.1%. For

purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; carcinogenicity; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.118671 Sulfur based acid, compds. with modified bisphenol A-epichlorohydrin-polyalkylene polyol ether with bisphenol A polymer-N-dialkylalkylidene-N-(dialkylalkylidene)aminoalkyl-alkanepolyamine-alkylaminoalkanol reaction products (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as sulfur based acid, compds. with modified bisphenol A-epichlorohydrin-polyalkylene polyol ether with bisphenol A polymer-N-dialkylalkylidene-N-(dialkylalkylidene)aminoalkyl-alkanepolyamine-alkylaminoalkanol reaction products (PMN P-21-61) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general

and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; carcinogenicity; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 11.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11872 1,2-Alkanediol, 3-aryloxy, mono phosphate ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 1,2-alkanediol, 3-aryloxy, mono phosphate ester (PMN P-21-66) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely destroyed.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general

and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (3), and (5). For the purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: acute toxicity; skin corrosion; skin irritation; serious eye damage; eye irritation; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure or that results in fugitive air emissions. It is a significant new use to use the substance other than as an epoxy curative.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11873 Metalloxanes, alkyl, alkyl group-terminated, reaction products with dihalo-dialkylalkylaryl-alkyl-polycyclic-ylidene(dialkylsilylene)-dialkylalkylaryl-alkylalkyl-polycyclic-ylidene, metal oxide and nonmetallic oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as metalloxanes, alkyl, alkyl group-terminated, reaction products with dihalo-dialkylalkylaryl-alkyl-polycyclic-ylidene(dialkylsilylene)-dialkylalkylaryl-alkylalkyl-polycyclic-ylidene, metal oxide and nonmetallic oxide (PMN P-21-68) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1) and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity; skin corrosion; skin irritation; serious eye damage; eye irritation; respiratory sensitization; skin sensitization; germ cell mutagenicity; reproductive toxicity; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a) through (c). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation or dermal exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 50.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11874 Alkenoic acid, reaction products with pentaerythritol, polymers with diisocyanatoalkane and heteromonocycle homopolymer esters with alkenoic acid-pentaerythritol reaction products (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkenoic acid, reaction products with pentaerythritol, polymers with diisocyanatoalkane and heteromonocycle homopolymer esters with alkenoic acid-pentaerythritol reaction products (PMN P-21-83) is subject to reporting under this section

for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3) and (5). For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; respiratory sensitization; skin sensitization; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11875 Carbopolycycle octa-alkene, halo (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as carbopolycycle octa-alkene, halo (PMN P-21-84) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity; skin corrosion; serious eye damage; skin sensitization; genetic toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 7.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11876 2-Propenoic acid, (polyhydro-1,3-dioxo-2H-isoindol-2-yl)alkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 2-propenoic acid, (polyhydro-1,3-dioxo-2H-isoindol-2-yl)alkyl ester (PMN P-21-92) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in

§ 721.63(a)(1) and (3) through (5), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1) and (3). For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; specific target organ toxicity; reproductive toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. For purposes of § 721.72(e), the concentration is set at 1.0%. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the substance at a concentration of greater than 40% in formulation when inhalation exposure is expected.

(iv) *Disposal.* It is a significant new use to dispose of the substance or waste streams containing the substance other than by incineration or RCRA subtitle C landfill.

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11877 Heteromonocycle, polymer, [2-[(1-oxo-2-propen-1-yl)oxy]alkyl]ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as heteromonocycle,

polymer, [2-[(1-oxo-2-propen-1-yl)oxy]alkyl]ester (PMN P-21-102) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; specific target organ toxicity; developmental toxicity; skin sensitization. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 337.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11878 Hydrocarbons linear and branched, light alkylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, light alkylate (PMN P-21-

109) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11879 Hydrocarbons linear and branched, light catalytic cracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, light catalytic cracked (PMN P-21-110) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery

feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11880 Hydrocarbons linear and branched, heavy catalytic cracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, heavy catalytic cracked (PMN P-21-111) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are

reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11881 Hydrocarbons linear and branched, light hydrocracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, light hydrocracked (PMN P-21-112) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent

exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11882 Hydrocarbons linear and branched, isomerization (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, isomerization (PMN P-21-113) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant

new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11883 Hydrocarbons linear and branched, heavy catalytic reformed (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, heavy catalytic reformed (PMN P-21-114) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or

deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11884 Hydrocarbons linear and branched, hydrotreated light (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, hydrotreated light (PMN P-21-116) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in

§ 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11885 Hydrocarbons linear and branched, hydrotreated light paraffinic (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, hydrotreated light paraffinic (PMN P-21-117) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11886 Hydrocarbons linear and branched, light catalytic cracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, light catalytic cracked (PMN P-21-118) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11887 Hydrocarbons linear and branched, heavy hydrocracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, heavy hydrocracked (PMN P-21-119) is subject to reporting under

this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11888 Hydrocarbons linear and branched, heavy catalytic cracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, heavy catalytic cracked (PMN P-21-121) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to

cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11889 Hydrocarbons linear and branched, heavy hydrocracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, heavy hydrocracked (PMN P-21-122) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as

required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11890 Hydrocarbons linear and branched, light hydrocracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrocarbons linear and branched, light hydrocracked (PMN P-21-123) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or used as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes

of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11891 Imidazole-carboxylic acid, substituted (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as imidazole-carboxylic acid, substituted (P-21-197) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into an article.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3) and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity; skin corrosion; eye irritation; serious eye damage; skin sensitization;

reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3) this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to process or use the substance other than in an enclosed process, except that sampling and equipment cleaning operations need not occur in an enclosed process.

(iv) *Disposal.* It is a significant new use to dispose of the substance or waste streams containing the substance other than by incineration with 99.9% efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11892 Multi-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P-21-216) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured), entrained in a polymer, or incorporated into an article.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000 if the capture and

reduction rate is at least 99.5% but not 99.975% or greater, or at least 50 if the capture and reduction rate is at least 99.975%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: eye irritation; skin irritation; respiratory sensitization; skin sensitization; genetic toxicity; reproductive toxicity; carcinogenicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to manufacture the substance to contain the confidential impurity listed in the Order at greater than 1% (by weight). It is a significant new use to process or use the substance other than for the confidential use allowed in the Order. It is a significant new use to process or use the substance other than in application methods that do not generate a vapor, mist, dust, or aerosol, unless such application method occurs in an enclosed process.

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1) and (2), (b)(1) and (2), and (c)(1) and (2). It is a significant new use to release the substance directly, whether by point (stack) or non-point (fugitive) sources, to air.

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11893 Multi-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P-21-217) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The

requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured), entrained in a polymer, or incorporated into an article.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1) and (3) through (5) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000 if the capture and reduction rate is at least 99.5% but not 99.975% or greater or of at least 50 if the capture and reduction rate is at least 99.975%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: eye irritation; skin irritation; respiratory sensitization; skin sensitization; genetic toxicity; reproductive toxicity; carcinogenicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to manufacture the substance to contain the confidential impurity listed in the Order at greater than 1% (by weight). It is a significant new use to process or use the substance other than for the confidential use allowed in the Order. It is a significant new use to process or use the substance other than in application methods that do not generate a vapor, mist, dust, or aerosol, unless such application method occurs in an enclosed process.

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1) and (2), (b)(1) and (2), and (c)(1) and (2). It is a significant new use to release the substance directly, either by point (stack) or non-point (fugitive) sources, to air.

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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[FR Doc. 2024–29276 Filed 12–11–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0369; FRL–12352–01–R9]

Finding of Failure To Submit State Implementation Plan Submissions for the 2008 and 2015 Ozone National Ambient Air Quality Standards; California; San Diego County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to find that California has failed to submit State Implementation Plan (SIP) elements required under the Clean Air Act (CAA or the “Act”) for the 2008 and 2015 8-hour ozone national ambient air quality standards (NAAQS) in the San Diego County nonattainment area. California was required to submit a SIP submission demonstrating that reasonably available control technology (RACT) requirements are implemented at the “Serious” nonattainment area classification for the 2008 and 2015 ozone NAAQS. The State submitted the required RACT demonstrations on December 28, 2020, but subsequently withdrew portions of its submission on August 23, 2024. If the EPA has not affirmatively found that the State has submitted a complete SIP for the withdrawn RACT element requirements within 18 months of this finding, the offset sanction will apply in the area. If within six additional months the EPA has still not affirmatively determined that the State has submitted a complete SIP for the withdrawn RACT element requirements, the highway funding sanction will apply in the area. No later than two years after the EPA makes this finding, if the State has not submitted and the EPA has not approved each of

the required RACT elements, the EPA must promulgate a federal implementation plan (FIP) to address the remaining requirements.

DATES: This action is effective January 13, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2024–0369. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Eugene Chen, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4304 or by email at chen.eugene@epa.gov.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedure Act (APA), U.S.C. 553(b)(B), provides that an agency may issue a rule without providing notice and an opportunity for public comment when that agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to public interest. The EPA has determined that there is a good cause for issuing this finding without prior proposal and opportunity for comment because there is little or no judgment involved for the EPA to make a finding of failure to submit SIPs or elements of SIPs required by the CAA, where states have not submitted a required SIP revision, made incomplete submissions, or, as in this case, withdrawn an existing submission. In such circumstances, the EPA finds that notice and public procedures are unnecessary and that this constitutes good cause under 5 U.S.C 553(b)(B).

Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background

Emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) contribute to the production of ground-level ozone, smog, and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and NO_x emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas that are classified as Moderate or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or NO_x. Section III.D of the preamble to the EPA’s final rule to implement the 2008 ozone NAAQS further discusses RACT requirements.¹ Section III.D states, in part, that RACT SIPs must contain adopted RACT regulations, certifications that existing provisions meet the RACT requirement (where appropriate), and/or negative declarations that no sources in the nonattainment area are covered by a specific CTG.² It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA’s implementation rule for the 1997 ozone NAAQS.³

The San Diego County ozone nonattainment area is classified as “Severe” nonattainment for the 2008 and 2015 ozone standards.⁴ On March 27, 2008, the EPA finalized an action to revise the 8-hour ozone NAAQS to 0.075 parts per million (ppm).⁵ San Diego County was originally designated as a “Marginal” nonattainment area and has subsequently been reclassified to a Severe nonattainment area for the 2008 8-hour ozone NAAQS.⁶ On October 26, 2015, the EPA finalized an action to revise the 8-hour ozone NAAQS to 0.070 ppm.⁷ San Diego County was originally designated as a “Moderate” nonattainment area, and has subsequently been reclassified to a

¹ 80 FR 12264 (March 6, 2015). Per 83 FR 62998 (December 6, 2018), these provisions were retained without significant revision for purposes of implementing the 2015 ozone NAAQS.

² Id. at 12278.

³ Id.; 70 FR 71612, 71652 (November 29, 2005).

⁴ 40 CFR 81.305.

⁵ 73 FR 16435.

⁶ 77 FR 30088 (May 21, 2012, Marginal), 81 FR 26697 (May 4, 2016, Moderate), 84 FR 44238 (August 23, 2019, Serious), 86 FR 29522 (June 2, 2021, Severe).

⁷ 80 FR 65292.

Severe nonattainment area for the 2015 8-hour ozone NAAQS.⁸

The San Diego County Air Pollution Control District (SDCAPCD or “District”) has jurisdiction over the entirety of San Diego County, and as a result of the area’s Severe classification for the 2008 and 2015 ozone standards, SDCAPCD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or NO_x within the nonattainment area. Any stationary source that emits or has the potential to emit at least 25 tons per year (tpy) of VOCs or NO_x is a major stationary source in a Severe ozone nonattainment area.⁹

On October 14, 2020, the District adopted a SIP revision containing an analysis of its compliance with the CAA section 182 RACT requirements for the 2008 and 2015 8-hour ozone standards (“2020 RACT SIP”). Specifically, the 2020 RACT SIP contained a RACT demonstration for the 2015 8-hour ozone standard, an updated RACT demonstration for the 2008 8-hour ozone standard following the area’s reclassification to a Severe ozone nonattainment area, as well as updated information for certain RACT elements for the 2008 8-hour standard at the Moderate classification. The California Air Resources Board (CARB) submitted the District’s 2020 RACT SIP to the EPA on December 28, 2020.¹⁰ The EPA subsequently took final action to approve all elements of the 2020 RACT SIP related to the 2008 ozone standard

at the Moderate classification. In addition, while the EPA took final action to approve the negative declarations for certain elements of the 2020 RACT SIP related to the 2015 ozone standard and 2008 ozone standard at the Severe classification, we have not acted upon the majority of the other elements related to the two standards.¹¹

On August 23, 2024, CARB submitted a letter to the EPA from SDCAPCD that withdrew a majority of the 2020 RACT SIP because it was no longer deemed appropriate for inclusion into the California SIP.¹² The withdrawal encompasses all elements of the 2020 RACT SIP with the exception of the negative declaration associated with the Control Techniques Guideline (CTG) titled *Control Techniques Guidelines for the Oil and Natural Gas Industry* (EPA–453/B–16–001).

II. Consequences of Findings of Failure To Submit

For plan requirements under part D, title I, of the CAA, such as those for ozone nonattainment areas, if the EPA finds that a state has failed to make the required SIP submission, then CAA section 179 establishes specific consequences, including the eventual imposition of mandatory sanctions for the affected area. Additionally, such a finding triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than two years from the effective date of the finding, if the affected state has not submitted, and

the EPA has not approved, the required SIP submissions.

If the EPA has not affirmatively determined that a state has submitted a complete SIP addressing the deficiency that is the basis for these findings within 18 months of the effective date of this rulemaking, pursuant to CAA sections 179(a) and (b) and 40 CFR 52.31, the emissions offset sanction identified in CAA section 179(b)(2) will apply to the affected nonattainment area. If the EPA has not affirmatively determined that the state has submitted a complete SIP addressing the deficiency that is the basis for these findings within six months after the offset sanction is imposed, the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The State must make the required SIP submission, and the EPA must take final action to approve the submission within two years of the effective date of this finding; otherwise, the EPA is required to promulgate a FIP to address the relevant requirements. This is required pursuant to CAA section 110(c) for the affected nonattainment area.

Based upon the withdrawal of the 2020 RACT SIP as described in Section I of this rulemaking, the EPA is finding that California has failed to make the required submittals for the RACT elements for the 2008 and 2015 ozone NAAQS for the San Diego County nonattainment area listed in Table 1 below.

TABLE 1—LIST OF WITHDRAWN RACT ELEMENTS FOR THE 2008 AND 2015 OZONE NAAQS
[Severe classifications]

CTG document No.	RACT element
EPA-450/R-75-102	Design Criteria for Stage I Vapor Control—Gasoline Service Stations.
EPA-450/2-77-008	Surface Coating of Cans.
EPA-450/2-77-008	Surface Coating of Coils.
EPA-450/2-77-008	Surface Coating of Paper.
EPA-450/2-77-008	Surface Coating of Fabric.
EPA-450/2-77-008	Surface Coating of Automobiles and Light-Duty Trucks.
EPA-450/2-77-022	Solvent Metal Cleaning.
EPA-450/2-77-025	Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.
EPA-450/2-77-026	Tank Truck Gasoline Loading Terminals.
EPA-450/2-77-032	Surface Coating of Metal Furniture.
EPA-450/2-77-033	Surface Coating of Insulation of Magnet Wire.
EPA-450/2-77-034	Surface Coating of Large Appliances.
EPA-450/2-77-035	Bulk Gasoline Plants.
EPA-450/2-77-036	Storage of Petroleum Liquids in Fixed-Roof Tanks.
EPA-450/2-77-037	Cutback Asphalt.
EPA-450/2-78-015	Surface Coating of Miscellaneous Metal Parts and Products.
EPA-450/2-78-030	Manufacture of Pneumatic Rubber Tires.
EPA-450/2-78-032	Factory Surface Coating of Flat Wood Paneling.

⁸ 83 FR 28776 (June 4, 2018, Moderate), 86 FR 29522 (June 2, 2021, Severe). SDCAPCD voluntarily requested reclassification from Moderate to Severe nonattainment. The applicable attainment date would be as expeditious as practicable but no later than August 3, 2033 for the 2015 ozone NAAQS.

⁹ CAA sections 182(d) and (f) and 302(j).

¹⁰ See Docket Item A–01. Letter dated December 28, 2020, from Richard W. Corey, Executive Director, CARB, to John W. Busterud, Regional Administrator, EPA Region IX.

¹¹ 87 FR 38665 (June 29, 2022)

¹² See Docket Item A–02. Letter dated August 23, 2024, from Michael Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

TABLE 1—LIST OF WITHDRAWN RACT ELEMENTS FOR THE 2008 AND 2015 OZONE NAAQS—Continued
[Severe classifications]

CTG document No.	RACT element
EPA-450/2-78-033	Graphic Arts—Rotogravure and Flexography.
EPA-450/2-78-036	Leaks from Petroleum Refinery Equipment.
EPA-450/2-78-047	Petroleum Liquid Storage in External Floating Roof Tanks.
EPA-450/2-78-051	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.
EPA-450/3-82-009	Large Petroleum Dry Cleaners.
EPA-450/3-83-006	Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
EPA-450/3-83-007	Leaks from Natural Gas/Gasoline Processing Plants.
EPA-450/3-83-008	Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.
EPA-450/3-84-015	Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
EPA-450/4-91-031	Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
EPA-453/R-96-007	Wood Furniture Manufacturing Operations.
EPA-453/R-94-032 61 FR 44050; 8/27/96.	ACT Surface Coating at Shipbuilding and Ship Repair Facilities Shipbuilding and Ship Repair Operations (Surface Coating).
EPA-453/R-97-004 59 FR 29216; 6/06/94.	Aerospace MACT and Aerospace (CTG & MACT).
EPA-453/R-06-001	Industrial Cleaning Solvents.
EPA-453/R-06-002	Offset Lithographic Printing and Letterpress Printing.
EPA-453/R-06-003	Flexible Package Printing.
EPA-453/R-06-004	Flat Wood Paneling Coatings.
EPA 453/R-07-003	Paper, Film, and Foil Coatings.
EPA 453/R-07-004	Large Appliance Coatings.
EPA 453/R-07-005	Metal Furniture Coatings.
EPA 453/R-08-003	Miscellaneous Metal Parts Coatings, Table 2—Metal Parts and Products.
EPA 453/R-08-005	Miscellaneous Industrial Adhesives.
EPA 453/R-08-006	Automobile and Light-Duty Truck Assembly Coatings.
	Non-CTG Major Sources of VOC.
	Non-CTG Major Sources of NO _x .

In addition, we have previously taken action on several RACT elements for the 2008 and 2015 ozone NAAQS for the San Diego County nonattainment area. A summary of the status of the elements that were not withdrawn are listed below in Table 2.

TABLE 2—STATUS OF REMAINING RACT ELEMENTS FOR THE 2008 AND 2015 OZONE NAAQS
[Severe classifications]

CTG document No.	RACT element	Status
EPA-450/2-78-029	Manufacture of Synthesized Pharmaceutical Products	Approved. ^a
EPA 453/R-08-003	Miscellaneous Plastic Parts Coatings, Table 3—Plastic Parts and Products	Approved. ^a
EPA 453/R-08-003	Miscellaneous Plastic Parts Coatings, Table 4—Automotive/Transportation and Business Machine Plastic Parts.	Approved. ^a
EPA 453/R-08-003	Miscellaneous Plastic Parts Coatings, Table 5—Pleasure Craft Surface Coating	Approved. ^a
EPA 453/R-08-003	Miscellaneous Plastic Parts Coatings, Table 6—Motor Vehicle Materials	Approved. ^a
EPA 453/R-08-004	Fiberglass Boat Manufacturing Materials	Approved. ^a
EPA 453/B-16-001	Oil and Natural Gas Industry	Approved. ^b

^a The EPA took final action to approve negative declarations for these RACT elements for the 2008 and 2015 ozone standards on June 29, 2022 (87 FR 38665).

^b The EPA took final action to approve the negative declaration for this RACT element for the 2008 and 2015 ozone standards on November 4, 2024 (89 FR 87505).

With this finding, section 179 of the CAA starts sanctions clocks and a FIP clock. California may avoid these sanctions by taking timely action to remedy this finding. The clock governing the CAA's imposition of sanctions for these areas will stop and sanctions will not take effect if the EPA finds that the State has made a complete SIP submission addressing the RACT elements listed in Table 1 for this area within 18 months of the date of this finding. Similarly, the EPA is not required to promulgate a FIP if California makes the required SIP

submissions, and the EPA takes final action to approve the submissions within two years of this finding of failure to submit a required SIP. In sum, the CAA does not require sanctions or a FIP if the State and the EPA take timely action to remedy this finding.

III. Final Action

In this action, the EPA finds that, following the August 23, 2024 withdrawal of the 2020 RACT SIP for the San Diego County ozone nonattainment area, California has failed to submit certain RACT SIP

elements for the 2008 and 2015 ozone NAAQS required under subpart 4 of part D of title I of the CAA. Specifically, California has failed to submit those RACT SIP elements listed in Table 1. The consequences of this finding are discussed in Section II of this action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders.gov>.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not impose additional requirements beyond those imposed by state law.

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 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 does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

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 the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, 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 and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions 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 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. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA 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 Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on 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 District did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving EJ for communities with EJ concerns.

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).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

Dated: November 26, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–28529 Filed 12–11–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 84****[EPA-HQ-OAR-2021-0643; FRL-11739-02-OAR]****RIN 2060-AW20****Phasedown of Hydrofluorocarbons: Restrictions on the Use of HFCs Under the AIM Act in Variable Refrigerant Flow Air Conditioning Subsector****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The U.S. Environmental Protection Agency is amending a provision of the 2023 Technology Transitions regulations promulgated under the American Innovation and Manufacturing Act of 2020. This action provides until January 1, 2027, for the installation of certain new variable refrigerant flow air conditioning and heat pump systems which use components manufactured in the United States or imported into the United States prior to January 1, 2026. This action also provides until January 1, 2028, for the installation of certain new variable refrigerant flow air conditioning and heat pump systems if a building permit that approves the use of a hydrofluorocarbon or blend containing a hydrofluorocarbon in such a system was issued prior to October 5, 2023, provided that the system uses components manufactured in the United States or imported into the United States prior to January 1, 2026. This action will mitigate the potential for stranded inventory of variable refrigerant flow systems.

DATES: This final rule is effective on January 13, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2021-0643. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Joshua Silver, Stratospheric Protection Division, Office of Atmospheric Protection (Mail code 6205A),

Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2473; email address: silver.joshua@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us,” “the Agency,” or “our” is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

AC—Air Conditioning
 AHRI—Air-Conditioning, Heating, and Refrigeration Institute
 AIM Act—American Innovation and Manufacturing Act of 2020
 The Alliance—Alliance for Responsible Atmospheric Policy
 BTU/h—British thermal units per hour
 CAA—Clean Air Act
 CRA—Congressional Review Act
 EPA—U.S. Environmental Protection Agency
 FR—Federal Register
 GWP—Global Warming Potential
 HARDI—Heating, Air-conditioning & Refrigeration Distributors International
 HFC—Hydrofluorocarbon
 HVAC—Heating, Ventilation, and Air Conditioning
 kW—Kilowatt
 NAICS—North American Industry Classification System
 NTTAA—National Technology Transfer and Advancement Act
 OEM—Original Equipment Manufacturer
 PRA—Paperwork Reduction Act
 RACHP—Refrigeration, Air Conditioning, and Heat Pumps
 RFA—Regulatory Flexibility Act
 UMRA—Unfunded Mandates Reform Act
 VRF—Variable Refrigerant Flow

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- I. National Technology Transfer and Advancement Act (NTTAA)
- 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?**

You may be affected by this rule if you manufacture, import, export, sell, distribute, or install residential and light commercial air conditioning and heat pump equipment. Potentially affected categories, by North American Industry Classification System (NAICS) code, include:

- New Multifamily Housing Construction (except For-Sale Builders) (236116).
- New Housing For-Sale Builders (236117).
- Residential Remodelers (236118).
- Industrial Building Construction (236210).
- Commercial and Institutional Building Construction (236220).
- Plumbing, Heating, and Air Conditioning Contractors (238220).
- Air Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (333415).
- Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers (423720).
- Warm Air Heating and Air Conditioning Equipment and Supplies Merchant Wholesalers (423730).

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This list includes the types of entities that the EPA is aware could potentially be regulated by this action. Other types of entities not included could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the regulatory text at the end of this document. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

This rule provides one additional year, until January 1, 2027, for the installation of new variable refrigerant flow (VRF) systems used for residential and light-commercial air-conditioning and heat pumps when using components that are manufactured in the United States or imported into the United States before January 1, 2026. Specifically, this rule allows for pre-2026 condensing units, evaporators, and air handlers using hydrofluorocarbons (HFCs) and blends containing HFCs, such as R-410A, not meeting the October 2023 Technology Transitions Rule's (88 FR 73098) restrictions, to be assembled into new VRF systems (*i.e.*, installed), so long as those systems are assembled prior to January 1, 2027. For projects that were issued a building permit which approved the use of an HFC or blend containing an HFC in a VRF system prior to October 5, 2023, this rule provides for installation of such systems until January 1, 2028, provided that they use components that are manufactured in the United States or imported into the United States prior to January 1, 2026.

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

On December 27, 2020, the American Innovation and Manufacturing Act of 2020 (AIM Act) was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (codified at 42 U.S.C. 7675). Subsection (k)(1)(A) of the AIM Act provides EPA with the authority to promulgate necessary regulations to carry out EPA's functions under the Act, including its obligations to ensure that the Act's requirements are satisfied. Subsection (k)(1)(C) of the AIM Act also provides that the Clean Air Act (CAA) sections 113, 114, 304, and 307 apply to the AIM Act and any regulations EPA promulgates under the AIM Act as though the AIM Act were part of title VI of the CAA. Accordingly, this rulemaking is subject to CAA section 307(d) (see 42 U.S.C. 7607(d)(1)(I)) (CAA section 307(d) applies to "promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection)").

The AIM Act authorizes EPA to address HFCs by providing authorities in three main areas: phasing down the production and consumption of listed HFCs; promulgating certain regulations for purposes of maximizing reclamation and minimizing releases of these HFCs

from equipment and ensuring the safety of technicians and consumers; and facilitating the transition to next-generation technologies by restricting use of these HFCs in sectors or subsectors in which they are used. Subsection (i) of the AIM Act, "Technology Transitions," provides that "the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used." 42 U.S.C. 7675(i)(1). The AIM Act lists 18 HFCs, and by reference any of their isomers not so listed, that are covered by the statute's provisions, referred to as "regulated substances" under the Act.¹ (42 U.S.C. 7675(c)(1)). This rule amends restrictions on the use of regulated substances, or blends containing regulated substances, with a global warming potential (GWP) above 700 for VRF systems. EPA's regulations at 40 CFR 84.64 describe how to determine the GWP of a regulated substance or blend containing a regulated substance for purposes of complying with regulations under the Technology Transitions program.

D. What are the incremental costs and benefits of this action?

This rule will reduce regulatory burden associated with the Technology Transitions restrictions on VRF systems used for residential and light commercial air-conditioning and heat pumps while having a negligible environmental impact. Original equipment manufacturers (OEMs) and distributors have indicated that manufactured inventory of VRF equipment could go unsold without an extension of the installation compliance date. Commenters representing builders and owners of large residential buildings have also described how they may be unable to install already-purchased VRF equipment in projects that are currently under development within the existing timeframes. Stranding equipment that does not meet the new GWP limits is counter to the overall approach EPA took in the October 2023 Technology Transitions Rule. Providing additional time for the installation of these systems will not affect the environmental benefits modeled under that rule given EPA is limiting the extension of the installation compliance date to equipment manufactured in the United States or imported into the United States before the existing compliance date of January 1, 2026 (88 FR 73098). Therefore, we do

not anticipate an increase in the amount of VRF equipment manufactured or imported as a result of this rule.

II. Background

A. Previous Technology Transitions Rules

On October 24, 2023, EPA published the final rule establishing the Technology Transitions program (88 FR 73098; hereafter "October 2023 Technology Transitions Rule"). That rule restricted the use of certain HFCs in many sectors and subsectors in which they are used by establishing limits for those uses based on GWP. Among other things, that rule prohibited the manufacture and import of factory-completed products and the installation of certain refrigeration, air conditioning, and heat pump systems that use HFCs or blends containing HFCs above specified GWP limits. The compliance dates for these restrictions vary by subsector and range generally from January 1, 2025, to January 1, 2028. The rule also included a prohibition on the sale, distribution, and export of factory-completed products that applies three years after the subsector manufacture and import compliance dates, to allow for a sell-through period of previously manufactured or imported products.

After issuance of the October 2023 Technology Transitions Rule, manufacturers, importers, and distributors of residential and light commercial air conditioning and heat pump equipment requested clarification about split systems and VRF systems. A letter dated November 13, 2023, to EPA from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), the Alliance for Responsible Atmospheric Policy (the Alliance), and Heating, Air-conditioning & Refrigeration Distributors International (HARDI) states that these organizations understand that components for these systems that are manufactured or imported before January 1, 2025, and January 1, 2026, respectively, using an HFC or blend containing an HFC with a GWP of 700 or more, cannot be installed as new systems after each such compliance date (See Docket ID No. EPA-HQ-OAR-2021-0643-0246). The letter states that not allowing time between the manufacture and import compliance date and the installation date would be "particularly problematic for residential new construction, including both single-family and multi-family dwellings, where builders order heating and cooling equipment well in advance of knowing the exact date of install. Such equipment is not installed until construction is nearly complete,

¹ "Regulated substance" and "HFC" are used interchangeably in this document.

but at time of order builders do not know when this date will be.” The letter further articulates that allowing the use of components manufactured or imported prior to the compliance date to be installed as part of new systems for one year after the compliance date would provide some relief to these economic and practical burdens.

In response to this letter from industry trade groups, EPA indicated on November 29, 2023, that the Agency “intends to act swiftly to address concerns regarding the January 1, 2025, installation compliance date, including by potentially amending the final regulation to allow for installation of previously manufactured components until January 1, 2026, and separately intends timely consideration of VRF systems” (See Docket ID No. EPA–HQ–OAR–2021–0643–0235). Subsequently, EPA issued an interim final rule (88 FR 88825; December 26, 2023) to reevaluate the specific circumstances for residential and light commercial air conditioning and heat pump systems. That rule extended the installation compliance date for those systems from January 1, 2025, to January 1, 2026, when using components that are manufactured or imported prior to January 1, 2025, to prevent the stranding of existing inventories of equipment. That rule did not address VRF systems, which are subject to this action.

B. EPA’s Proposal Regarding Variable Refrigerant Flow Systems

In response to stakeholder concerns raised in the aforementioned letter received by EPA after the finalization of the October 2023 Technology Transitions Rule, EPA proposed to adjust the installation compliance date for VRF systems manufactured or imported prior to January 1, 2026 (89 FR 53373; June 26, 2024; hereafter “VRF Proposed Rule”). VRF systems are described in the October 2023 Technology Transitions Rule as direct expansion multi-split systems that incorporate the following: a split system air conditioner or heat pump incorporating a single refrigerant circuit that is a common piping network to two or more indoor evaporators, each capable of independent control, or compressor units. VRF systems contain a single module outdoor unit or combined module outdoor units with at least one variable capacity compressor that has three or more steps of capacity, with air or water as the heat source. While this technology is used in air conditioning and heat pump equipment of any size, the October 2023 Technology Transitions Rule restrictions for VRF systems apply only

to air-source VRF systems with capacities of 65,000 BTU/h (19 kW) or more and water-source VRF systems of any capacity. The regulatory text at 40 CFR 84.54(c)(2) refers to these systems as “variable refrigerant flow systems for use as residential and light commercial air-conditioning or heat pumps.”² Throughout this preamble, these systems are referred to as “VRF systems.”

The number of VRF systems is small compared to the overall number of residential and light commercial air conditioning and heat pump equipment. EPA used data from AHRI (See Docket ID No. EPA–HQ–OAR–2021–0643–0245)³ and eJARN⁴ to estimate that approximately 42,000 VRF units that had a capacity of 65,000 BTU/h or more were sold in 2023. This represents 0.49% of total air conditioning and heat pump equipment sales that year. The available data also indicate that approximately 37,000 VRF units with capacities below 65,000 BTU/h were sold in 2023. Adding together these estimates of units sold in 2023 for VRF units of any capacity provides an overall estimate of 79,000 VRF units, which is approximately 0.91% of all air conditioning and heat pump equipment sold in 2023. EPA notes that this number and percentage of VRF units is a rough estimate intended to describe its use currently as an extremely small percentage of all residential and light commercial air conditioning and heat pump equipment.

In the VRF Proposed Rule, EPA proposed to extend the installation compliance date for new VRF systems from January 1, 2026, to January 1, 2027, when using components that are manufactured or imported prior to January 1, 2026 (89 FR 53373; June 26, 2024). In the alternative, EPA proposed to extend the installation compliance date for new VRF systems from January 1, 2026, to January 1, 2027, when using components that are manufactured or imported prior to January 1, 2026, but only for projects where a building permit both approved the HFC or blend

containing the HFC to be used and was issued prior to October 5, 2023.

EPA received public comments on its proposal from stakeholders representing VRF equipment manufacturers, distributors, industry trade groups, real estate developers, contractors, and environmental groups. After the initial 30-day comment period ended on July 26, 2024, the Agency reopened the comment period via a document published in the **Federal Register** to offer the public an opportunity to request a public hearing to provide oral comment, if desired (89 FR 65575; August 12, 2024). A public hearing was requested, and the Agency held a public hearing on August 27, 2024. The comment period remained open for 30 days after the date of the public hearing, closing on September 26, 2024. All comments received on the VRF Proposed Rule and a transcript of the public hearing are available in the docket for this action (See Docket ID No. EPA–HQ–OAR–2021–0643).

III. EPA’s Final Action

A. Final Action

After considering the comments and input received on the VRF Proposed Rule, EPA is finalizing the extended installation compliance date for new VRF systems to January 1, 2027, as proposed. EPA is also providing additional time, to January 1, 2028, for the installation of such systems in projects where a building permit approved the use of an HFC or blend containing an HFC in such a system, and was issued prior to October 5, 2023. Building permits are government-issued documents that grant authorization to an entity to begin a construction project, which are typically issued by local permitting authorities, or authorities having jurisdiction. This includes county or city offices of permits and licensing, departments of housing, or other authorities having jurisdiction. Building permits vary in the level of specificity provided; for purposes of EPA’s regulations in 40 CFR part 84, subpart B, EPA considers a building permit to include designs submitted as part of the application that is approved by the authority having jurisdiction.

These extensions only allow for installation of new VRF systems using an HFC, or blend containing an HFC, with a GWP above 700 in components that are manufactured in the United States or imported into the United States prior to January 1, 2026.

To further limit the possibility of stranded inventory, EPA is providing the additional time for installation to January 1, 2028, for projects where three

² The regulations at 40 CFR 84.54(c)(2) treat VRF systems as a separate subsector, due to how the regulatory restriction is structured. No difference in meaning is intended as to which systems are addressed, however.

³ AHRI notes that its “reports track shipments, which are defined as when a unit transfers ownership. While some people use the terms shipments and sales interchangeably, they may not be the same.” See <https://www.ahrinet.org/analytics/statistics>. Date Accessed: November 15, 2024.

⁴ See <https://www.ejarn.com/article/detail/83750>. In this article, the term “units” is used, as in “79,000 units.” We note that VRF units is not equivalent to VRF systems.

conditions are met: (1) an approved building permit was issued for a project prior to October 5, 2023, (2) that building permit approves the use of an HFC or blend containing an HFC in a VRF system, and (3) all specified components of that VRF system are manufactured in the United States or imported into the United States prior to January 1, 2026. Stakeholder input indicated that even a January 1, 2027, extended installation compliance deadline could still risk stranding VRF equipment for larger buildings using VRF systems with particularly long construction timelines. EPA is finalizing this rule with the additional extension given the complexity of these systems, the size of the projects in which these systems are typically installed, and recognizing that the projects were issued approved building permits prior to the issuance of the Technology Transitions Rule on October 5, 2023. EPA recognizes that a subset of construction projects that use VRF equipment were issued approved building permits prior to October 5, 2023, and may not be completed by the new installation date of January 1, 2027, and thus determines that this additional flexibility for those projects using VRF systems with HFCs or blends containing HFCs above the new GWP threshold is reasonable in light of the goal to avoid stranding inventory.

B. Avoiding Stranded Inventory

An important consideration in the October 2023 Technology Transitions Rule was to avoid stranding inventory of equipment manufactured ahead of the various compliance deadlines. This includes systems that are already installed and operating as well as unsold equipment in the manufacturing and distribution chain. EPA stated that “[w]e recognize that the production and purchase of products or components that are unable to be sold to consumers is an economic and environmental outcome no parties desire, and the proposed rule’s forward-looking compliance dates were intended to allow all parties in the market supply chain sufficient time to avoid that outcome” (88 FR 73123; October 24, 2023). EPA’s goal of avoiding the stranding of inventory is consistent with the requirement in subsection (i)(6) that Technology Transitions restrictions may not take effect sooner than one year from the date of promulgation; this provision also serves to ensure that regulated parties have sufficient time to prepare for and comply with restrictions under this provision. In response to concerns about stranded inventory raised during the public comment

period on that proposed rule, EPA made two significant adjustments in the October 2023 Technology Transitions Rule.

First, EPA removed the applicability of the rule’s use restrictions to components. EPA explained that components are pieces of equipment that do not function independently and must be assembled together in the field in order to function for its intended purpose. Components are replaceable and a faulty component can be swapped out to avoid replacing an entire system. Recognizing the ongoing need for servicing and updating previously installed systems, EPA allowed for the continued manufacture, import, sale, distribution, offer for sale and distribution, and export of components that rely on higher-GWP HFC refrigerants. Aside from reporting and labeling requirements, components are not subject to the restrictions in the October 2023 Technology Transitions Rule, except insofar as those components may not be installed in new systems on or after the applicable installation compliance dates.

Second, EPA extended the sell-through period for factory-completed products in the October 2023 Technology Transitions Rule from one year to three years after the manufacture and import compliance date. For the purposes of the restrictions under that rule for the refrigeration, air conditioning, and heat pump (RACHP) sector, factory-completed products are pieces of equipment that are functional upon completion of manufacturing in a factory. Functional means that the equipment’s refrigerant circuit is complete, it is charged with refrigerant, and it is ready to use for its intended purpose. The Agency received many comments on this topic, including from those commenters that considered one year to be insufficient for the sale of seasonal products.

EPA believed it had minimized the potential for stranded inventory with these two modifications to the October 2023 Technology Transitions Rule. Specifically with respect to components, the Agency’s view was that there would continue to be a market for components not meeting the GWP limit thresholds for new systems, because those components could continue to enter the market to service existing systems.

EPA also finalized later compliance dates for the installation of most field-assembled refrigeration systems, recognizing, in part, that refrigeration systems would require manufacturers and importers to make components available and that such systems can be

specifically designed for an individual facility and would need more time to transition.⁵ For some refrigeration subsectors, EPA also recognized in the October 2023 Technology Transitions Rule that buildings may have already been issued an approved building permit prior to finalization of that rule. Recognizing that where earlier issued permits approved the use of an HFC or blend containing an HFC, and where such permitted systems were likely to be highly complex and costly to redesign, EPA provided one additional year beyond the final rule compliance dates for the installation of certain field-assembled systems. Specifically, that extension applied to the following refrigeration systems or subsectors (certain industrial process refrigeration systems; retail food refrigeration—supermarkets; cold storage warehouses; and ice rinks) if an approved building permit was issued prior to the signature date of the final rule (*i.e.*, October 5, 2023), and the permit specified the use of a system containing an HFC or blend containing an HFC with a GWP above the relevant GWP threshold for that subsector (88 FR 73120; 40 CFR 84.54(d)).

EPA intended this limited flexibility in the October 2023 Technology Transitions Rule to prevent the need to redesign these systems and, in some cases, the facility that houses these systems, given that facilities or systems may already have been well along on the construction timeline. EPA granted this permit-based extension selectively, as most systems are not typically designed specifically for an individual facility and/or most systems covered by the October 2023 Technology Transitions Rule have a later compliance date and thus could make any necessary adjustments with the GWP restrictions in mind.

EPA did not finalize later compliance dates for the installation of residential and light commercial air conditioning and heat pump systems and VRF

⁵ See 88 FR 73143 (industrial process refrigeration systems—proposed January 1, 2025, compliance date, finalized January 1, 2026, compliance date (January 1, 2028, for some subsectors); 88 FR 73149 (data centers, ITEF, computer room cooling equipment—proposed January 1, 2025, compliance date, finalized January 1, 2027, compliance date); 88 FR 73150 (systems in retail food refrigeration subsector—proposed January 1, 2025, compliance date, finalized a range of compliance dates from January 1, 2026, to January 1, 2028); 88 FR 73162 (cold storage warehouses—proposed January 1, 2025, compliance date, finalized January 1, 2026, compliance date); 88 FR 73163 (ice rinks—retained proposed January 1, 2025, compliance date in final rule but increased GWP limit from 150 to 700); 88 FR 73175 (chillers-industrial process refrigeration—proposed January 1, 2025 compliance date, finalized compliance dates of January 1, 2026, and January 1, 2028 depending on the system).

systems in the October 2023 Technology Transitions Rule.⁶ After issuing that rule, EPA learned that additional time, which EPA had extended to nearly all of the subsectors covering field-assembled refrigeration systems, was also needed for residential and light commercial air conditioning systems and VRF systems. As noted previously, EPA responded by issuing an interim final rule reevaluating the specific circumstances for residential and light commercial air conditioning and heat pump systems and extending the installation compliance date for those systems by one year to January 1, 2026 (88 FR 88825; December 26, 2023), and by undertaking this rulemaking for VRF systems.

EPA has reevaluated the planning, purchasing, and installation timeframes for VRF systems in new construction projects as referenced in the Agency's response to industry stakeholders (See Docket ID No. EPA-HQ-OAR-2021-0643-0235). EPA is providing one additional year to install VRF systems, which aligns with the additional time already provided for system installations in many refrigeration subsectors in the October 2023 Technology Transitions Rule and in the interim final rule for installation of residential and light commercial air conditioning and heat pump systems. In addition, EPA is allowing installation of VRF systems that use an HFC, or a blend containing an HFC, with a GWP above 700 until January 1, 2028, in projects where a building permit approves the use of an HFC or blend containing an HFC in a VRF system, and that approved building permit was issued prior to October 5, 2023, provided the components were manufactured or imported prior to January 1, 2026. EPA is providing this additional extension based on information received from commenters that detailed the length of the timeline from initial design, to permitting, to construction completion of projects that incorporate VRF systems, which are typically much larger and more complex than other projects. Given the longer lead times for the compliance dates for new projects incorporating VRF systems, EPA does not anticipate similar scenarios for equipment used in other sectors and subsectors covered by the October 2023 Technology Transitions Rule.

The construction of new multi-unit residential and commercial buildings is planned well in advance, including plans for the heating and cooling systems intended to be installed in that new construction. Builders may order those planned heating and cooling systems in concert with the planning process well in advance of when those systems are installed. As noted by commenters, installation of these systems is often one of the final steps in construction. For construction planned to occur after January 1, 2026, components of VRF systems that use a regulated substance, or a blend containing a regulated substance, with a GWP above 700 may have already been incorporated into the design of the building and ordered by builders. In addition, such buildings may have already been issued a building permit approving the use of an HFC or blend containing an HFC with a GWP above 700, from the appropriate local permitting authority or the authority having jurisdiction, prior to October 5, 2023. In these cases, the VRF equipment associated with these projects are at risk of being stranded. EPA also recognizes that as one of the first systems facing a system installation compliance date under the October 2023 Technology Transitions Rule, the ability of installers of VRF systems to comply with this deadline relies on equipment manufacturers, importers, and distributors to quickly make commercially available component parts that comply with the GWP thresholds. For this reason, as well, EPA has determined it is appropriate to provide a limited extension for compliance.

As discussed in the October 2023 Technology Transitions Rule, EPA established the compliance date of January 1, 2026, for these systems based on consideration of the AIM Act's subsection (i)(4) factors, and in particular, the assessment that VRF systems will be able to meet the GWP limit of 700 and transition from the current use of HFCs. EPA's consideration of the statutory factors continues to support a swift transition for these systems, but the January 1, 2026, installation compliance date could result in builders of new construction being left with stranded inventory that could not be used. Stranded inventory is an economically and environmentally undesirable outcome, and the issue addressed in this rule—that the January 1, 2026 installation deadline for new VRF systems could result in stranded inventory—was not brought to the Agency's attention until after the

October 2023 Technology Transitions Rule was finalized. Through this action, EPA is extending the January 1, 2026, installation compliance date to January 1, 2027, provided the new installation uses components that are manufactured or imported prior to January 1, 2026. In addition, for those projects that were issued a building permit prior to October 5, 2023 which approves the use of an HFC or blend containing an HFC in a VRF system, EPA is extending the installation compliance deadline to January 1, 2028, provided all specified components of that VRF system were manufactured or imported prior to January 1, 2026.

C. Comments and Responses

The Agency received several comments on the VRF Proposed Rule. These comments are addressed in this section.

Comment: Several commenters, representing original equipment manufacturers (OEMs), distributors, air conditioning contractors, developers, and trade associations—including the groups that contacted the Agency in the November 13, 2023, letter—expressed support for the proposal to extend the installation compliance date by one year. They reiterated that the proposal “provides indispensable relief to manufacturers, homebuilders, and other stakeholders in the implementation of the . . . AIM Act and the [October 2023 Technology Transitions Rule]” (See Docket ID No. EPA-HQ-OAR-2021-0643-0255). Commenters underscored the importance of the proposed extension to mitigate the potential for significant stranded inventory that would otherwise burden the industry (See Docket ID No. EPA-HQ-OAR-2021-0643-0249). Some requested this rule to be finalized soon, or before the end of 2024, to provide clarity for the industry (See Docket ID No. EPA-HQ-OAR-2021-0643-0253, and Docket ID No. EPA-HQ-OAR-2021-0643-0276).

Response: EPA agrees with commenters that extending the installation compliance date by one year, until January 1, 2027, for such equipment would avoid stranding inventory and provide relief to most manufacturers, distributors, builders, and other stakeholders. EPA takes note of the request to finalize this rule quickly to provide clarity for the industry.

Comment: Three commenters requested the Agency exempt projects that were already permitted. One commenter suggested EPA exempt buildings from any VRF system installation compliance date if they received a permit prior to October 5,

⁶ See 88 FR 73178 (residential and light commercial air conditioning and heat pumps—proposed January 1, 2025, compliance date, finalized January 1, 2025, compliance date); *id.* (VRF systems—proposed January 1, 2026, compliance date, finalized January 1, 2026, compliance date).

2023. Another commenter encouraged EPA to consider a variance or exemption for already-designed projects that had applied for permits based on heating, ventilation, and air conditioning (HVAC) systems then-available on the market. One commenter requested the Agency consider a further exemption of previously permitted VRF equipment.

Response: While some flexibility is fitting, it would not be appropriate with the application of the subsection (i)(4) factors to provide a broad, indefinite exemption for VRF systems from the October 2023 Technology Transitions Rule to any project where the project in which the system would be installed was issued an approved building permit prior to October 5, 2023. EPA was cognizant in establishing restrictions in the October 2023 Technology Transitions Rule, and in considering the new information provided after finalization of the October 2023 Technology Transitions Rule that there may be equipment that would need to work its way through the distribution chain. As demonstrated in the October 2023 Technology Transitions Rule, EPA recognized that in discrete situations, projects that were issued approved building permits prior to October 5, 2023, may not have the system installed by the relevant compliance date as anticipated. EPA's analysis under the October 2023 Technology Transitions Rule was that substitutes with a GWP below 700 will be available for the components needed for the installation of VRF systems in time for the January 1, 2026, compliance date. One of the primary manufacturers of this equipment has confirmed EPA's assessment about availability in the materials provided to the Agency during the comment period. However, as noted previously, EPA became aware of new information after the issuance of the October 2023 Technology Transitions Rule that indicated the potential for stranded inventory held by some affected entities. As a result, EPA is extending the compliance date for installation by one year and based on the comments received, is finalizing a limited additional extension for projects where abuilding permit approves use of an HFC or blend containing an HFC in a VRF system, and that approved building permit was issued by the relevant permitting authority prior to October 5, 2023. This additional time recognizes that some projects were well underway ahead of the issuance of the October 2023 Technology Transitions Rule. The Agency expects that projects with an approved building permit

issued on or after October 5, 2023, will either use VRF systems that meet the 700 GWP threshold, or will use VRF components that are manufactured or imported prior to January 1, 2026, and will be installed by the January 1, 2027, installation deadline.

Comment: Some commenters requested that the installation compliance date be extended by two years, instead of one, and described the several-year construction timeline in support of this request. One commenter stated this extended timeline is necessary to provide projects that have already been designed, permitted, financed, and contracted with enough time to meet the installation compliance date (See Docket ID No. EPA-HQ-OAR-2021-0643-0251). Other commenters stated that more than one year is needed to provide building owners and developers with time to comply without significantly disrupting existing projects, particularly larger, in-process development projects where construction has already started (See Docket ID EPA-HQ-OAR-2021-0643-0256). Two commenters requested a blanket two-year extension to the installation compliance date given the several-year construction timeline. They described this timeline, from initial design to construction completion, for buildings with VRF systems. One of these two commenters stated that it can take six to 18 months to design a building, obtain building permits, and go through the entitlement process. This commenter noted that the HVAC system is incorporated into the initial design of a building based on available equipment. Further, this commenter stated that the construction timeline after the design and permitting stage ranges from 12 months to three years, depending on jurisdiction, construction type, project size, and project complexity. The other commenter indicated the total time between initial design and selection of the project's mechanical systems and the installation of those mechanical systems in large development projects is typically between four and eight years. This commenter further noted that design takes at least two years, and that HVAC systems are selected during the design planning process. This commenter, who is based in New York, stated that the building permit approval process in New York takes six to 12 months, and that construction starts three to six months after building permits are approved. Lastly, this commenter noted that actual construction takes two to six years, and that installation of the HVAC systems, while purchased at the start of

the construction period, are installed within the last six months of this schedule.

Response: EPA took into consideration the comments from stakeholders who preferred a blanket two-year extension to the installation compliance date for VRF systems, however we do not agree that a blanket two-year extension to the installation compliance date for VRF systems is warranted.

EPA considered the information on construction timelines that commenters provided. EPA's decision in this final rule to extend the installation compliance date by one year for VRF systems, and by two years for projects that were issued an approved building permit prior to October 5, 2023, and meet the other conditions described in this rule, is informed by these comments. This rule and its extension of the compliance dates for installation of VRF systems is designed to mitigate the narrow issue of stranded inventory without delaying the overall transition to substitutes for VRF systems that are compliant with the GWP thresholds established in the October 2023 Technology Transitions Rule. Regulated parties also have a responsibility to ensure that they are not taking actions, particularly after promulgation of a regulation, that risk creating stranded inventory. Such actions may include, but are not limited to, submitting building permits for approval at such a point that does not give sufficient time for the authority having jurisdiction to issue an approved building permit and allow the project to be constructed, with the relevant equipment installed, by a regulatory deadline. It also includes purchasing equipment that may not be able to be installed by a regulatory deadline.

In establishing the January 1, 2026, deadline in the October 2023 Technology Transitions Rule, EPA provided more than two years between promulgation of that rule and the relevant installation compliance date. In this action, EPA is providing an additional year for all VRF systems that were subject to the January 1, 2026 deadline, or two additional years under a specific set of circumstances. Most affected regulated entities will therefore have more than three years from the time the October 2023 Technology Transitions Rule was published in the **Federal Register**, and the new installation compliance deadline. For those projects that were issued an approved building permit prior to the finalization of the October 2023 Technology Transitions Rule, and were therefore further along on the

construction timeline, we are providing more than four years, until January 1, 2028. Builders, VRF equipment manufacturers, distributors, and installers therefore will have had multiple years to accommodate the restrictions in their planning. Moreover, available information indicates that equipment using compliant lower-GWP substitutes will be available for installation allowing the affected regulated entities to meet the new installation compliance date of January 1, 2027. Those projects that were issued an approved building permit prior to the signature of the October 2023 Technology Transitions Rule, and meet other conditions as described in this rule, are being granted until January 1, 2028, not because of the lack of available equipment for compliance with the restrictions, but because it is more likely that the construction timeline of such projects is further along such that the likelihood of stranding inventory for these projects is greater.

Commenters requesting a blanket two-year extension did not supply sufficient information to support such an extension, or a longer extension, for installation of VRF systems. One commenter's construction timeline of 12 months to three years is fully within the time provided in this rule. The other commenter's construction timeline of two to six years goes beyond the more than four years provided for projects that were issued an approved building permit prior to October 5, 2023. However, this commenter noted just one project that would be adversely affected by a January 1, 2027, compliance date, and the extension to January 1, 2028, for projects that were issued an approved building permit prior to October 5, 2023 and meet the other conditions described in this rule, resolves the commenter's concern with respect to the specified project.

The Agency is also cognizant of the remaining phasedown period for HFCs in declining to adopt commenters' request for additional extensions. Per Congress' phasedown schedule in the AIM Act, by 2029 overall domestic production and consumption of HFCs must be reduced by 70 percent from historic baseline levels and by 85 percent from the baseline by 2036. AIM Act subsection (i)(4)(D) directs EPA to factor in, to the extent practicable, "the remaining phase-down period for regulated substances," when promulgating restrictions under the Technology Transitions program. 42 U.S.C. 7675(i)(4)(D). EPA explained in the October 2023 Technology Transitions Rule that the fact that most of the AIM Act's phasedown would

occur by 2029 was "an important factor" in finalizing the compliance dates and restrictions in the Technology Transitions Rule (See 88 FR 73140). As the phasedown is implemented, the supply of available HFCs will decrease significantly. Timely restricting the use of HFCs in sectors and subsectors that are well positioned to transition to new substitutes and technologies supports the phasedown and fulfills Congress' direction to the Agency in subsection (i). For VRF systems, the best available information from manufacturers and industry commenters is that substitutes that meet the October 2023 Technology Transitions Rule's restrictions are currently being manufactured and will be commercially available in time to support the transition. We therefore do not agree that extensions beyond those established in this rule are warranted.

Comment: One commenter requested a two-year extension to the installation compliance date for VRF systems in projects that use higher-GWP refrigerants, were permitted prior to October 24, 2023, and where the components for such systems are manufactured or imported prior to January 1, 2026 (See Docket ID No. EPA-HQ-OAR-2021-0643-0251). This commenter described that it is in the process of constructing a building and expects to complete the installation of the VRF system in that building by April 1, 2027. The commenter stated that this project was issued an approved building permit prior to finalization of the October 2023 Technology Transitions Rule and submitted its approved permitting documents and building designs to the docket. These documents indicate R-410A, a refrigerant blend that has a GWP of 2,088 and consists of two HFCs regulated under the AIM Act, is intended to be used in the VRF system in the project.

Response: EPA appreciates the details and documents provided by this stakeholder on this project. EPA notes this stakeholder's concern would not be addressed with a one-year extension to the installation compliance date. Projects that had already been issued an approved building permit prior to October 5, 2023, are more likely than those that were issued an approved building permit on or after this date to be substantially further along in the construction timeline, such that switching the refrigerant to one that complies with the 700 GWP threshold could risk stranding already-manufactured, and already-purchased, VRF equipment inventory, as well as require developers to re-design, re-permit, and in some cases, rebuild

ongoing projects to accommodate a different VRF system (See Docket ID No. EPA-HQ-OAR-2021-0643-0242). We are therefore finalizing an extension to January 1, 2028, for installation of VRF systems where the project was issued a building permit prior to October 5, 2023, where the building permit approves the use of an HFC or blend containing an HFC in a VRF system, and where the components of the VRF system were manufactured or imported prior to January 1, 2026.

EPA is finalizing October 5, 2023, instead of October 24, 2023, as the date by which an approved building permit must have been issued to allow projects to install certain VRF systems until January 1, 2028, because this was the signature date of the October 2023 Technology Transitions Rule, it aligns with the flexibility provided to entities in the October 2023 Technology Transitions Rule as described in section III.B. of this rule, and entities could have become aware of the Technology Transitions restrictions on or around this date. In addition, the commenter's project that was issued an approved permit would not be adversely affected by this earlier date than their request.

EPA can reasonably anticipate that there may be a discrete number of projects that may also have been issued building permits ahead of October 5, 2023, that approve the use of an HFC or blend containing an HFC in VRF systems, and thus is providing this additional flexibility where these circumstances exist and the other conditions in this rule are met.

Comment: Several commenters opposed the alternative proposal in the VRF Proposed Rule to limit the one-year extension to only those projects with an approved building permit that specified an HFC or blend containing an HFC and was issued prior to October 5, 2023 (See Docket ID No. EPA-HQ-OAR-2021-0643-0252, Docket ID No. EPA-HQ-OAR-2021-0643-0254, Docket ID No. EPA-HQ-OAR-2021-0643-0255, Docket ID No. EPA-HQ-OAR-2021-0643-0258). They said this alternative proposal is too narrow in comparison to the proposed extension. One commenter noted that it "would fail to resolve the inventory and order fulfillment concerns articulated by industry" (See Docket ID No. EPA-HQ-OAR-2021-0643-0255).

Response: EPA agrees with these commenters. Based on its review of the comments received in total, EPA finds that a limited one-year extension solely for projects that were issued an approved building permit prior to October 5, 2023, will not provide sufficient relief to avoid stranding

inventory. Comments from multiple OEMs, distributors, developers, and trade associations provided information that indicated that a broad one-year extension was necessary to provide certainty to those looking to complete construction on projects with long timeframes. We are also cognizant that the compliance date for VRF systems is among the earlier deadlines of all the Technology Transitions program's restrictions for assembled systems. The flexibility of a blanket one-year extension to January 1, 2027, to install components that were manufactured or imported by January 1, 2026, is intended to help smooth the transition. It provides some cushion to OEMs, distributors, and developers if roll-out of the new rule-compliant components are delayed in any way, ensuring that builders and installers will be able to depend on available supply of previously manufactured equipment for these systems to reliably meet the January 1, 2027, installation deadline.

Comment: One commenter supported the alternative approach in the VRF Proposed Rule to limit the one-year installation compliance extension to only those projects that were issued an approved building permit with a specified HFC or blend containing an HFC, prior to October 5, 2023 (See Docket ID No. EPA-HQ-OAR-2021-0643-0260). This commenter questioned how much stranded inventory there would be since no data was provided by OEMs on the volume of potential stranded equipment. This commenter also encouraged the Agency to avoid continued compliance date extensions.

Response: After reviewing the comments, EPA disagrees that it should finalize the alternative approach described in the VRF Proposed Rule since it is likely that far fewer projects would qualify for this one-year extension, which could result in stranding already-purchased VRF equipment. EPA instead agrees with other commenters that a broad one-year extension provides certainty and avoids stranding inventory.

EPA recognizes that finalizing an extension to January 1, 2028, for projects that were issued a building permit prior to October 5, 2023, and where the building permit approves the use of an HFC or blend containing an HFC with a GWP above the threshold, provides one additional year beyond the alternative proposal that this commenter supported. EPA is finalizing this targeted extension to still limit the universe of who may qualify for additional time while addressing the

needs of certain affected regulated entities to avoid stranding inventory.

Comment: One commenter requested clarification on whether a VRF-Dedicated Outdoor Air System with a single direct expansion coil connected to a VRF condensing unit meets the definition of VRF systems under the Technology Transition Program and thus would be on the same timeline as other VRF systems. This commenter also asked if outdoor units which are tested in accordance with AHRI 1230 and listed as VRF units, regardless of whether they are installed with one or multiple associated evaporators, would fall under this definition of VRF systems.

Response: Air conditioning systems that have one indoor evaporator instead of two or more as described in the October 2023 Technology Transitions Rule, do not fall under the description of VRF systems in that rule. This rulemaking does not reconsider the description of VRF systems from the October 2023 Technology Transitions Rule. For purposes of the Technology Transitions program, the systems that the commenter described are considered residential and light commercial air conditioning and heat pump systems, and have an installation compliance date of January 1, 2026, when using components that are manufactured or imported prior to January 1, 2025. VRF systems described in this rule, which uses the same description as the one found in the October 2023 Technology Transitions Rule, do not cover all designs using VRF technology. For example, air-source VRF units with capacities below 65,000 BTU/h are not subject to this final rule and instead are regulated with other residential and light commercial air conditioning and heat pump systems.

Comment: One commenter provided their estimate that the costs associated with an installation compliance deadline earlier than January 1, 2028, will be \$112 million for a project currently under development (See Docket ID No. EPA-HQ-OAR-2021-0251). This project was issued an approved building permit prior to October 5, 2023. The costs that this commenter highlights stem from real estate taxes, land loan interest, insurance expenses, the equity costs of capital, cost of new VRF equipment, and the cost to re-design the building to accommodate incorporation of additional ventilation into the building to account for the flammability of the new refrigerant.

Response: EPA appreciates comments, including in this case, with detailed information on cost breakdowns. EPA

appreciates this commenter's description of the cost impacts associated with a compliance deadline earlier than January 1, 2028. With EPA's decision to extend the installation compliance deadline to January 1, 2028, for projects issued an approved building permit prior to October 5, 2023 and that meet the other conditions described in this rule, the commenters' projected cost estimates, which EPA has not independently evaluated or verified, will in any case be avoided.

Comment: One commenter suggested EPA change the definition of "install" to mean that VRF equipment are mounted in place, regardless of whether the field-installed system is charged (See Docket ID No. EPA-HQ-OAR-2021-0275).

Response: EPA is not adopting a change in the definition of "install" to its regulations. EPA defined that term in the October 2023 Technology Transitions Rule after a notice-and-comment rulemaking and did not reopen that definition in this rulemaking. As such, this request is outside the scope of this narrow rulemaking. Such a change would have far-reaching impacts on existing stakeholder plans to comply with the October 2023 Technology Transitions Rule in numerous subsectors. Other subsectors with an installation compliance deadline include, but are not limited to, chillers, industrial process refrigeration, and several retail food subsectors. Based on the information provided by this commenter, finalizing an additional year to install VRF systems in certain projects that were issued an approved building permit prior to October 5, 2023, beyond the one year as proposed would also alleviate the commenter's concerns and would not affect the broader Technology Transitions program.

Comment: Two commenters stated that EPA did not give the real estate industry sufficient notice about this rule's potential effects on the real estate industry. They note that NAICS codes that correspond to builders and developers were not used in the October 2023 Technology Transitions Rule, the interim final rule issued in December 2023 (88 FR 88825), or the VRF Proposed Rule (See Docket ID No. EPA-HQ-OAR-2021-0643-0273). One commenter called this a "major oversight" (See Docket ID No. EPA-HQ-OAR-2021-0643-0274). This commenter also mentioned that EPA set installation deadlines without engaging developers, and thus failed to meaningfully consider or discuss compliance needs and challenges of commercial and multifamily housing

developers. As such, this commenter requested that EPA work with the real estate industry to set compliance deadlines, and the other commenter requested that EPA delay the installation compliance deadline.

Response: EPA acknowledges that the October 2023 Technology Transitions Rule, interim final rule (88 FR 88825), and VRF Proposed Rule did not include NAICS codes for developers and general construction. EPA has included those codes in this final rule and will continue to include them where appropriate in further regulations under the Technology Transitions program. EPA disagrees that this means the Agency provided insufficient notice of the rule. Notice of EPA's intention to regulate is provided through publication in the **Federal Register**. The list of NAICS codes within that document serves as a guide for readers regarding entities the EPA expects could potentially be affected, but EPA states that the list is not intended to be exhaustive, and that other types of entities not listed could also be affected. EPA received input from multiple developers and real estate-related trade associations during the comment period on this rule and the interim final rule, and has met with real estate developers before finalizing this rule. A record of meetings EPA held with stakeholders after publication of the VRF Proposed Rule on June 26, 2024, is included in the docket for this rule (See attachment 1, Docket ID No. EPA-HQ-2021-0643-0276. EPA intends to continue its engagement with these stakeholders.

Comment: One commenter suggested EPA should not set compliance deadlines until it develops a building code amendment strategy with model code bodies, state legislatures, and the buildings sector (See Docket ID No. EPA-HQ-OAR-2021-0643-0274). This commenter stated further that EPA should clarify the regulatory impacts that will arise on existing buildings' air conditioning and chiller systems when they reach the end of their useful lives. In particular, this commenter noted that existing buildings would need to be retrofitted to accommodate new air conditioning systems using refrigerants with lower GWP but higher flammability ratings. Another commenter noted that the latest building codes, which harmonize requirements for lower-GWP A2L refrigerants, have not been adopted in numerous jurisdictions across the country, which makes it harder to comply with these installation compliance dates. Other commenters also noted that lack of consistent A2L requirements across building codes

could result in an inability to complete construction for projects that have already been issued approved building permits.

Response: This rule serves the limited purpose of extending compliance deadlines for the installation of new VRF systems. To the extent that commenters are identifying concerns regarding building codes as an impediment to compliance with the October 2023 Technology Transitions Rule deadline for installation of VRF systems, this rule only alleviates those concerns by extending that deadline by one year, or in specific cases, two years. This rule does not address the retrofit of buildings to accommodate new air conditioning systems with lower GWP and higher flammability ratings but EPA welcomes further discussion on this topic. As discussed in section III.F. of this preamble, in electing to provide additional time for compliance, the Agency is not revisiting or reopening its analysis of the AIM Act subsection (i)(4) factors with respect to VRF systems, as set forth in the October 2023 Technology Transitions Rule preamble (88 FR 73177-73180). In that rule, EPA considered building codes as one factor of its assessment of the availability of substitutes for HFCs used in the VRF systems. As noted in that final preamble, model building codes for this subsector were updated in 2021 to incorporate the use of lower-GWP refrigerants (88 FR 73178). When EPA issued the October 2023 Technology Transitions Rule, it noted that 41 states had either updated state building codes or legislatively ensured that refrigerants classified as A2Ls (*i.e.*, lower-GWP substitutes that can support compliance with the October 2023 Technology Transitions Rule restrictions) could be used (See attachment 5, p. 5-6, of Docket ID No. EPA-HQ-OAR-2021-0643-0227). At the time of this rulemaking, only Alaska, the District of Columbia, Kentucky, Massachusetts, Michigan, and Nevada have yet to update their codes or legislatively provide for the use of A2Ls in air conditioning (See attachment 2, Docket ID No. EPA-HQ-OAR-2021-0643-0276).⁷ Finally, with respect to regulatory impacts of the marginal cost of installing a new rule-compliant system at the end of the useful lives of existing systems, that comment is beyond the scope of this rule, which has the limited effect of extending the

deadline for compliance for one air conditioning and heating subsector.

Comment: One commenter, noting its engagement in other EPA partnerships, suggested that the Agency develop partnership programs with the real estate industry to drive the responsible and methodical phasedown of HFCs and appropriate building equipment transitions.

Response: The establishment of potential partnership programs, or expansion of existing ones, is beyond the scope of this rulemaking. EPA welcomes additional opportunities for communication and collaboration with the real estate industry to successfully implement the phasedown of HFCs.

Comment: Some commenters referenced issues outside the scope of this rulemaking or made inaccurate statements about rules promulgated under the AIM Act. One commenter noted concerns about how air conditioning systems used on boats are classified under the Technology Transitions program (See Docket ID No. EPA-HQ-OAR-2021-0643-0257). Two commenters requested EPA extend the installation compliance date for residential and light commercial air conditioning and heat pump systems beyond the time provided in the interim final rule (88 FR 88825) (See Docket ID No. EPA-HQ-OAR-2021-0643-0272 and EPA-HQ-OAR-2021-0643-0273). One commenter noted that this rulemaking "would set the HFC production and consumption baseline levels from which reductions will be made [and] establish an initial methodology for allocating and trading HFC allowances for 2022 and 2023" (See Docket ID No. EPA-HQ-OAR-2021-0643-0267).

Response: These comments are outside the scope of this rulemaking, which is solely related to an extension of the installation compliance date for VRF systems.

D. Limiting the Environmental Impact of This Action

EPA is narrowly tailoring this action to respond to stakeholder concerns about stranded inventory and longer construction timelines for projects that incorporate VRF systems while maintaining the human health and environmental benefits of the October 2023 Technology Transitions Rule. To do so, EPA is granting the extension for installation of a VRF system only if all "specified components" of that system are manufactured or imported prior to January 1, 2026. The term "specified component" is defined in the October 2023 Technology Transitions Rule as "condensing units, condensers,

⁷ See AHRI's Building Code Map, web page, accessed November 13, 2024. Available at <https://www.ahrinet.org/a2l-refrigerant-building-code-map>.

compressors, evaporator units, and evaporators” (88 FR 73112).⁸ As a result, the total number of VRF systems using HFCs, or blends containing HFCs, with a GWP above 700 installed in 2025, 2026, and 2027 for projects that were issued an approved building permit prior to October 5, 2023, would match what the Agency modeled for installation before the January 1, 2026, deadline. The extra year that is being provided for installation of new VRF systems, and two years for certain installations, would not increase total demand for HFCs in VRF systems, but rather shift some of the modeled demand from 2025 into 2026 and 2027.

Specified components manufactured or imported on or after January 1, 2026, remain subject to the restrictions of the October 2023 Technology Transitions Rule. Specifically, if they use or are intended for use with an HFC or a blend containing an HFC with a GWP of 700 or greater, their use is limited to servicing previously installed systems. All the labeling, reporting, and recordkeeping requirements, as delineated in the October 2023 Technology Transitions Rule, also continue to apply to components using, or intended to use, any regulated substance.

EPA finds that providing additional time for installation effectively responds to stakeholder concerns about stranded inventory while remaining protective of the environmental benefits of the restrictions in the October 2023 Technology Transitions Rule. This approach was suggested by industry stakeholders in their letter dated November 13, 2023, and it aligns with industry’s plans to transition VRF systems to use lower-GWP substitutes.

E. How do the labeling, recordkeeping, and reporting provisions apply?

The October 2023 Technology Transitions Rule requires labels on products and specified components that use regulated substances. The labeling requirement takes effect at the time of the manufacture and import prohibition for products and specified components. This timing reflects the primary purpose of the labels, which is for assessing compliance of products and systems in sectors and subsectors with active HFC restrictions.

Consistent with the October 2023 Technology Transitions Rule, this action does not require any new labeling for specified components intended for use

in VRF systems that are manufactured in the United States or imported into the United States prior to January 1, 2026 (*i.e.*, existing inventory). This action also does not change the labeling requirements for specified components used in VRF systems that are manufactured or imported after January 1, 2026. As such, they must be labeled with the following: (1) the statement “For servicing existing equipment only,” (2) the HFC or blend containing an HFC that is used or intended for use, and (3) the date of manufacture.

This labeling is particularly important to distinguish between components manufactured or imported before January 1, 2026, which are not subject to restrictions, from those that are manufactured or imported on or after January 1, 2026, which may be subject to the GWP limit depending on whether it is new or intended for servicing existing equipment. For a complete description of the Technology Transitions program labeling requirements, including formatting requirements, please refer to the October 2023 Technology Transitions Rule, or 40 CFR 84.58.

The October 2023 Technology Transitions Rule established recordkeeping and reporting requirements for any entity that manufactures or imports products or specified components that use or are intended to use HFCs in the sectors and subsectors covered in that rule. The reporting period for all sectors and subsectors starts on January 1, 2025, and the first reports covering the 2025 calendar year must be submitted to the Agency by March 31, 2026. This action does not add to nor modify the existing reporting and recordkeeping requirements for specified components. This rule does not establish new reporting and recordkeeping requirements related to the sale or installation of components manufactured or imported prior to January 1, 2025. However, EPA notes that entities that intend to rely on the flexibility associated with the date of their approved building permit should maintain that approved building permit as a record and have it available for inspection, if requested. Reporting and recordkeeping requirements finalized in the October 2023 Technology Transitions Rule are still applicable for specified VRF components that are manufactured in the United States or imported into the United States on or after January 1, 2025.

F. Evaluation of the Subsection (i)(4) Factors

Subsection (i)(4) of the AIM Act directs EPA to factor in, to the extent practicable and using best available data, various considerations when carrying out a rulemaking under subsection (i). As discussed in detail in the preamble to the October 2023 Technology Transitions Rule, EPA views subsection (i)(4)(A) through (D) as providing overarching direction for setting restrictions under subsection (i) (88 FR 73129–73141). In this action, EPA did not reconsider the interpretations provided in the October 2023 Technology Transitions Rule regarding how it considers the factors laid out in subsection (i)(4). Nor did the Agency revisit or reopen its analysis of the (i)(4) factors with respect to VRF systems as set forth in the October 2023 Technology Transitions Rule preamble (88 FR 73177–73180). However, in finalizing this narrow adjustment to the installation compliance date for VRF systems, EPA considered the (i)(4) factors to the extent practicable, as applicable to the Agency’s adjustment of that compliance date.

The issue being addressed by this final rule was brought to the Agency’s attention by stakeholders impacted by the October 2023 Technology Transitions Rule after the issuance of that rule. As noted in EPA’s discussion of subsection (i)(4)(A), in addition to information generated by other governing bodies and agencies, the Agency considered information provided by industry, environmental non-governmental organizations, trade associations, academia, standard-setting bodies, and more (88 FR 73129). EPA acknowledges that in some cases, regulated entities may be best situated to identify best available information, particularly regarding implementation challenges.

With respect to the Agency’s evaluation of the availability of substitutes under subsection (i)(4)(B), EPA previously determined that substitutes with a GWP less than 700 are available effective January 1, 2026, for VRF systems. EPA did not change that determination and continues to find that substitutes with a GWP less than 700 will be available January 1, 2026, for these systems. Manufacturers and importers in this subsector are currently making or importing VRF systems and components with lower-GWP refrigerants for other markets and are prepared to meet the January 1, 2026, manufacture and import compliance date for such systems. This action did not reconsider the Agency’s prior

⁸ Other components of an air conditioning or heat pump system such as valves or refrigerant piping are not restricted by the October 2023 Technology Transitions Rule and can be installed regardless of manufacture or import date.

evaluation of the availability of substitutes for meeting the use restrictions issued in the October 2023 Technology Transitions Rule for VRF systems; rather, this action addresses the disposition of components manufactured in the United States or imported into the United States before January 1, 2026.

This rule to adjust the installation compliance date for VRF systems was motivated by the policy goal of avoiding the negative environmental and economic impacts of stranding inventory where possible, while recognizing that the AIM Act authorizes the Agency to establish use restrictions where appropriate for sectors and subsectors to move away from the use of high-GWP HFCs. These goals are consistent with the direction in subsection (i)(4)(C), which instructs the Agency to factor in, to the extent practicable, overall economic costs and environmental impacts, as compared to historical trends. As discussed in the October 2023 Technology Transitions Rule, EPA interprets (i)(4)(C) as purposefully accommodating different types and degrees of analysis of economic costs and environmental impacts, including costs and impacts that may be difficult to quantify (88 FR 73138). The narrow adjustment in this final rule reduces the potential to unintentionally strand equipment used in VRF systems, while still achieving a prompt transition for this equipment. Specifically, even with the adjustments in this final rule, manufacturers and importers of components for new VRF systems will be required in the near term (*i.e.*, before January 1, 2026) to transition away from using HFCs or blends containing HFCs with a GWP above 700 in those components, and developers and builders will not be allowed to install new systems that use non-compliant regulated substances beginning January 1, 2027 (or January 1, 2028, in limited circumstances). This action does not affect the overall consumption of HFCs because EPA does not anticipate a change in the amount of new VRF equipment that will be manufactured or imported prior to January 1, 2026. Further discussion of environmental impacts can be found in section III.D.

Finally, subsection (i)(4)(D) directs the Agency to factor in, to the extent practicable, the remaining phasedown period for regulated substances under the allowance allocation program. The reduction in the supply of HFCs is an important factor supporting compliance dates and GWP limits that are as stringent as feasible under the analysis of all the (i)(4) factors. This rule will not

materially affect the demand for HFCs because it limits installations to components that are manufactured or imported before January 1, 2026. The effect of this rule is to extend the installations that EPA modeled to occur in 2025 over the two-year period of 2025 and 2026, with further limited installations extending into 2027 for projects issued an approved building permit prior to October 5, 2023, providing the other criteria established in this rule are met.

G. Negotiated Rulemaking

Prior to proposing a rule, subsection (i)(2)(A) of the AIM Act directs EPA to consider negotiating with stakeholders in the sector or subsector subject to the potential rule in accordance with negotiated rulemaking procedures established under subchapter III of chapter 5 of title 5, United States Code (commonly known as the “Negotiated Rulemaking Act of 1990”). If EPA makes a determination to use the negotiated rulemaking procedures, subsection (i)(2)(B) requires that EPA, to the extent practicable, give priority to completing that rulemaking over completing rulemakings under subsection (i) that are not using that procedure. If EPA does not use the negotiated rulemaking process, subsection (i)(2)(C) requires the Agency to publish an explanation of the decision not to use that procedure before commencement of the rulemaking process. A discussion on EPA’s consideration of using negotiated rulemaking procedures and its decision not to use such procedures prior to proposal can be found in section II.G. of the VRF Proposed Rule (89 FR 53378–53380; June 26, 2024).

IV. Judicial Review

The AIM Act regulations promulgated herein may be challenged in the United States Court of Appeals for the District of Columbia Circuit. Pursuant to section 307(b)(1) of the CAA, petitions for judicial review of the AIM Act regulations must be filed in that court within 60 days after the date notice of this final action is published in the **Federal Register**.

The AIM Act provides that certain sections of the CAA “shall apply” to the AIM Act and actions “promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA].” 42 U.S.C. 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, which includes provisions on judicial review. Section 307(b)(1) provides, in part, that petitions for review must only be filed in the United States Court of Appeals for the

District of Columbia Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect.”

The AIM Act regulations promulgated herein are “nationally applicable regulations” within the meaning of CAA section 307(b)(1). These regulations establish regulatory requirements applicable across the entire United States to implement restrictions under subsection (i) of the AIM Act. The regulations promulgated herein amend an existing nationally applicable regulation by adjusting a compliance deadline for certain systems. The deadlines in the amended regulation and the conditions required to qualify for those extended deadlines are nationally applicable to all affected entities. Accordingly, under section 307(b)(1) of the CAA, petitions for judicial review of these AIM Act regulations must be filed in the United States Court of Appeals for the District of Columbia Circuit by February 10, 2025.

V. 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)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

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. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule would not have a significant economic impact on a substantial number of small entities

because the rule would relieve regulatory burden on the small entities subject to the rule. This rule will prevent the stranding of components used to install VRF systems. EPA therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

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. It will 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is narrowly tailored to prevent the stranding of certain air conditioning and heat pump equipment using VRF technology while not affecting the demand for HFCs. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

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)

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

EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action is narrowly tailored to prevent the stranding of inventory of air conditioning and heat pump equipment using VRF technology while not affecting the demand for HFCs.

Although this action does not concern human health or environmental conditions, EPA identified and addressed environmental justice concerns within the October 2023 Technology Transitions Rule (88 FR 73098; October 24, 2023).

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 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Imports, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 84 as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

Subpart B—Restrictions on the Use of Hydrofluorocarbons

■ 2. Amend § 84.54 by revising paragraph (c)(2) to read as follows:

§ 84.54 Restrictions on the use of hydrofluorocarbons.

* * * * *

(c) * * *

(2) Effective January 1, 2026, variable refrigerant flow systems for use as residential or light commercial air-conditioning or heat pumps, using a regulated substance, or a blend containing a regulated substance, with a global warming potential of 700 or greater. Such new variable refrigerant flow systems using a regulated substance, or a blend containing a regulated substance, with a global warming potential of 700 or greater may be installed prior to January 1, 2027, where all specified components of that system are manufactured or imported prior to January 1, 2026. Such new variable refrigerant flow systems using a regulated substance, or a blend containing a regulated substance, with a global warming potential of 700 or greater may be installed prior to January 1, 2028, when an approved building permit issued prior to October 5, 2023, specifies the use of a restricted regulated substance, or blend containing a restricted regulated substance, in such system detailed in that building permit, and where all specified components of that system are manufactured or imported prior to January 1, 2026.

* * * * *

[FR Doc. 2024–29243 Filed 12–11–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 24–224; RM–11988; DA 24–1188; FR ID 266282]

Television Broadcasting Services Lubbock, Texas.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking issued in response to a Petition for Rulemaking filed by Gray Television Licensee, LLC (Gray) and SagamoreHill of Lubbock, LLC (SagamoreHill and collectively, the Petitioners), the licensees of two Lubbock, Texas stations; KCBD, operating on channel 11, and KJTV–TV,

operating on channel 35. The Petitioners request amendment of the Table of TV Allotments to substitute channel 11 for channel 35 and channel 35 for channel 36, respectively. The Petitioners filed comments in support of the Petition, as required by the Commission's rules (rules), reaffirming their interest in the proposed channel substitutions and that they will promptly file applications seeking authorizations on channels 11 and 35.

DATES: Effective December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 89 FR 64851 on August 8, 2024. The Petitioners filed comments in support of the petition reaffirming their commitment to apply for channels 11 and 35.

The Bureau believes the public interest would be served by substituting channel 11 for channel 35 for KJTV-TV and channel 35 for channel 36 for KCB D. Gray previously requested the substitution of channel 36 for channels 11 and the Bureau granted the request. Accordingly, channel 11 is no longer allotted to Lubbock in the Table. Gray was also granted a construction permit to construct a facility on channel 36 at Lubbock, but was unable complete construction of the channel facility by the expiration date. According to the Petitioners, KJTV-TV's channel 35 tube transmitter is failing, replacement parts are not available, and the cost for SagamoreHill to replace the transmitter for KJTV-TV's 1000 kW facility is prohibitively expensive. The Petitioners' proposal will allow SagamoreHill to replace KJTV-TV's failing equipment with the equipment (*i.e.*, antenna, transmitter, etc.) currently used by KCB D on channel 11, which is in good operating condition. Because Gray had already planned to invest in a new 1000 kW transmitter for KCB D on channel 36, it has the funds necessary to replace KJTV-TV's failing channel 35 transmitter and operate KCB D on channel 35. There would be no predicted loss area on channel 35 when compared to KCB D's previously-authorized channel 36 facility and the proposed channel 11 facility for KJTV-TV would result in no loss and instead provide additional service to approximately 8,000 persons. The Bureau finds that channel 11 can be substituted for channel 35 at Lubbock as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the

rules,¹ at coordinates 33°-32'-29.9" N and 101°-50'-13.6" W, and also meets the technical requirements set forth in section 73.622(a) of the rules. We also find that channel 35 can be substituted for channel 36 at Lubbock as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the rules, at coordinates 33°-30'-08.3" N and 101°-52'-21.3" W, and also meets the technical requirements set forth in section 73.622(a) of the rules.

This is a synopsis of the Commission's *Report and Order*, MB Docket No. 24–224; RM–11988; DA 24–1188, adopted and released on November 26, 2024. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

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

PART 73—RADIO BROADCAST SERVICE

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

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

¹ 47 CFR 73.618(a).

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

§ 73.622 Digital television table of allotments.

*	*	*	*	*
(j)	*	*	*	
Community			Channel Nos.	
*	*	*	*	*
Texas				
*	*	*	*	*
Lubbock	11, 16,	*25,	27, 31,	35
*	*	*	*	*

[FR Doc. 2024–29049 Filed 12–11–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 241126–0301]

RIN 0648–BK65

Modification of the Duration of Certain Permits and Letters of Confirmation Under the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS hereby modifies the regulations for Marine Mammal Protection Act (MMPA) section 104 permits, including scientific research, enhancement, photography, and public display permits and Letters of Confirmation (LOCs) under the General Authorization. The modification removes the 5-year regulatory limitation on the duration of section 104 permits and LOCs. This change gives NMFS the discretion to issue these permits for longer than 5 years, if such a duration is appropriate. This rule applies only to permits and LOCs issued under section 104 of the MMPA.

DATES: This rule is effective on January 13, 2025.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Authority for Action

Under section 104 of the MMPA (16 U.S.C. 1374), NMFS may issue permits for the take or importation of marine mammals for:

- Scientific research (section 104 (c)(3));
- Enhancing the survival or recovery of the species or stock (section 104 (c)(4));
- Public display (section 104 (c)(2));
- Commercial or educational photography (section 104(c)(6)); and
- Scientific research that may result only in taking by Level B harassment, via LOCs issued under the MMPA's General Authorization (GA) provisions (section 104 (c)(3)). Level B harassment refers to activities that have the potential to disturb but not injure a marine mammal.

The implementing regulations for scientific research, enhancement, public display, and photography permits can be found at 50 CFR 216.31–216.41. The implementing regulations for issuing LOCs under the GA can be found at 50 CFR 216.45. Applying for an LOC is a simpler and more expedited process than applying for a scientific research permit, and it does not require a public comment period. An LOC confirms that an applicant's proposed research activities will only result in Level B harassment (*i.e.*, activities with the potential to disturb but not injure) and will only target marine mammals that are not endangered or threatened under the Endangered Species Act (ESA). A scientific research permit is required for research that will result in take of ESA-listed species or for research that involves more than Level B harassment of marine mammals.

Background

Section 2 of the MMPA, 16 U.S.C. 1361, provides that it is the sense of Congress that marine mammals “should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem.” Section 2 also includes Congress' finding that there is inadequate knowledge of the ecology and population dynamics of marine mammals. Since the MMPA was enacted in 1972, NMFS has issued permits to allow research on marine mammals as well as other permits and LOCs allowing take of marine mammals as specified in section 104.

Take, as defined in section 3 of the MMPA, 16 U.S.C. 1362, and in § 216.3,

means to harass, hunt, capture, collect, and kill marine mammals, or any attempt to do so. While all permits that are the subject of this rule authorize take of marine mammals, the majority of the take authorized under these permits is for low-level harassment of marine mammals or collection of biological samples rather than lethal take.

Section 104 permits like those described below authorize activities that promote the goals set out in section 2 of the MMPA. The vast majority of permits issued under section 104 (93 percent of current permits) authorize scientific research on marine mammals. Research permits cover a wide variety of projects, such as capturing, sampling, tagging, and releasing seals to find out how deep they dive, remotely biopsy sampling and tagging large whales to study their migrations, or conducting physiology studies on permanently captive marine mammals in academic facilities. In addition to fieldwork activities, some research permits authorize scientists to import and export marine mammal parts (*i.e.*, biological samples) to study topics such as disease, genetics, prey species, and hormones; and for curation in scientific collections. Some scientists have permits for both research and enhancement activities, such as vaccinating a wild endangered population against disease or maintaining endangered animals that cannot be released to the wild to contribute to the survival or recovery of the species. LOCs may be issued to researchers who study non-listed marine mammals and whose research methods may only result in low-level (*i.e.*, Level B) harassment. An example would be photographing bottlenose dolphins (*Tursiops truncatus*) to identify individuals and study distribution and social patterns. As scientists conduct permitted research, they expand our knowledge of the abundance, distribution, and health of these animals. Resource managers then use the best available science to inform their decisions.

Under section 104, NMFS also issues permits for commercial and educational photography of non-listed marine mammals. For example, a typical photography permit authorizes filming of marine mammals by underwater divers or from a vessel or drone to collect footage for a documentary. Filmmakers working under a commercial photography permit are restricted to activities that only have the potential to disturb (not physically contact, injure, or kill) marine mammals. Often the final product of these permits is a documentary television series or similar project that

may inspire awe and educate the public about marine mammals.

Additionally, NMFS also issues section 104 permits for the import of non-depleted and non-listed marine mammals for the purpose of public display. For example, a public display permit may authorize the import of dolphins from a foreign facility for public exhibition at a U.S. zoo or aquarium. These permits mandate a conservation or education program, as well as provide opportunities for the public to view marine mammals.

Section 104(b) of the MMPA requires that all permits specify “the period during which the permit is valid.” The MMPA does not limit how long section 104 permits or LOCs can be valid. Currently, there are regulatory limitations that prevent section 104 permits and LOCs from being valid longer than 5 years (§§ 216.35 and 216.45, respectively), with the provision for 1-year extensions (§§ 216.39 and 216.45, respectively). This rule removes the 5-year regulatory limitation on the duration of section 104 permits and LOCs. This will allow NMFS to issue section 104 permits and LOCs for longer than 5 years, as appropriate. Each permit will have an expiration date, tailored to the specific activities proposed by the applicant, which will be subject to public comment.

Need for the Action

NMFS has been issuing marine mammal permits under section 104 for almost 50 years, and NMFS' implementing regulations have not been updated since 1996. Having issued MMPA permits since 1972, NMFS has a better understanding of marine mammal research and the effects of that research than when the 5-year restriction was promulgated in 1996. Based on decades of experience with the issuance of these permits and the activities conducted pursuant to them, NMFS believes a change is warranted to allow section 104 permits with durations greater than 5 years, in certain circumstances, as discussed below. As described in our comment responses below, NMFS routinely receives feedback from permit holders about the burden of the permit application process. Seventy-five percent of comments received in support of NMFS' proposed rule referenced the burden of the permit application process.

An important benefit of removing the 5-year restriction on permits is to make the MMPA permitting regulations consistent with those of the ESA. Many permits are issued under both the MMPA and ESA because the target species are marine mammals that are

listed as threatened or endangered, and thus protected under both statutes. Unlike the current MMPA regulations, the ESA section 10 permit regulations do not limit the number of years an ESA section 10(a)(1)(A) scientific research and enhancement permit may be valid (50 CFR part 222). Consistency between the MMPA and ESA permitting regulations with respect to permit duration will allow NMFS to issue joint MMPA–ESA permits with terms of longer than 5 years, if warranted. Since 2017, NMFS has been issuing 10-year ESA permits for scientific research and enhancement on species such as sawfish, sea turtles, and sturgeon, when such duration is warranted. NMFS will now be able to issue longer duration permits, if warranted, involving marine mammals, improving consistency and efficiency.

This rule provides greater flexibility and efficiency to permit and LOC applicants and the agency. Removing the limit on section 104 permit durations decreases how often researchers need to apply for a permit, thus decreasing the amount of time and effort required in reapplying to continue their research. As shown below, decades of permit data show that researchers tend to apply for multiple permits throughout their career. Lengthening permit duration where appropriate promotes efficiency and lessens the burden on our permit holders, while still providing the protections for marine mammals mandated by the MMPA.

As noted above, most section 104 permits are permits for scientific research, which results in data that informs management and conservation of marine mammal species. Rigorous studies of these long-lived species often require years, even decades, of data collection. Sixty percent of the current scientific research permit holders have had a permit for 20 or more years, meaning four or more permit cycles. Seventeen permit holders have held a permit for more than 40 years. Many researchers have dedicated their careers to conducting longitudinal studies. For example, one research group has been studying the population dynamics of Weddell seals (*Leptonychotes weddellii*) since 1968, while another scientist has been studying dolphins in Florida for over 50 years. NMFS science centers have held MMPA research permits since the enactment of the MMPA and continue to hold 13 permits today. The MMPA requires NMFS to conduct research to assess marine mammal populations, which typically requires scientific research permits. NMFS is also required to compile abundance and

distribution data on marine mammals and publish the findings as Stock Assessment Reports. These long-term research efforts, some of which are mandated by the MMPA, are examples of ongoing projects where a longer duration permit may be warranted.

Another example of a permit that may merit a longer time period is for permanently captive marine mammals maintained for the duration of their lives in academic facilities, zoos, and aquariums for research or enhancement purposes. Under this change in regulations, these permit holders might request a permit for longer than 5 years, and the agency may, in certain circumstances, depending on the specifics of the research or enhancement, issue a permit for a longer term. However, if an applicant proposes activities that are considered novel or are likely to be controversial, a shorter permit duration may be warranted.

The need for long-term research activities is expected to continue into the foreseeable future and permits or LOCs of longer than 5 years in duration may be appropriate in some instances. Regardless of the requested duration of research, all applications for permits or LOCs will include a proposed duration as well as a justification for this duration. All permits and LOCs issued will have definitive expiration dates.

Because NMFS has been issuing permits for decades, the effects of specific permitted activities on marine mammals, including particular research techniques, are well known and documented. Most research methodologies have become standardized over time. Permit holders tend to request and use the same techniques year after year because they are effective and create continuity across their long-term data sets. As a result, the impacts of their activities conducted under consecutive permits are often expected to be the same or similar. Historically, these section 104 permits have not raised significant public concern, as described below.

As required by statute, NMFS gives the public the opportunity to comment on all scientific research, enhancement, photography, and public display permit applications it processes, via notice in the **Federal Register**. Although NMFS receives infrequent input from the public, the agency takes all substantive public comments into consideration when making a decision on whether to grant a requested permit. All applications are evaluated to ensure the proposed activities are humane and that other required issuance criteria are met (see Implementation and Oversight section).

Comments and Responses

On May 2, 2024, NMFS published a proposed rule in the **Federal Register** and requested comments from the public (89 FR 35769). On May 3, 2024, NMFS received a request for a 60-day extension of the public comment period from the Animal Welfare Institute (AWI). On June 3, 2024, NMFS announced a 15-day extension of the public comment period (89 FR 47508). During the 45 days of public comment, NMFS received 23 comment submissions, including comments from the Marine Mammal Commission (MMC), state, academic, and non-profit researchers, non-governmental organizations, and private citizens. All comments can be found at: <https://www.regulations.gov/document/NOAA-NMFS-2024-0054-0001>.

Twenty of the comments received expressed support for NMFS' proposed action. Commenters stated that the proposed change is positive and will improve efficiency in the permitting process. The majority of commenters said that the changes will decrease the burden on researchers, who must take time away from their research to reapply for a permit every 5 years. Some commenters, including permit holders with long-term experience applying for permits, used words such as “cumbersome” when describing the permit application process. Multiple researchers stated that the permit application process interferes with their ability to conduct field research or to apply for the grants that fund their research. One researcher said that allowing longer duration permits will save their program many weeks or months of time.

Multiple letters included comments on the expertise of the NMFS staff who review and process section 104 permits and LOCs, including several mentions of a thorough and organized application review process. Commenters expressed confidence in NMFS' ability to make decisions about the appropriateness of a particular permit duration, saying that NMFS staff have the necessary experience and perspective to do so. Multiple comments stated that annual reports will continue to hold permit holders accountable and be a useful tool to track compliance and indicate if any changes are needed.

Three commenters discussed the potential benefits of the proposed rule changes for permanently captive marine mammals held under scientific research or enhancement permits. These commenters mentioned that the current 5-year permit limit is a “regulatory burden” that does not comport with the

potential lifespan of marine mammals. The Alliance for Marine Mammal Parks and Aquariums (AMMPA) recommended that NMFS consider a permit duration that lasts for the life of permanently captive animals and pointed out that the facilities conducting captive research or enhancement activities on non-releasable marine mammals have agreed to cover potentially long-term, expensive medical care for the animals. The AMMPA and Association of Zoos and Aquariums supported NMFS' effort for increased consistency between MMPA and ESA permits, but the AMMPA cautioned against assigning arbitrary time limits to permit durations.

A comment submitted jointly from the Natural Science Collections Alliance and the Society for the Preservation of Natural History represents another type of permit holder, those curating scientific collections of marine mammal specimens. Their letter points out that, currently, natural history collections must re-apply every 5 years for a new permit to import, export, or receive parts even though, typically, there are no changes to research techniques, impacts to live animals, or activities that could negatively affect wild populations. The comment states that a longer permit duration could "support the longstanding role of collections as stable repositories and save scientific and administrative effort both for museum collections staff and for NOAA, without negatively impacting the important function that these permits serve in marine mammal protection."

Four commenters stated they support changing the MMPA permit durations to be in alignment with the ESA permit durations. As noted above, marine mammals listed under the ESA may also require permitting under ESA section 10(a)(1)(A) for scientific research or enhancement activities. The ESA and its applicable regulations do not limit the duration of such permits.

The MMC comment letter expressed general support of NMFS' proposed action but provided several comments about the implementation of the rule, which are addressed below.

Three comment letters explicitly disagreed with NMFS' proposal to remove the duration limit on section 104 permits and LOCs. Two of these comments did not contain substantive information and expressed general opposition to NMFS' proposed rule. The third comment letter, from AWI, contained substantive comments; summaries of the MMC and AWI's comments and NMFS' responses are provided below.

Comment 1: The MMC recommended that NMFS develop and consistently apply objective criteria for determining whether a longer duration permit or LOC is "justified and appropriate" and clearly communicate those criteria to permit holders and applicants. The MMC commented that clear criteria specifying when permit holders are eligible for a longer duration permit will (1) ensure consistency in duration determinations, (2) allow researchers to know whether their experience and proposed methods meet the criteria for a longer duration, and (3) improve reviewers' ability to assess whether a longer duration is warranted.

Response 1: As stated in the preamble to the proposed rule, in addition to consideration of the permit issuance criteria at § 216.34, NMFS will also consider whether the applicant has previously held a permit, and if so, whether they have successfully achieved their objectives. If an applicant proposes activities that are considered novel or are likely to be controversial, a shorter permit duration may be warranted. Regardless of the requested duration, every application for a permit or LOC will be required to include justification for the requested duration. NMFS will update the permit and LOC application instructions to include this requirement. NMFS will take into consideration the requested duration of the permit when determining if the applicant has met the applicable statutory and regulatory issuance criteria and restrictions (see Implementation and Oversight section). NMFS will further consider all comments received on a proposed permit application, including the proposed duration, prior to making a decision about permit issuance (except LOCs, which do not require a public comment period).

Comment 2: The MMC recommended that before this rule is finalized, NMFS should prioritize finalizing its draft of standard methods for marine mammal research (in the context of scientific research permits). The MMC also requested that NMFS provide the MMC with a timeline for when the standard methods will be available for review.

Response 2: At this time, NMFS has prioritized finalizing this rule because a proposed rule has already been published. There is greater potential for permitting efficiencies from finalizing this rule than halting the rulemaking to pursue standard methods. The standard methods framework is in a preliminary drafting phase and is not yet ready for public review and comment. While NMFS will continue to develop standard methods, the standard

methods initiative is not linked to the implementation of permit duration regulation changes. NMFS will keep the MMC, marine mammal researchers (*i.e.*, permit holders), and the public apprised of the status of the marine mammal standard methods.

Comment 3: The MMC emphasized that an accurate and complete application is essential for reviewers to determine whether the proposed duration is appropriate and justified. The MMC recommended that prior to publication of any application in the **Federal Register**, NMFS staff review each application in light of the applicable application instructions to ensure that all required information has been included, is consistent with NMFS's policies, and has been reviewed and deemed sufficient by relevant internal experts.

Response 3: NMFS reviews applications to ensure they meet the requirements of our application instructions, derived from the regulations for section 104 permit applications at 50 CFR 216.33 and the issuance criteria at § 216.34. NMFS' process follows a protocol whereby, prior to sending an application to the MMC, external reviewers, or the public, NMFS conducts a comprehensive review involving our relevant internal experts. This process will remain the same when reviewing applications for longer duration permits.

Comment 4: In anticipation of future changes to NMFS' acoustic thresholds for marine mammals, the MMC recommended that NMFS include a general condition in all permits or permit amendments involving active acoustics requiring permit holders to base their estimation of Level A and B harassment zones on NMFS's current thresholds at the time field work occurs rather than the thresholds in place when the permit was issued. More broadly, the MMC recommended that NMFS develop a plan to ensure that all future changes affecting research activities are communicated to longer duration permit holders and incorporated as permit conditions or through permit modifications. The MMC also recommended that NMFS should consider establishing new general conditions for all longer duration permits to address this issue and adopt outreach strategies to inform permit holders whenever relevant changes occur.

Response 4: As any changes to NMFS' acoustic thresholds have not been finalized, NMFS cannot speak to how any such changes to research permits would be implemented. Changes, such as new conditions, will be applicable to

all section 104 permits authorizing active acoustics, regardless of their duration.

NMFS already has mechanisms in place, such as permit contact emails, our online application system, and web pages, to disseminate relevant information to permit holders. Through NMFS' experience issuing permits for greater than 5 years for non-mammal ESA species, NMFS has found that the mechanisms currently in place are sufficient to manage longer duration permits and communicate necessary changes or updates to permit holders. NMFS will continue these efforts and consider additional outreach strategies for longer permits if the need arises.

Comment 5: AWI disagreed with the assertion that NMFS' prior experience issuing section 104 permits and LOCs justifies allowing permit durations of greater than 5 years.

Response 5: Because NMFS has been issuing section 104 permits and LOCs for decades, the effects of specific permitted activities on marine mammals, including particular research techniques, are well known and documented in the record. This allows NMFS to meaningfully assess whether a permit application, regardless of the applicant's requested duration, meets the necessary issuance criteria under the MMPA, and whether the requested duration is appropriate for the activity proposed. This record is coupled with NMFS' experience in issuing approximately 45 permits for greater than 5 years for non-mammal ESA-listed species since 2017. This history of ESA permit issuance for durations greater than 5 years demonstrates NMFS' ability to manage issuance and oversight of longer term permits. NMFS' review of incident and annual reports and use of adaptive management, for example through permit amendments, has ensured appropriate mitigation is incorporated into permits as warranted (see *Agency Oversight* section below).

Comment 6: AWI does not view reapplying for permits every 5 years, even for established research projects, to be overly burdensome for permit holders or the agency.

Response 6: As stated in the preamble to the proposed rule, the Paperwork Reduction Act (PRA) estimated number of burden hours to complete a scientific research permit application is 50 hours, with an estimated average hourly rate of \$32.58. Thus, an applicant for a scientific research permit will spend approximately \$3,258 and 100 hours to apply for two consecutive 5-year research permits. By removing the duration limit for section 104 permits, the number of burden hours and costs

to apply for a scientific research permit could be reduced, for example, to approximately \$1,629 and 50 hours for a 10-year permit, if a permit of such duration were to be deemed appropriate. Additionally, 15 comments received on the proposed rule, including from permit holders experienced with the application process, referenced the significant burden of applying for section 104 permits and LOCs. This is further reinforced by feedback received by NMFS during the course of permit processing as well as through the PRA process.

The applications submitted by recurrent researchers every 5 years also creates a burden for the agency. Processing a section 104 permit takes approximately 6 months. NMFS processed an average of 40 section 104 permits and LOCs annually over the last 5 years. As NMFS has found with the issuance of longer duration ESA section 10(a)(1)(A) permits, processing fewer permits annually allows additional focus on conservation and recovery, including compiling and summarizing information from permit annual reports for use by ESA section 7 biologists, ESA recovery coordinators, and managers.

Comment 7: AWI commented that the 5-year duration limit was established with a precautionary principle in mind, and with a primary goal of protecting marine mammal populations, which can decline precipitously without scientific detection.

Response 7: The 1993 proposed rule stated that periodic review is needed and that there should not be indefinite permits for captive marine mammals. As AWI stated later in their letter, the goal of the MMPA is to protect marine mammals such that they can be maintained at optimum sustainable population (OSP). To determine if a population is at OSP and detect potentially precipitous declines, NMFS must periodically assess the status of the population, which is typically achieved through long-term population monitoring under research permits or LOCs. Permits with durations of longer than 5 years may facilitate this long-term population monitoring research and inform management decisions to achieve healthy marine mammal populations.

The issuance of permits for longer than 5 years does not negate the ability to take a precautionary approach to permitting scientific research. Because NMFS has been issuing section 104 permits and LOCs for decades, the effects of specific permitted activities on marine mammals, including particular research techniques, are well known

and documented in the record. The effects of permitted marine mammal research are continually monitored by NMFS through management mechanisms built into the permit process, such as submission of annual reports and incident reports, which are available to the public through the Freedom of Information Act (FOIA). If, for example, there were sudden declines in marine mammal populations, NMFS retains the ability to modify permits to add conditions or otherwise amend a permit, as well as suspend or revoke permits. These actions can be taken at any time during a permit's duration.

Comment 8: AWI commented that a 5-year permit duration allows timely oversight of permit applicants who may be acting in bad faith, who violate permit conditions, or who provide misinformation on permit applications. AWI believes that all permit holders should be monitored closely and be required to reapply for permits on a reasonable schedule, where permit holders must clarify discrepancies between permit conditions and actual outcomes. AWI also commented that annual reports, which are not published in the **Federal Register** and require public initiative to review, are insufficient to ensure adequate transparency. If NMFS proceeds with the proposed rule, AWI commented that it will likely become more difficult for NMFS to meaningfully assess whether applicants are applying in good faith and ensure that the criteria continue to be satisfied throughout the duration of the permit.

Response 8: NMFS will make its determination on permit issuance based on whether an application includes all of the required information and meets NMFS' issuance criteria for conducting activities over the proposed duration of the permit. If a permit applicant requests a permit duration longer than 5 years, NMFS will determine if the applicant has demonstrated they meet all of the issuance requirements for that proposed duration. Once a permit is issued, permit noncompliance constitutes a violation and is grounds for permit modification, suspension, or revocation, and for enforcement action. All instances of permit noncompliance are required to be reported to our office, which allows NMFS' to continually track permit compliance. NMFS reviews annual and incident reports to ensure compliance with the permit as issued. Additionally, reports from cooperating Federal partners may be used to evaluate permit compliance. For example, in the case of permitted captive research and enhancement, NMFS requires facilities to be compliant

with the Animal Welfare Act and its regulations. Thus, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service's reports may be evaluated to assess permit compliance.

The frequency of reporting (*e.g.*, annually) and the types of reports required will not change regardless of permit duration. AWI did not provide evidence to support the statement that annual reports are insufficient to ensure transparency; however, as stated above in *Response 5*, since 2017, NMFS has issued approximately 45 permits with durations greater than 5 years for non-mammal ESA-listed species. This demonstrates NMFS' ability to manage issuance of longer-term permits. NMFS' review of incident and annual reports and use of adaptive management, for example through permit amendments, has ensured appropriate mitigation is incorporated into permits as warranted (see *Agency Oversight* section below). These reports also allow NMFS to assess if permit holders are making results available to the scientific community in a timely manner, increasing transparency in research and enhancement activities.

Comment 9: AWI is concerned about the agency potentially setting negative regulatory precedent, as NMFS stated in its 1993 proposed rule "an indefinite valid period for a permit authorizing the captive holding of marine mammals is unacceptable for a number of reasons" including the need for public review and comment. The 1993 proposed rule further detailed that periodic review of permits is necessary to ensure permit compliance and address any changing circumstances associated with the captive holding of marine mammals. AWI claimed that it is arbitrary and capricious for the agency to reverse course on its longstanding policy.

Response 9: NMFS is not proposing indefinite periods for permits. As NMFS stated in the 2024 proposed rule, "each permit would have an expiration date, tailored to the specific activities proposed by the applicant, which would be subject to public comment. . . . Regardless of the requested duration of research, every application for a permit or authorization would include justification for the requested duration and all permits and authorizations issued would have expiration dates." MMPA section 104 (a)(2)(C) requires that permits specify "the period during which the permit is valid," and 50 CFR 216.33(d) requires that an application provides "the requested period of the permit," which will include a specified expiration date.

NMFS considers the process of evaluating permit compliance to be continuous, beginning with assessing the standing of an applicant when a permit application is submitted and continuing through processing of annual reports and incident reports when submitted. Since the 1993 proposed rule, NMFS has taken a more systematic approach to reporting, ensuring all applicants are required to provide answers to certain key questions. Permit holders can now submit annual reports online, making the process easier for them and also making it easier for NMFS to track timeliness of required reports. NMFS monitors active permits via reports to make sure permit holders are in compliance with permit terms and conditions and that the effects of the permitted activities are consistent with those described in NMFS' analysis conducted for permit issuance. In addition to annual reports, permit holders are required to contact NMFS and submit incident reports within 2 weeks if serious injury or mortality of protected species occurs (if not authorized) or reaches that specified in the permit; or, if authorized take is exceeded in any of the following ways: more animals are taken than allowed in the permit; animals are taken in a manner not authorized by this permit; or protected species other than those authorized by a permit are taken. In such cases, permit holders must stop permitted activities and request permission from NMFS to resume. Both annual reports and incident reports are available to the public through FOIA.

As to AWI's concerns about periodic public review, the public will continue to have an opportunity to comment on section 104 permit applications when a Notice of Receipt is published in the **Federal Register**. The public is notified of permit issuance via the **Federal Register** as well. Once a permit is issued, the reports submitted by permit holders are available to the public through FOIA. In addition to public review and comments when an application is in progress, the following will still constitute a major amendment according to 50 CFR 216.39(a)(1) and will be subject to the public comment process: any changes to (1) number and species of marine mammals; (2) the manner of taking, import, or export if it may result in an increased level of take or risk of adverse impact; (3) the location; and (4) the duration, if extending a permit for more than 12 months.

Comment 10: AWI commented that captures from the wild or import for public display are not always conducted immediately after the permit is issued,

in some cases not for years after a permit has been issued. AWI commented that a duration of 5 years is most appropriate, as conditions in the wild and at a captive facility may change in that time period. AWI believes a new permit application and review are the most precautionary way to account for any such changes.

Response 10: NMFS has not issued a permit for the direct capture of marine mammals from the wild for public display since 1988. Across 15 import permits for public display since 2010, the average time to import was 2.7 years. Some permit holders cannot conduct their requested activity in any given year for various reasons (*e.g.*, pandemic, logistics, funding). Authorized activities can only be conducted during the term of validity of a permit, which means the necessary analyses are conducted to meet the required issuance criteria for the requested time period. If, during the term of permit validity, circumstances change such that NMFS decides that action is warranted (*e.g.*, if there is a sharp decline in the abundance of a population of wild marine mammals, or if a facility is no longer in compliance with the Animal Welfare Act), NMFS retains the ability to modify permits to add conditions or otherwise amend a permit, as well as suspend or revoke permits. Further, as described above in *Response 9*, the following will still constitute a major amendment according to 50 CFR 216.39(a)(1) and will be subject to the public comment process: any changes to (1) number and species of marine mammals; (2) the manner of taking, import, or export if it may result in an increased level of take or risk of adverse impact; (3) the location; and (4) the duration, if extending a permit for more than 12 months. As NMFS stated in our proposed rule (89 FR 35769, May 2, 2024), "each permit would have an expiration date, tailored to the specific activities proposed by the applicant, which would be subject to public comment." NMFS would consider public comments on the proposed duration prior to issuing any permit, including permits for public display.

Comment 11: AWI questioned why NMFS is proposing to change the duration of all section 104 permits and LOCs when 93 percent of NMFS' current permits are scientific research permits. The other types of permits tend to be for singular or discrete activities, and a 5 year-duration limitation is more appropriate.

Response 11: Removing the 5-year limitation on permit durations does not mean that all permits will be issued for

more than 5 years. Regardless of the requested duration, every application for a permit or LOC will be required to include justification for the requested duration. NMFS will update the permit and LOC application instructions to include this requirement. NMFS will take into consideration the requested duration of the permit when determining if the applicant has met the applicable statutory and regulatory issuance criteria and restrictions (see Implementation and Oversight section). NMFS will further consider all comments received on a proposed permit application, including the proposed duration, prior to a decision about permit issuance (except the LOCs, which do not require a public comment period).

Comment 12: AWI commented that the proposed rule leaves too much to the discretion of the agency, stating that the duration of a permit should not be left to the discretion of individuals who may not know the history of a permit applicant.

Response 12: Over the years, NMFS has created numerous internal resources to make the processing of permits and LOCs as objective as possible, as well as maintained the Federal records, which allow all analysts to access relevant past permit information. All issued permits are required to have a clear expiration date. Regardless of the requested duration, every application for a permit or LOC will be required to include justification for the requested duration. NMFS will update the permit and LOC application instructions to include this requirement. NMFS will consider all comments received on a proposed permit application including the proposed duration, prior to a decision about permit issuance (except LOCs, which do not require a public comment period). The duration will be proposed by the applicant, reviewed by NMFS, and provided to the public and expert reviewers for their review; it is not at the discretion of individual analysts but rather the product of a series of rigorous reviews and analyses to determine if the applicant has demonstrated they meet the applicable statutory and regulatory issuance criteria and restrictions for the duration proposed. NMFS' *Response 1* above provides additional detail about the criteria that may be considered when evaluating an application's requested duration in addition to the applicant's justification. Additionally, analysts review the annual and incident reports of the most recent prior permit held by an applicant. Collectively, this information provides a history of the applicant for analysts, regardless of their tenure within the agency. The annual

and incident reports are also available to the public through FOIA, which provides additional opportunity for public review of permitted and reported activities.

Comment 13: AWI stated that with a 5-year permit duration, the disposition of captive animals can be reassessed in a transparent manner within a time frame relevant to the lifespan of the species. AWI further stated that extending a permit ad infinitum could be used as a "cover" for public display of animals imported for research and/or improper post-research disposition of animals, and that a 5-year permit duration allows the issue to be periodically reviewed by the public and the scientific community.

Response 13: As stated in *Response 1* above, if an applicant proposes activities that are considered novel or are likely to be controversial, which captive marine mammal permits can be, a shorter permit duration may be warranted. As stated in *Response 9*, NMFS is not proposing indefinite periods for any permits. As NMFS stated in the proposed rule, "each permit would have an expiration date, tailored to the specific activities proposed by the applicant, which would be subject to public comment Regardless of the requested duration of the proposed activity, every application for a permit or authorization would include justification for the requested duration and all permits and authorizations issued would have expiration dates." MMPA section 104(a)(2)(C) requires that permits specify "the period during which the permit is valid," and 50 CFR 216.33(d) requires that an application provides "the requested period of the permit," which will include a specified expiration date. Further, as stated in *Response 11*, NMFS will take into consideration the requested duration of the permit when determining if the applicant has met the applicable statutory and regulatory issuance criteria and restrictions (see Implementation and Oversight section). NMFS will further consider all comments received on a proposed permit application, including the proposed duration, prior to a decision about permit issuance.

Comment 14: AWI commented that NMFS should periodically examine whether scientific research conducted under a research permit remains bona fide. NMFS shouldn't assume that all longitudinal studies are bona fide. Long-term research projects have the potential to become duplicative or to produce results that are no longer likely to be

accepted for publication in a refereed scientific journal.

Response 14: NMFS does not assume longitudinal studies are bona fide. Bona fide scientific research is defined at 50 CFR 216.3 as research on marine mammals by qualified personnel, the results of which are likely to be accepted for publication in a scientific journal, are likely to contribute to basic knowledge of marine mammal biology or ecology, or are likely to identify, evaluate, or resolve conservation problems. Bona fide determinations are supported by a number of factors, including but not limited to: (1) a permit applicant's previously published research and history as a permitted researcher; (2) whether the proposed research is appropriately designed to meet the objectives; (3) whether the results of the proposed research are likely to qualify for publication; and (4) whether the proposed research will contribute to our knowledge of the species, or address conservation problems over a given time period. Evaluation of annual reports informs NMFS if the research conducted under the permit remains bona fide. Annual reports allow NMFS to assess if permit holders are making results available to the scientific community in a timely manner, such as journal publications and presentations. NMFS' application instructions ask researchers to describe how their study is different from, builds upon, or duplicates past research. Duplicative research may be warranted, for example, when validating previous study results. Applicants are required to describe how they coordinate with other researchers to effectively manage research efforts and any potential impacts to the marine mammals in the area.

Comment 15: AWI provided a hypothetical scenario in which a zoo bred a non-releasable animal that was precluded from breeding, resulting in a permit violation. AWI commented that requiring the permit holder to reapply for a new permit after 5 years will ensure the permit holder offers a justification—which will be assessed by the agency and outside reviewers, including outside scientists and members of the public—for the violation.

Response 15: Permit holders are required to report all instances of permit noncompliance, as part of NMFS' continual evaluation of permit compliance. Permit holders are required to contact NMFS and submit incident reports within 2 weeks if serious injury or mortality of protected species occurs (if not authorized) or reaches that specified in the permit; or, if authorized

take is exceeded in any of the following ways: more animals are taken than allowed in the permit; animals are taken in a manner not authorized by this permit; or protected species other than those authorized by a permit are taken. In such cases, permit holders must stop permitted activities, describe the incident and any future mitigation measures to prevent the incident from happening again, and request permission from NMFS to resume. NMFS can take action including modifying, suspending, or revoking the permit. In addition, the annual report requires permit holders to discuss any incidents, problems, or unexpected effects of their activities.

Comment 16: AWI commented that most photography permits are issued for singular or discrete actions so no need seems to exist for altering the current regulations to allow permits greater than 5 years in duration. AWI commented that if a permit holder for photography is unable to complete a permitted action before the 5-year permit duration expires, it is appropriate for the permit holder to reapply for a permit, as circumstances outlined in the original permit application may have changed.

Response 16: Most photography permits are for periods of less than 5 years, but there are instances where a project of greater than 5 years could be requested and justified. Whether a permit is ultimately issued for longer than 5 years will depend on the permit application, including the requested duration, and whether the applicant is able to meet the required issuance criteria for the proposed action. Removing the 5-year restriction does not prohibit NMFS from issuing permits for less than 5 years.

Comment 17: AWI commented that if the process for applying for an LOC is already streamlined, it does not seem justifiable to remove the 5-year duration limitation as well.

Response 17: The statute does not prohibit NMFS from implementing additional streamlining measures, provided the relevant issuance criteria are met. See also *Response 16* above.

Comment 18: AWI commented that they see no reason for consistency between the MMPA and ESA with regard to permit duration as they are different statutes with different standards and different goals. They commented that the MMPA seeks to maintain species at an ecologically relevant level, while the ESA seeks to recover species that have already declined to a dangerously low level. AWI commented that the existing regulations as described in NMFS's final rule on 50 CFR parts 216 (MMPA) and

222 (ESA) (61 FR 21926, May 10, 1996) are already consistent for marine mammals. Given the different purposes of the MMPA and the ESA, AWI does not believe further consistency is needed.

Response 18: NMFS issues permits jointly under both statutes in the cases of marine mammals that are listed as endangered or threatened. Both statutes provide for the issuance of permits for the purposes of scientific research and enhancement; neither the ESA nor the agency's implementing regulations limit the duration of those permits, even though they focus exclusively on species that are endangered or threatened and thus require heightened protection. Since 2017, NMFS has issued permits for scientific research of non-marine mammal ESA-listed species (e.g., sea turtles, sturgeon) for durations greater than 5 years.

Comment 19: AWI commented that both the individual and cumulative effects of climate change—and the difficulty researchers face in monitoring marine mammals, which Congress explicitly recognized in the MMPA—mean that takes such as those authorized by section 104 should be reconsidered regularly enough for NMFS to recognize and respond to problematic trends in marine mammal populations.

Response 19: NMFS acknowledges that climate change may have unanticipated effects on marine mammals and that long-term research is required to assess the effects to marine mammal populations (Gulland *et al.*, 2022; Orgeret *et al.*, 2021; Sanderson & Alexander, 2020). The ability to issue permits for longer than 5 years does not negate NMFS' ability to monitor the effects of the permitted activity and take action as warranted. As stated in *Response 7*, the effects of permitted marine mammal research are continually monitored by NMFS through management mechanisms built into the permit process, such as submission of annual reports and incident reports, which are available to the public through FOIA.

If, for example, there are climate-driven changes to marine mammal populations that cause concern, NMFS retains the ability to modify permits to add conditions or otherwise amend a permit, as well as suspend or revoke permits. These actions can be taken at any time during a permit's duration.

Comment 20: AWI commented that if the agency does away with mandatory time limits for section 104 permits, those seeking to exploit marine mammals in other ways may push for adjustments to duration requirements

for other types of permits. AWI also commented that even for purposes of national defense, a 7-year consecutive time limit cannot be exceeded when it comes to the permitted take of marine mammals, as outlined in MMPA section 101(a)(5).

Response 20: As noted above, NMFS is not “doing away” with time limits on permits. Every permit will have an expiration date. Furthermore, section 104 is a distinct section of the MMPA with its own requirements, which do not include a specific maximum duration. As noted above, section 104(a)(2)(C) requires only that permits specify “the period during which the permit is valid;” the statute does not specify a limit to permit duration for permits and LOCs issued under section 104.

Incidental take authorizations under MMPA section 101(a)(5) (16 U.S.C. 1371(a)(5)), as cited by AWI, are distinct from section 104 permits, and contain a duration limit explicitly imposed by the statute. In fact, the plain language of the MMPA demonstrates that where Congress intended there to be a defined period, it explicitly provided one (e.g., MMPA sections 101(a)(5)(A) and (D)). These types of authorizations are not a part of this rulemaking. The 5-year limitation on section 104 permits, by contrast, was established by NMFS 30 years ago via a rulemaking process. For the reasons provided in this final rule, the blanket 5-year limit is no longer an effective or efficient method of managing section 104 permits and LOCs.

Implementation and Oversight

Once this rule becomes effective, NMFS will begin accepting new applications for permits and LOCs that may propose durations of longer than 5 years. Requiring new permit applications, rather than amendment requests, will allow the public to review the entirety of the proposed activity. This will also allow the agency to manage its workload and continue processing new permit applications as anticipated based on current permit expirations.

Information Required in Applications

Applications for section 104 permits and LOCs will be evaluated and processed in the same manner as they are now in accordance with 50 CFR part 216. Applicants will still have to follow the Office of Management and Budget (OMB)-approved permit and LOC application instructions and include their proposed start and end dates, as well as a description of the frequency and seasonality of their proposed

activities in their application. Currently, applicants for section 104 permits and LOCs can request a time period of 5 years or less. Under the changed regulations, applicants may request a permit duration longer than 5 years, which may be more appropriately aligned with a project's goals rather than an arbitrary 5-year duration. Regardless of the requested duration, every application for a permit or LOC will be required to include justification for the requested duration. NMFS will update the permit and LOC application instructions to include this requirement.

Opportunity for Public Comment

This regulatory change will not remove the public's opportunity to comment on permit applications and any major permit amendments. NMFS will continue to publish notices in the **Federal Register** for a 30-day public comment period when complete permit applications and requests for major amendments are received consistent with statutory and regulatory requirements (16 U.S.C. 1374(d) and 50 CFR 216.33(d), respectively). These notices provide the public an opportunity to comment on the proposed permit duration for each application. NMFS will also continue to solicit comments from the MMC consistent with § 216.33(d)(2), and other relevant Federal and State agencies in accordance with § 216.33(d)(3), typically concurrent with the public comment period. NMFS will continue to consider all public and expert comments on a proposed permit application, including the proposed duration, prior to permit issuance. LOCs do not currently require a public comment period and that will not change.

When this final rule becomes effective, NMFS will begin implementing the duration changes upon the receipt of new permit and LOC applications. Applicants must provide a justification for the proposed duration when they apply for a new permit or LOC. This process will ensure that the public is able to review and comment on permit applications with durations longer than 5 years. Currently active permits with durations of 5 years or less will not automatically be changed to longer durations; we will not be amending those permits to extend their duration other than issuance of minor amendments for extensions of 12 months or less if justified (*e.g.*, to allow activities to continue uninterrupted prior to obtaining a new permit). As stated above, we will consider permit durations of more than 5 years in new permit applications. See *Amendments*

to Extend the Permit or LOC Duration below for additional information.

Permit Issuance

Issuing a longer term permit will require that the duration as proposed in a permit or LOC application is justified and appropriate for the applicant's project and objectives, is supported by the applicant's history with previous MMPA permits, has undergone public comment (except for LOCs, which do not require public comment), and meets all statutory and regulatory issuance criteria. All permits and LOCs issued will have expiration dates printed on the permit documentation. Despite removing the 5-year regulatory maximum duration, NMFS expects that there will continue to be projects for which a permit for a term of 5 years or less will be appropriate. For example, permits such as those for commercial or educational photography are issued for discrete projects that take place at specific times, rarely requiring more than a year or two. Similarly, permits for importation of marine mammals for public display are issued for a singular or discrete action, which typically warrant a permit of short duration. Thus, the duration of the permit will be determined based on the specific project proposed and the justified duration of that project.

To obtain a section 104 permit for scientific research or enhancement, applicants must meet certain statutory and regulatory issuance criteria. This includes, among other things, the regulatory issuance criteria at § 216.34, which require applicants to demonstrate, for the time period proposed, that the activity is:

- Humane and with no unnecessary risks;
- Consistent with regulatory restrictions;
- Consistent with the purposes and policies of the ESA (if threatened or endangered species are involved);
- Not likely to have a significant adverse impact on the species or stock;
- Conducted by personnel with expertise and adequate facilities and resources;
- Conducted by personnel with adequate resources for marine mammals held captive or transported; and
- That any requested import or export will not likely result in additional taking.

Additional criteria apply for depleted, threatened, and endangered marine mammals. These criteria will still apply regardless of permit duration.

In addition to the regulatory criteria above, NMFS will also consider whether the applicant has previously held a

permit or LOC, and if so, whether they have successfully carried out the permitted objectives. For example, for research permits, this may include whether the permit holder obtained funding, collected data, and made the results available to the scientific community in a reasonable period. As explained above (see *Need for the Action*), most permits issued under section 104 have not raised substantial public concern, and the impacts of most activities conducted under section 104 permits are well known. If an applicant proposes activities that are considered novel or are likely to be controversial, a shorter permit duration may be warranted.

Agency Oversight

Under the regulation change, permit and LOC holders will still be subject to agency oversight. For example, permit and LOC holders must submit annual reports as required by the regulations at §§ 216.38 and 216.45(d)(2), respectively. This requirement is universal, regardless of how long their permit or LOC is valid. Further, permit holders are required to stop permitted activities and submit incident reports for incidents such as mortalities, exceeding authorized take, and taking protected species that were not authorized. LOC and photography permit holders must temporarily stop authorized research if they exceed Level B harassment. Annual and incident reports allow NMFS to monitor permit and LOC compliance and impacts to protected species and are available to the public. NMFS maintains its authority for permit or LOC modification, suspension, or revocation. For example, NMFS may determine a permit modification is warranted to add permit conditions in response to information provided in annual or incident reports.

The agency will continue to publish in the **Federal Register** notices of receipt of requests for major amendments to increase the number of animals, add species, add methods that will increase adverse impacts, and change locations, for a 30-day public comment period, and notices of issuance of all major amendments and minor amendments extending a permit or LOC up to 1 year.

For any amendment to a permit or LOC, the agency will also reexamine the National Environmental Policy Act analysis based on information provided in the amendment request, taking into consideration information in annual and incident reports and in published literature. Likewise, if ESA-listed species are involved and the action is covered under an ESA section 7

consultation and, for example, a new species is listed or critical habitat is designated, NMFS will review the new information to determine if consultation needs to be reinitiated in accordance with 50 CFR 402.16. If these analyses produce new information that warrants a change to a permit or permits, NMFS retains the ability to amend permits to add conditions, such as mitigation measures to minimize impacts to protected species, as described in § 216.36(b).

Amendments To Extend the Permit or LOC Duration

As mentioned above (see *Opportunity for Public Comment*) and consistent with current practice, permit and LOC holders may request a minor amendment to extend the duration of their permit up to 1 year, if justified. The regulations at 50 CFR 216.39 state that a major amendment may include an extension of a permit beyond 12 months; however, NMFS typically issues extensions for 12 months or less.

Classification

Pursuant to the procedures established to implement E.O. 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Permit and LOC applicants including individuals, academic institutions, business or other for-profit organizations, not-for-profit institutions, and government organizations are the only entities that are subject to the requirements in these regulations. The number of small governmental jurisdictions, small organizations, or small businesses affected is approximately less than 150 entities total, and less than 35 applicants annually (some of which submit multiple applications). The change in duration of permits will not affect the cost to these small entities, as it will require the same amount of time and resources to apply for a 5-year permit as it will to apply for a permit of a longer duration. Overall, this rule may reduce the costs to these entities by potentially spending less time applying for permits. For example, the estimated number of burden hours to complete a scientific research permit application is 50 hours, with an estimated average hourly rate of \$32.58. Thus, an

applicant for a scientific research permit will spend approximately \$3,258 and 100 hours to apply for two consecutive 5-year research permits. By removing the duration limit for section 104 permits, the number of burden hours and costs to apply for a scientific research permit could potentially be reduced to approximately \$1,629 and 50 hours for a 10-year permit, if issued. An applicant for an LOC will spend approximately 10 hours and \$325.80 to complete a 5-year LOC application, which if issued for a longer period, will reduce that cost. Because of this, a regulatory flexibility analysis is not required, and none has been prepared.

A person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with an information collection subject to the requirements of the Paperwork Reduction Act (PRA) of 1995 unless the information collection has a currently valid OMB Control Number. This rule contains collection-of-information requirements subject to the provisions of the PRA.¹ No changes to the reporting requirements or to the information collection instrument is required as a result of this regulatory change, other than removing the 5-year duration restriction and requesting justification for an applicant's proposed permit duration.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals.

Dated: December 4, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, NMFS amends 50 CFR part 216 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 216.35, revise paragraph (b) to read as follows:

¹ The information collection is currently approved by OMB under control no. 0648–0084, *Basic Requirements for Special Exception Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under section 104 of the MMPA, the Fur Seal Act, and/or section 10(a)(1)(A) of the Endangered Species Act.*

§ 216.35 Permit restrictions.

* * * * *

(b) Special exception permits expire on the date specified in the permit, unless limited or extended in duration by the Director in accordance with §§ 216.36 and 216.39.

* * * * *

■ 3. In § 216.45, revise paragraphs (b)(2)(iv) and (d)(3) to read as follows:

§ 216.45 General Authorization for Level B harassment for scientific research.

* * * * *

(b) * * *

(2) * * *

(iv) The period of time over which the research project or program will be conducted (*i.e.*, the requested period of the LOC), including the field season(s) for the research, if applicable;

* * * * *

(d) * * *

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of confirmation issued under paragraph (c) of this section, unless limited or extended by the Director, or modified, suspended, or revoked in accordance with paragraph (e) of this section;

* * * * *

[FR Doc. 2024–28931 Filed 12–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231221–0314; RTID 0648–XE527]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer From New Jersey to North Carolina

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of New Jersey is transferring a portion of their 2024 commercial bluefish quota to the State of North Carolina. This quota adjustment is necessary to comply with the Atlantic Bluefish Fishery Management Plan (FMP) quota transfer provisions. This announcement informs the public of the revised 2024 commercial bluefish quotas for New Jersey and North Carolina.

DATES: Effective December 11, 2024 through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Matthew Rigdon, Fishery Management Specialist, (978) 281-9336.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.162, and the final 2024 allocations were published on January 2, 2024 (89 FR 34).

The final rule implementing amendment 1 to the FMP, as published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for transferring bluefish commercial quota from one state to another. Two or

more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can request approval to transfer or combine bluefish commercial quota under § 648.162(e). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: (1) the transfers would not preclude the overall annual quota from being fully harvested; (2) the transfers address an unforeseen variation or contingency in the fishery; and (3) the transfers are consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these criteria have been met for the transfers approved in this notification.

New Jersey is transferring 40,000 pounds (lb) (18,144 kilograms (kg)) to North Carolina through mutual

agreement of the states. This transfer was requested to ensure North Carolina would not exceed its 2024 state quota. The revised bluefish quotas for 2024 are: New Jersey, 108,898 lb (49,395 kg) and North Carolina, 1,170,996 lb (531,155 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 6, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-29141 Filed 12-11-24; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 89, No. 239

Thursday, December 12, 2024

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. FDA-2024-F-5467]

Leprino Nutrition; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Leprino Nutrition, proposing that the food additive regulations be amended to provide for the safe use of ultraviolet light for the reduction of microorganisms in whey products.

DATES: The food additive petition was filed on November 22, 2024.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this 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.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1204.

SUPPLEMENTARY INFORMATION: Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 5M4840), submitted on behalf of Leprino Nutrition by Keller and Heckman LLP, 1001 G St. NW, Suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 179.39 (21 CFR 179.39), "Ultraviolet radiation for the processing and treatment of food," to

provide for the safe use of ultraviolet light for the reduction of microorganisms in whey products.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(j), which applies to an action for substances used as a component of a food-contact surface of permanent or semipermanent equipment or of another food-contact article intended for repeated use. In addition, the petitioner has stated that, to its knowledge, no extraordinary circumstances exist that would warrant an environmental assessment (see 21 CFR 25.21). If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: December 4, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-29248 Filed 12-11-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF JUSTICE

28 CFR Part 25

[Docket No. FBI-158; AG Order No. 6100-2024]

RIN 1110-AA36

Bipartisan Safer Communities Act of 2022 and Consolidated Appropriations Act of 2022—Implementation Revisions for National Instant Criminal Background Check System (NICS)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The United States Department of Justice ("Department") proposes to amend its regulations pertaining to the National Instant Criminal Background Check System ("NICS") of the Federal Bureau of Investigation ("FBI") to implement parts of the Consolidated Appropriations Act, 2022 ("CAA") and the Bipartisan Safer Communities Act ("BSCA") by proposing additional, relevant definitions and procedures to reflect and implement the statutory mandates described above.

DATES: Written comments must be postmarked, and electronic comments must be submitted, on or before February 10, 2025. Commenters should be aware the electronic Federal Docket Management System will not accept comments after 11:59 p.m., Eastern Time, on the last day of the comment period.

ADDRESSES: You may submit comments, identified by RIN 1110-AA36 or Docket No. FBI-158, by either of the following methods:

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

■ **Mail:** Charles Klebe, Assistant General Counsel, Federal Bureau of Investigation, Office of the General Counsel, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0110; ATTN: Docket No. FBI-158.

Instructions: All submissions received must include the agency name and RIN (1110-AA36) or docket number (FBI-158) for this notice of proposed rulemaking. In general, all properly completed comments received will be posted without change to the Federal eRulemaking portal, <https://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jill A. Montgomery, NICS Business and Liaison Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, NICS Section. Telephone: (304) 625-0606 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Comments Sought

The Department welcomes public comments from any interested person on any aspect of the changes proposed in this rule. In particular, and as discussed in more detail in the parts of this preamble that describe specific changes, the Department seeks comments from the public on the proposed amendments to NICS regulations regarding: (1) identifying firearms prohibitions imposed by local

and Tribal governments; (2) providing denial notifications to local law enforcement; (3) conducting enhanced background checks of under-21 transactions; (4) collecting, using, and purging, where applicable, residential address information to comply with the statutory requirements of the CAA and BSCA; and (5) implementing a delay of up to 10 business days for under-21 transactions where NICS has notified the FFLs that additional research is required to determine if the prospective transferees have prohibiting juvenile records as described in 18 U.S.C. 922(d). The Department also seeks comments on a potential attestation process to facilitate interactions with State and local agencies, as described more fully in Section II.D of this preamble. The Department will carefully consider all properly submitted public comments in drafting any final rules.

All comments must reference RIN 1110-AA36 or this document's docket number, FBI-158, and be legible. Please do not submit, under this proposed rule, any comments pertaining to a different rule that may be discussed in limited detail below. After those other proposed rules are published, public comments concerning those proposed rules should be submitted as directed within those rules.

Please note that all comments received are considered part of the public record and may be made available for public inspection online at <https://www.regulations.gov>. Information made available for public inspection may include personal identifying information (such as name, address, etc.) submitted by the commenter.

B. Confidentiality

In general, the Department will make all comments, whether submitted electronically or on paper, available for public viewing on the internet through the Federal eRulemaking Portal. If you do not want your name or other personal identification information posted on the internet as part of your comment, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the Department to redact. Personal identifying information identified and located as set forth above will be placed in the Department's public docket file but not posted online.

If you wish to submit confidential business information as part of your

comment but do not wish it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the Department may choose not to post that comment (or to post only part of the comment) on <https://www.regulations.gov>. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

C. Submitting Comments

Submit comments in either of the following ways (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted.

- **Federal eRulemaking Portal:** The Department recommends that you submit your comments via the Federal eRulemaking portal at <https://www.regulations.gov> and follow the instructions. Please keep the comment tracking number that is provided after you have successfully uploaded your comment.
- **Mail:** Send written comments to the address listed in the **ADDRESSES** section of this document.

II. Background and Purpose

The Brady Handgun Violence Prevention Act of 1993 ("Brady Act"), Public Law 103-159, 107 Stat. 1536, required the Attorney General to establish a national system for FFLs, more specifically, federally licensed manufacturers, dealers, and importers of firearms under 18 U.S.C. 923, to request immediate information as to whether the transfer of a firearm to any given unlicensed person could proceed. To implement that requirement, the Department created NICS and delegated management of NICS to the FBI. See 28 CFR 25.3. NICS is managed by the NICS Section of the FBI's Criminal Justice Information Services ("CJIS") Division.

¹ Examples of prohibitions under 18 U.S.C. 922(g) and (n) include, but are not limited to, having sustained a conviction for, or being under indictment or information for, a "crime punishable by imprisonment for a term exceeding one year" (including State offenses denominated as misdemeanors but punishable by more than 2 years of imprisonment, see 18 U.S.C. 921(a)(20)); being a fugitive from justice; being addicted to or being an unlawful user of a controlled substance; being adjudicated as a mental defective or being committed to a mental institution; being subject to certain protection orders; and having sustained a conviction for a misdemeanor crime of domestic violence.

The NICS Section processed the first NICS background check on November 30, 1998. Background events that prohibited persons from being able, under the Brady Act, to receive a firearm were those specified in 18 U.S.C. 922(g) and (n)¹ and applicable State law(s).²

Since that first NICS background check in 1998, FFLs have initiated NICS background checks by contacting the FBI or a designated "point of contact" ("POC").³ FFLs contacted the FBI by phone or electronically.⁴ FFLs in each State are advised if they are required to contact the FBI's NICS Section or a POC to conduct a background check pursuant to 18 U.S.C. 922(t). See 28 CFR 25.6(a).

Prior to the implementation of BSCA, when an FFL contacted the FBI to initiate a NICS background check, NICS searched three electronic systems—the National Crime Information Center ("NCIC"),⁵ the Interstate Identification Index ("III"),⁶ and the NICS Indices⁷—

² Applicable State law prohibitions are those imposed by the State where the prospective transfer is occurring and the State where the transferee resides (if the State of residence is different than the State of transfer). Additionally, other State laws may be relevant to determining if a Federal firearms prohibition (under 18 U.S.C. 922(d), (g), or (n), as applicable) applies to the prospective transferee. Suppose, for instance, a resident of South Dakota is attempting to receive a rifle or shotgun ("long gun") from an FFL in Iowa. That prospective transferee, however, has a prior felony-level conviction from a State court in Washington. The State laws of South Dakota, Iowa, and Washington would all be considered during that transaction to assess that person's ability to receive a firearm under State and Federal law.

³ A POC is "a state or local law enforcement agency serving as an intermediary between an FFL and the federal databases checked by the NICS." 28 CFR 25.2. POCs are agencies with express or implied authority to perform POC duties pursuant to State law. *Id.*

⁴ The FBI's NICS electronic check system, known as E-Check, began in 2002. FBI, *NICS E-Check*, <https://www.fbi.gov/video-repository/nics-e-check.mp4/view> (last visited Oct. 4, 2024).

⁵ NCIC is searched for records such as active warrants and protection orders. See, e.g., FBI, *National Instant Criminal Background Check System Posts NICS Index Data* (Mar. 18, 2016), <https://www.fbi.gov/news/press-releases/national-instant-criminal-background-check-system-posts-nics-index-data> ("NICS Data").

⁶ III is part of the FBI's Next Generation Identification system and is used to search for available Federal, State, local, and Tribal criminal history records such as arrests, charges, or case dispositions. See *NICS Data*, *supra*; see also Privacy Act of 1974; System of Records, 84 FR 54182, 54184 (Oct. 9, 2019).

⁷ The NICS Index consists of entries from Federal, State, local, and Tribal agencies of persons who are prohibited from receiving or possessing firearms under Federal or State law. See 28 CFR 25.2. When referencing the NICS Index, the remainder of this rule will refer to the "NICS Indices" as it is more commonly known today among NICS users. The changes made by this rule include updates to the FBI's regulations to use the term "NICS Indices" rather than "NICS Index." The Department is also

Continued

for the existence of a relevant record demonstrating that the individual is prohibited from receiving or possessing firearms under Federal or applicable State law(s). FFLs provided NICS the prospective transferee's name, sex, race, complete date of birth, State of residence, height, weight, eye and hair color, place of birth, and, if provided, any unique identification number(s) such as a Social Security number or military number. *See* 28 CFR 25.7. It has typically taken NICS a matter of seconds to collect the prospective transferee's identifying information and identify matching or potentially matching records in NCIC, III, or the NICS Indices.

If the search of those three systems resulted in no matching (*i.e.*, disqualifying) record, a "Proceed" response was provided to the FFL. If the search of those three systems resulted in at least one record demonstrating that the individual was prohibited from receiving a firearm, a "Denied" response was provided to the FFL. For those transactions in which the NICS Section could not provide a definitive response of either "Proceed" or "Denied" because additional research of a possible Federal or State disqualification was required, the transaction was placed in a "Delayed" status. Upon issuance of a "Delayed" response, NICS would continue to research the possible prohibitions, even after the initial 3 business days had elapsed. If the NICS Section was unable to determine whether a delayed transaction should receive a "Proceed" or "Denied" response within 3 business days of the initiation of the NICS check, the FFL was not federally prohibited from transferring the firearm beginning on the day after the third business day, which was and still is referred to as the Brady transfer date. *See* 18 U.S.C. 922(t)(1).

In instances where a POC had been designated to process NICS background checks, upon being contacted by an FFL, the POC would "check state or local record systems [and] perform NICS inquiries." 28 CFR 25.2. In addition to using the NICS Transaction Number ("NTN") that NICS assigns to submitted transactions, POCs may also assign their own unique "State-Assigned Transaction Number" ("STN") to a valid background check inquiry. *Id.* When NICS received an inquiry from a POC for a NICS background check, it searched NCIC, III, and the NICS Indices for any matching records and provided an electronic response to the POC. *See*

28 CFR 25.6(f).⁸ When contacted by a POC, NICS provided one of four types of responses to the POC: (1) "No record" response if NICS determined that no matching records existed in the databases searched; (2) "partial" response if NICS had not completed the search of all of its records (this response provided the POC with the information found in any database in which the search was completed and sent a follow-up response when NICS completed the search in all databases); (3) "single matching record" response when one matching record was found; and (4) "multiple matching record" response if more than one matching record was found. *See id.* It has been and remains the responsibility of the POCs to review the responses that are provided by NICS, conduct any further research, render a final determination, and provide FFLs with the results. *See* 28 CFR 25.6(g).⁹

The CAA, Public Law 117–103, 136 Stat. 49 (2022), and BSCA, Public Law 117–159, 136 Stat. 1313 (2022), mandated certain changes to the NICS process. In particular, as described below, the CAA and BSCA added new disqualifying events for consideration during NICS transactions. The CAA and BSCA added local and Tribal prohibitions to the Federal and State prohibitions already listed under 18 U.S.C. 922(t). The CAA includes the NICS Denial Notification Act of 2022 ("NDNA"), 136 Stat. at 919, which requires the FBI to send denial notification reports ("denial notifications") to local law enforcement authorities following the FBI's denial of a NICS transaction involving a prospective transfer of a firearm. BSCA sets forth new requirements for under-21 transactions, including enhanced contacts to State and local entities and, if needed, additional delay to further investigate possibly disqualifying juvenile records. 136 Stat. at 1322–24. As described below, the Department proposes to amend the regulations outlining the NICS process to conform with these requirements of the CAA and BSCA. The Department is publishing this notice of proposed rulemaking to propose amendments to 28 CFR 25.1, 25.2, 25.6, 25.7, 25.8, 25.9, 25.10, and 25.11 to implement parts of the CAA and BSCA as codified at 18 U.S.C.

⁸ State laws may require or allow POCs to collect further identifying information from a prospective transferee.

⁹ Further discussion of POCs can be found below within the discussion of denial notifications in Section II.B of this preamble and the discussion of under-21 transactions in Section II.C of this preamble.

922(d) and (t), 18 U.S.C. 925B, 18 U.S.C. 925C, and 34 U.S.C. 40901(l).

A. Updated Prohibitions

As amended by the CAA and BSCA, 18 U.S.C. 922(t) now precludes approval of a firearm transfer to a nonlicensee if the transfer or receipt of a firearm would violate local or Tribal law. 136 Stat. at 921–22; 136 Stat. at 1323. The FBI now is required to review NICS results for any applicable firearm prohibitions imposed by local or Tribal authorities, in addition to reviewing NICS results for any events that meet firearm prohibitions imposed by Federal law under 18 U.S.C. 922(d), (g), or (n), or applicable State law(s). *See* 18 U.S.C. 922(t)(1)(B)(ii), (t)(1)(C)(iii). Where a local or Tribal firearm prohibition may be applicable to the prospective transferee, the FBI must consider that prohibition in the same manner as Federal and State prohibitions that may be applicable based upon the prospective transferee's background-check results. To reduce the risk of under-enforcement of local and Tribal prohibitions, this rule seeks public comments to identify which local and Tribal governments may, or may not, have enacted their own firearm prohibitions that are not already reflected in applicable State or Federal laws. What background record or event would prohibit a person from possessing firearms in the future? To whom do those local or Tribal prohibitions apply?

The Department proposes amending 28 CFR 25.1, 25.2, 25.6, and 25.9 to reflect the fact that 18 U.S.C. 922(t) now includes firearm prohibitions imposed by local and Tribal law. The Department also proposes amendments to 28 CFR 25.7(a) and 25.8(f) to require an FFL, after initially providing NICS a prospective transferee's State of residence and State of purchase, to subsequently provide the address and city limits information listed by a prospective transferee on the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") Form 4473 ("Form 4473"), Firearms Transaction Record, when the FBI determines based on the State of residence and State of purchase that a local or Tribal firearms prohibition may apply. In such situations, and in the circumstances described further below, FFLs will be required to provide the FBI with the additional address information before the FBI provides the FFL with a transaction's status and an NTN. Providing further residence information in such instances may prevent NICS from unnecessarily delaying a transaction if the residence information

updating the regulations to use "NICS Section" instead of "NICS Operations Center."

excludes the possibility of local or Tribal laws applying to that transfer or receipt of firearms. For example, for a prospective transferee with a criminal history who resides in a State that also has potentially applicable local or Tribal firearm prohibitions, the individual's full residential address, as reported on the revised Form 4473,¹⁰ can help quickly determine if the prospective transferee is subject to the local or Tribal firearm prohibitions.

The full street address is needed to determine whether a local or Tribal prohibition should be considered in making the determination. Because there are multiple jurisdictional boundaries that may fall within a ZIP Code, county, or city, more granular information for the address may be needed to make an accurate determination. For example, different parts of one street could be subject to different local jurisdictions. The FBI anticipates utilizing the same city, State, county, and ZIP Code mapping as described in Section II.B of this preamble to determine if a local or Tribal prohibition is applicable.

Under 18 U.S.C. 922(d), it is unlawful for any person to sell or otherwise dispose of a firearm or ammunition knowing, or having reasonable cause to believe, that the prospective transferee is subject to any of the described disqualifying events in that subsection.¹¹ As amended by section 12001(a) of BSCA, 18 U.S.C. 922(d) now prohibits such sales or dispositions to a person the transferor knows or has reasonable cause to believe is subject to one of the described disqualifying events, "including as a juvenile." 136 Stat. at 1322.¹² This proposed rule would incorporate conforming changes into NICS regulations to reflect these statutory amendments expanding the Brady Act prohibitions as now described in 18 U.S.C. 922(t).

The Department notes that, through various amendments to NICS regulations over the years, current NICS regulations contain inconsistent references to the Brady Act prohibitions, particularly the Federal prohibitions. The Department proposes amending

NICS regulations found at 28 CFR 25.1, 25.2, 25.6, and 25.9 to ensure consistency with respect to how firearms prohibitions are described. To the extent necessary, the Department intends to reconcile these various references to Brady Act prohibitions in the Department's NICS regulations through this proposed rule as well as through RIN 1110-AA35 and through other technical updates to the Department's NICS regulations in a future rulemaking, RIN 1110-AA37.

B. Local Law Enforcement Notification

The NDNA, which was enacted as part of the CAA, requires that the Attorney General send a denial notification to a "local law enforcement authority" upon denial of a NICS transaction involving the prospective transfer of a firearm by an FFL. *See* CAA, Public Law 117-103, div. W, title XI, sec. 1101, 136 Stat. 49, 919-20. Since the NDNA's effective date, October 1, 2022, the FBI has been submitting denial notifications.

When the FBI denies a NICS transaction, as described in 18 U.S.C. 925B(a) related to the prospective transfer of a firearm, it sends a denial notification to the "local law enforcement authority" of the State or Tribe within whose jurisdiction the person sought the firearm transfer and, if different, to the "local law enforcement authority" of the State or Tribe within whose jurisdiction the person resides.¹³ This ensures that local law enforcement authorities in both jurisdictions are made aware of the denial.¹⁴ As proposed by this rule in 28 CFR 25.2, "'local law enforcement authority' means a bureau, office, department, or other authority of a State or local government or Tribe that has jurisdiction to investigate a violation or potential violation of, or enforce, a State, local, or Tribal law." *See also* 18 U.S.C. 921(a)(36). The Department's proposed amendments to 28 CFR 25.2, 25.7(a), and 25.8(f) reflect the FBI's current process for collection of information for carrying out the NDNA's requirements and, if finalized, would

generally not alter the current denial notification process as described herein.

To reflect how the Department has implemented the NDNA, the Department proposes to amend 28 CFR 25.7(a) and 25.8(f) to require FFLs to provide additional residence address information for prospective transferees whose prospective firearm transfers will be "Delayed" or "Denied." Again, after an FFL has initiated the transaction, NICS determines within seconds if NCIC, III, or the NICS Indices include records that require the transaction to be "Delayed" for further research or "Denied." After NICS has identified that a transaction will be "Delayed" or "Denied," the FFL must provide NICS with the subject's full residential address before the FFL will be provided with the NTN and status. This information will be requested over the phone or collected electronically, depending on how the FFL initiated the transaction. Once the system has received the subject's full residence address, the FBI will then, over the phone or electronically, provide the FFL with that transaction's NTN and initial status.

A "Delayed" transaction can change quickly to a "Denied" transaction. Consequently, by also collecting full address information before a "Delayed" status is provided to an FFL, the FBI will have that address information readily available should that transaction result in a denial. Collecting address information in such a manner avoids scenarios where the FFL is unavailable to receive a second contact from the FBI, which avoids delaying the address collection and denial notification. Thus, the amendments proposed in this rule and the process currently implemented by the FBI allow NICS to provide more timely denial notifications to local law enforcement authorities where the individual attempts to obtain the firearm and, if different, where the person resides. As discussed elsewhere in this rule, POCs will see similar results when they begin implementing the NDNA provisions (to the extent their State laws do not already require implementation of all or some aspects of the NDNA).

Local law enforcement authorities are not required by the NDNA to take any action upon receiving the denial notification.¹⁵ However, to avoid potential conflict with ongoing Federal investigations, the denial notification effectively encourages local law

¹⁰ A full residential address, as reflected on the revised Form 4473, includes the number and full street address; city, State, and ZIP Code; county, parish, or borough of residence; and whether the subject resides within the city (to include town or other municipal boundary) limits.

¹¹ Historically, 18 U.S.C. 922(d) has encompassed the same prohibitions as referenced in 18 U.S.C. 922(g) and (n).

¹² In addition to the other amendments relevant to NICS, title II, section 12004 of BSCA added two new prohibitions related to preventing illegal firearms trafficking. *See* 18 U.S.C. 922(d)(10) and (d)(11).

¹³ Federal law allows an FFL to transfer a long gun to a resident of another State so long as, among other considerations, the sale, delivery, and receipt otherwise satisfy the State laws and published ordinances of both jurisdictions. *See* 18 U.S.C. 922(b).

¹⁴ For example, if a resident of Fort Wayne, Indiana, attempts to receive a firearm from an FFL in Indianapolis, Indiana, and the transaction is "Denied," then the FBI would send a denial notification to the local law enforcement authorities in Fort Wayne (where the denied transferee resides) and Indianapolis (where the firearm was sought).

¹⁵ In fact, some local law enforcement authorities will not have a State, local, or Tribal violation of law to enforce if, for example, the denial was due to a Federal violation.

enforcement authorities to coordinate with their local ATF office prior to taking any anticipated action. The city in which the local ATF office is located and the office's contact information are provided in the denial notification. The denial notification is transmitted through NCIC and contains the NDNA-required information that NICS "Denied" the firearm transaction; the Federal, State, local, or Tribal prohibition that was the basis for the denial; the prospective transferee's identifying information (*i.e.*, the transferee's name, sex, height, date of birth, place of birth, and residence address); the date and time the transaction was denied; and the location and contact information for the FFL where the denied transfer occurred.¹⁶ See 18 U.S.C. 925B(a)(1). The denial notification also contains a general reminder explaining why the denial notification is being provided and contact information for any other law enforcement entities to which NICS sent the denial notification.

The NDNA provides that, where practicable, a denial notification will be provided to State, local, or Tribal prosecutors in the jurisdiction where the firearm transfer was sought to assist with enforcing State, local, or Tribal laws (when applicable). See 18 U.S.C. 925B(a)(2). Should a "Denied" transaction be later overturned, the NDNA requires that any law enforcement authority and prosecutor previously provided with a denial notification for that transaction be provided an updated notification of the overturned denial. See 18 U.S.C. 925B(c). Such updated notifications are also provided via NCIC to all agencies that received a denial notification for that transaction.

Currently, FFLs obtain the prospective transferee's residence address on the Form 4473. See 27 CFR 478.124. This residence information is collected in box 10 of the Form 4473 and includes number and street address, city, whether the residence is within city limits, State, ZIP Code, and county or parish or borough. Under 28 CFR 25.7, the only address information that must be provided for the initial NICS check is the prospective transferee's State of residence; the regulations have not required FFLs to submit further information to NICS about a prospective transferee's residence address even

though the FFL must collect such information on the Form 4473.¹⁷

The full street address of a prospective transferee is needed to determine which local jurisdiction(s) would be appropriate for notification of a denial determination. There are multiple agencies that may fall within a ZIP Code, county, or city. To notify the correct agency, specific information for the address is needed. For example, one street within a city could be within the jurisdiction of one police department while the adjacent street could be under a different police department's jurisdiction. When an FFL initially submits a prospective firearm transfer to the FBI and the initial NICS check of NCIC, III, and the NICS Indices finds information indicating the transaction will be "Delayed" or "Denied," the FBI, during that same, initial contact with NICS, requests (by phone or electronically¹⁸) the full residence address of the prospective transferee while the FFL waits for NICS to provide them with the initial status and the NTN. Once NICS has been provided with the full residence address, the FFL is provided with the NTN and the transaction's status.

Through each State, local, and Tribal law enforcement agency's Originating Agency Identifier ("ORI"), the FBI has mapped those law enforcement agencies to the city, State, county, and ZIP Code(s) for which they have jurisdiction to enforce laws.¹⁹ Each State (including Territories and the District of Columbia) has validated the mapping accuracy via an NCIC unsolicited message. NCIC unsolicited messages are automated communications that normally inform law enforcement and other criminal justice agencies about activity on an NCIC record, such as important details about a specific subject or property item or system status information. NICS now also uses this communication line to send denial notifications to applicable local law enforcement authorities. For transactions that are "Denied," NICS systematically compares the full address information of the FFL and the prospective transferee with the address information of the mapped law enforcement agencies. NICS then

submits, via NCIC unsolicited messages, the denial notifications to the State, local, and Tribal law enforcement agencies that fall within the jurisdiction of the FFL's address where the transfer was sought and, if different, the State, local, and Tribal law enforcement agencies with jurisdiction over the denied transferee's residence address.

ATF also revised the Form 4473 to request full residence information for prospective transferees. In addition to assisting with the implementation of the CAA and BSCA provisions describing use of local and Tribal firearm prohibitions, the revised Form 4473 ensures the information is available to FFLs when the FBI seeks such information to support the continued implementation of the NDNA. The denial notifications provide timely assistance to State, local, and Tribal governments that wish to enforce existing laws in their jurisdictions against individuals attempting to illegally purchase, possess, or receive firearms (whether through fraudulent background checks or otherwise).

In the 19 States²⁰ in which partial or full POCs conduct NICS checks, POCs serve as intermediaries between FFLs and the Federal databases checked by NICS, with POCs acting on behalf of the FBI to perform the NICS transactions from those jurisdictions. See 28 CFR 25.2 and 25.6. Partial POCs elect to process background checks for handguns, long guns, or both, and the FBI processes all other checks for FFLs in the State. Currently, all four partial POCs process their own NICS checks for handguns.²¹ The FBI has verified, based on discussions with POCs, that 14 of the 19 POCs that responded in time for this rule already have some type of denial notification process established within their State. The FBI does not render denial decisions for POCs. See 28 CFR 25.6(g). Therefore, this rule proposes revisions to 28 CFR 25.2 and 25.6 to reflect that POCs must, at a minimum, report denial notifications in accordance with the NDNA when the POC denies a prospective firearm transfer.²² If these

²⁰ See FBI, *NICS Participation Map*, <https://www.fbi.gov/file-repository/nics-participation-map.pdf/view> (last visited Oct. 4, 2024).

²¹ See *id.*

²² The Department notes that the statutory obligation to issue denial notifications does not include the issuance of denial notifications to the same entity that denied the transaction. See 18 U.S.C. 925B(d) (denial notification to State authorities not required if the same State authorities made the original denial determination with respect to the transfer of the firearm). For example, if a resident of Fort Wayne, Indiana, attempts to receive a firearm from an FFL in Illinois, and the transaction is denied by the Illinois POC (the Illinois State Police), then the Illinois POC would issue denial notifications to the "local law

¹⁶ Additional information on this topic and a copy of a draft notification can be found at FBI, *NICS Denial Notifications for Law Enforcement*, <https://le.fbi.gov/informational-tools/nics-denial-notifications-for-law-enforcement> (last visited June 18, 2024).

¹⁷ In addition to the prospective transferee's State of residence, an FFL must submit the prospective transferee's name, sex, race, and complete date of birth to initiate a NICS check. See 28 CFR 25.7.

¹⁸ For some transactions using NICS E-Check to submit information to NICS, NICS is able to systematically capture the residence without aid of the FFL.

¹⁹ An ORI is "a nine-character identifier assigned by the FBI to an agency that has met the established qualifying criteria for ORI assignment to identify the agency in transactions on the NCIC System." 28 CFR 25.2.

revisions are finalized, POCs will also be required to provide the NICS Section with applicable statistics necessary for the FBI to comply with the provisions of 18 U.S.C. 925C.

C. Enhanced Background Checks for Individuals Under 21 Years of Age

As described earlier in this rule, prior to BSCA's enactment of new enhanced background checks during under-21 transactions, when an FFL initiated a NICS transaction—regardless of the prospective transferee's age—NICS searched three primary systems to determine if the person was disqualified from possessing or receiving firearms.²³ If the traditional search resulted in no disqualifying or potentially disqualifying records, NICS provided a “Proceed” status to the FFL. If a juvenile or adult record was located that disqualified the person under Federal or State law, NICS provided a “Denied” status to the FFL. If a possibly disqualifying record (whether having occurred as a juvenile or adult) resulted from the initial search, NICS provided a “Delayed” status and advised the FFL that, if the FFL did not receive a “Proceed” or “Denied” response from NICS on or before the end of the third business day after initiation of the check, the FFL was not federally prohibited from transferring the firearm on the day after the third business day.²⁴ *Cf.* 18 U.S.C. 922(b), (d).²⁵

enforcement authorities” in Indiana (where the denied transferee resides) but would not need to issue a denial notification to the Illinois State Police.

²³ Currently, BSCA's provisions related to under-21 transactions are to sunset September 30, 2032. 136 Stat. at 1324.

²⁴ Currently, “Delayed” and “Open” are defined as follows: “Delayed means the response given to the FFL indicating that the transaction is in an ‘Open’ status and that more research is required prior to a NICS ‘Proceed’ or ‘Denied’ response. A ‘Delayed’ response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up ‘Proceed’ response from the NICS or the expiration of three business days, whichever occurs first.” 28 CFR 25.2 “Open means those non-canceled transactions where the FFL has not been notified of the final determination. In cases of ‘open’ responses, the NICS continues researching potentially prohibiting records regarding the transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a proceed or a deny. An ‘open’ response does not prohibit an FFL from transferring a firearm after three business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.” *Id.*

²⁵ The Department notes that, after receiving a “Proceed” or “Open” response from NICS, Federal law would not prohibit the FFL from transferring the firearm. Receipt of such a response, however, “[d]oes not relieve” the FFL from complying with other provisions of law, such as 18 U.S.C. 922(d), that may be applicable to that transfer. 28 CFR 25.2 (defining “Proceed”). A similar caveat for the definition of “Open” has been proposed as part of

In addition to the searches of NCIC, III, and the NICS Indices, BSCA now requires enhanced NICS background checks for prospective transferees under 21 years of age. *See* 34 U.S.C. 40901(l).²⁶ With respect to these enhanced background checks conducted for under-21 transactions, Congress imposed two overarching requirements on NICS. First, in addition to the traditional NICS check of relevant FBI systems, NICS is required to make three enhanced requests to specified types of State and local entities to determine whether the prospective transferee has a “possibly disqualifying juvenile record” under 18 U.S.C. 922(d). The enhanced requests to State and local entities where the prospective transferee resides are to be made to (1) the State criminal history repository or juvenile justice information system, as appropriate; (2) the State custodian of mental health adjudication records; and (3) the local law enforcement agency. *See* 34 U.S.C. 40901(l)(1).

In October of 2022, the FBI began a phased, manual implementation of the enhanced background checks BSCA requires for under-21 transactions coming from the State of Maine. For the remaining States²⁷ for which the FBI processes NICS checks for prospective firearm transfers, since January 4, 2023, NICS has been automatically submitting all three enhanced requests via email. To begin implementing BSCA's requirements of contacting the criminal history repository or juvenile justice information system and the appropriate State custodian of mental health records in the State in which the person resides for possibly disqualifying juvenile records pursuant to 18 U.S.C. 922(d), the NICS Section met with representatives from all States and Territories to establish contacts for those requests; this was because the NICS Section did not have such contacts

this rule. When, throughout this rule, the Department observes that, in certain situations, receipt of a response from NICS indicates that Federal law would not prohibit an FFL from transferring a firearm, it should be understood that the FFL must still comply with other laws, such as 18 U.S.C. 922(d).

²⁶ Under Federal law, persons who are at least 18 years of age are of lawful age to purchase long guns; however, some States set a higher minimum age to purchase long guns. *See* 18 U.S.C. 922(b).

²⁷ “State” is federally defined to include the District of Columbia, the Commonwealth of Puerto Rico, and most possessions (“Territories”) of the United States. *See* 18 U.S.C. 921(a)(2). United States Territories that submit background checks to NICS include Guam, Northern Mariana Islands, American Samoa, and the Virgin Islands. *See* FBI, *NICS Participation Map*, <https://www.fbi.gov/file-repository/nics-participation-map-020124/view> (last visited Oct. 4, 2024).

required by BSCA at the time of enactment.

Some States informed the NICS Section they do not have a centralized contact for some of the juvenile records BSCA requires NICS to request. Those States directed the NICS Section to contact courts that handle juvenile criminal history or mental health information. The FBI has shared all identified contacts (centralized or otherwise) with POCs so that POCs can utilize the same contacts as the NICS Section for enhanced background checks. Both the NICS Section and POCs utilize their own existing contact methods for contacting local law enforcement agencies during under-21 transactions. The amendments proposed by this rule, unless noted otherwise, will not alter how the enhanced background checks related to under-21 transactions are being conducted.

Second, if NICS determines that cause exists to further investigate whether the prospective transferee has a disqualifying juvenile record under 18 U.S.C. 922(d), BSCA provides for an additional period of time for NICS to process that under-21 transaction before the FFL may transfer the firearm. *See* 18 U.S.C. 922(t)(1)(C); 34 U.S.C. 40901(l)(2). BSCA requires NICS to notify the FFL “as soon as possible, but in no case more than 3 business days” after the initiation of the check if such cause exists. 34 U.S.C. 40901(l)(2).

If NICS determines such cause exists, NICS notifies the FFL of that determination, and it is then unlawful for the FFL to transfer a firearm to the prospective transferee without receiving a follow-up “Proceed” response or waiting for the expiration of 10 business days from initial contact with NICS, whichever occurs first. *See id.* Accordingly, the Brady transfer date for an under-21 transaction where NICS has determined that cause exists for further investigation is the day after the tenth business day from the date the FFL contacted NICS. As NICS has begun submitting enhanced background checks for under-21 transactions, FFLs have also been notified by the FBI when cause for further investigation has been established and, consequently, that the Brady transfer date has changed to the day after the tenth business day.²⁸

To reflect BSCA's requirements during under-21 transactions, technical enhancements have been made to NICS to have NICS use the subject's complete date of birth to immediately calculate whether the prospective transferee is

²⁸ The FFL is updated in the same manner as when the FFL initially contacted NICS, either electronically or by telephone.

under 21 years of age on the day the transaction was submitted to NICS. Systematically, this age calculation is occurring at the same time NICS is searching NCIC, III, and the NICS Indices. Once NICS determines the subject is under 21 years of age, NICS will request the transferee's full residence address, and, generally, will notify the FFL that the transaction will be placed into a "Delayed" status. NICS collects the full residence address of subjects who are under 21 years of age in the same manner as NICS collects a full residence address for purposes of the NDNA. For an under-21 transaction, the FBI uses the full residence address of the subject to determine which "local law enforcement agency [has] jurisdiction where the person [under 21 years of age] resides" and, therefore, must be contacted by NICS. 34 U.S.C. 40901(l)(1)(C). The prospective transferee's State of residence is used to identify which State-level agencies the FBI also needs to contact during enhanced background checks.

After collecting the full residence address of the subject, NICS systematically sends the enhanced background check requests to the agencies corresponding to the subject's full residence address.²⁹ Generally, the FBI sends these enhanced requests by email communications to the designated agencies. Some States that are not centralized have designated that certain courts should be contacted for the requested juvenile records. The FBI also conducts some enhanced outreach to State agencies by manually accessing State databases that were established during the FBI's outreach to States, the District of Columbia, and Territories.

Unless the under-21 transaction can be denied sooner based on available information, NICS now has up to 3 business days to determine if BSCA's enhanced background checks, or any responses from the initial searches of NCIC or III, provide cause for further delay of the under-21 transaction due to a potentially prohibiting juvenile record. During this time, NICS is also investigating those same sources for any adult records that are prohibiting or potentially prohibiting. Some under-21 transactions will be denied in a matter of seconds due to, for example, the NICS Indices responding with a prohibiting record that matches the subject's biographic information. Even if the under-21 transaction is immediately "Denied," the Department reads BSCA

to still require NICS to submit the enhanced background checks.

BSCA's enhanced background check requirements result in under-21 transactions being significantly more complex than NICS background checks conducted before BSCA. Unlike the pre-BSCA background check process (described above in the beginning of Section II of this preamble), BSCA mandates enhanced background checks that include requiring NICS to also contact, in 56 different jurisdictions, the State and local agencies identified under 34 U.S.C. 40901(l)(1). The results of those queries will then depend on the ability and capabilities of those State and local agencies.

Based on the FBI's experience in conducting BSCA's enhanced background checks, the FBI estimates the majority of State and local agencies that are contacted and that respond during the enhanced background checks of under-21 transactions do so within 3 business days. The Department does not consider an agency to have provided "cause for further investigation" within the first 3 business days if the agency contacted provides a substantive response that it has no potentially prohibiting juvenile record(s); if the agency responds to each enhanced background check request submitted to that agency that State law prohibits providing the type of juvenile records sought; or if the agency responds to each enhanced background check request submitted to that agency that the juvenile records sought are already provided to the relevant Federal system (NCIC, III, or the NICS Indices).

If an agency informs the Department within 3 business days of the check being initiated that the agency requires more time to investigate whether a prospective transferee has potentially prohibiting juvenile records, or the agency has not responded at all within 3 business days, the Department interprets these circumstances as "cause for further investigation," and the agency will be afforded up to 7 additional business days to respond to the request. *See* 34 U.S.C. 40901(l)(2). The Department believes Congress's imposition of additional checks for disqualifying State and local juvenile records during under-21 transactions would be frustrated by practical administrative delays inherent in conducting these enhanced checks if a State or local agency's failure to respond within the 3-business-day period could not be understood to constitute "cause for further investigation." While this interpretation could result in a relatively short additional delay (up to 7 additional business days at most)

before Federal law would allow the FFL to complete the firearm transfer for the prospective transferee, the alternative interpretation might result in subjecting the public to a risk that BSCA was intended to address.

As soon as all required checks are cleared of any possible disqualifications, the FBI will place the under-21 transaction in a "Proceed" status. *See* 34 U.S.C. 40901(l)(3). BSCA did not institute a mandatory 3- or 10-day waiting period for all under-21 transactions. Instead, BSCA requires that NICS conduct the enhanced outreach described above, and it provides NICS up to 3 business days to determine if cause exists to further investigate whether the prospective under-21 transferee has a disqualifying juvenile record under 18 U.S.C. 922(d).

Another technical enhancement made for under-21 transactions is that NICS automatically calculates and populates, to the NICS Audit Log,³⁰ the 10-business-day transfer date in case that date becomes applicable. If that date is applied to the transaction, NICS provides the FFL with the 10-business-day transfer date during a follow-up communication. The FBI has also added to the NICS Audit Log fields for each under-21 transaction noting which State and local agencies were contacted during the enhanced background checks for a transaction and a general notation of whether and how those agencies responded (*e.g.*, no records, records, or cannot respond by law). NICS must contact these State and local agencies according to BSCA, but the FBI understands that currently not all States have one or both State-level systems described above and, further, some States' laws prohibit the sharing of juvenile justice records or mental health records.³¹ Notwithstanding such limitations, the FBI has continued to submit the enhanced background check requests to relevant State and local agencies during every under-21 transaction since January 3, 2023.

The Department proposes the following amendments to conform NICS regulations with the above-described provisions of BSCA for under-21

³⁰ For NICS purposes, "[a]udit log means a chronological record of system (computer) activities that enables the reconstruction and examination of the sequence of events and/or changes in an event." 28 CFR 25.2.

³¹ FBI subject matter experts estimate that, currently, more than half of all States, including the District of Columbia and the Territories, have laws in place that prohibit the sharing of juvenile justice records, juvenile mental health records, or both. Many agencies in those States do not currently respond to each NICS request with substantive records or a notification that the records sought are protected from dissemination by State law.

²⁹ During an under-21 transaction, a Tribal law enforcement authority may also receive a request for potentially prohibiting juvenile records if the Tribe shares the same ZIP Code as the prospective transferee.

transactions. First, the Department proposes amending 28 CFR 25.7(a) and 25.8(f) to require submission of the full residential address³² for NICS checks of prospective transferees who are less than 21 years old, in addition to the information already required to be submitted as described above. Second, the Department proposes amending 28 CFR 25.6(c) to reflect that, upon initiation of an under-21 transaction from an FFL, the FBI will immediately conduct a NICS check of NCIC, III, and the NICS Indices and make the enhanced outreach to the following agencies where the person resides: (1) the State criminal history repository or juvenile justice information system, as appropriate; (2) the State custodian of mental health adjudication records; and (3) the local law enforcement agency. The FBI has identified all necessary agencies to contact during this enhanced outreach to determine if cause exists for additional delay of the transaction to further investigate whether the person has a disqualifying juvenile record under 18 U.S.C. 922(d). The amendments proposed by the Department in this rule would not modify how the FBI is conducting the enhanced background checks of under-21 transactions.

Next, the Department proposes a new transaction status of “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” which is not a part of the current under-21 transaction process. A definition for this new status is proposed under 28 CFR 25.2. Also, the FBI proposes revisions to 28 CFR 25.6(c)(iv), 28 CFR 25.8(g)(2), 28 CFR 25.9(b), and 28 CFR 25.11(b)(1) to reflect the status of “No Known Prohibitors: At least one state or local agency has not responded or cannot respond.” The Department proposes that an FFL be provided the status of “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” generally in circumstances where NICS has either not received one or more responses to the enhanced background checks or the relevant State is barred from sharing juvenile information by a governing State law. This status would be provided under the following circumstances:

- **Barred from Responding.** If at least one agency affirmatively responds that it is barred by State law from sharing

relevant information with NICS, any other agencies have responded, and the available information does not demonstrate a (potentially) prohibiting record exists for the subject.

- **Non-Response.** At the end of the tenth business day if at least one of the agencies contacted during the enhanced background checks for that under-21 transaction has not responded and available information does not demonstrate a (potentially) prohibiting record exists for the subject.

A “Proceed” status to an FFL signifies that all systems have been checked, requests for records have received responses, and available information reveals no (potentially) prohibiting record exists.³³ Accordingly, where State or local agencies either do not or cannot share information on a prospective transferee, providing an FFL with the status of “Proceed” would be inaccurate. Similarly, an “Open” response signifies to an FFL that NICS is still researching a potential firearm prohibition. *See* 28 CFR 25.2. Accordingly, it would also be inaccurate for an “Open” response to be provided in any of the above circumstances because NICS would not be conducting further research at that point. The Department believes providing this new status of “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” to FFLs in these circumstances would more accurately inform the FFL of the fact that the State or local agencies at issue either did not or could not respond to the enhanced requests for juvenile records. However, unless NICS has provided an FFL with a status of “Denied,” the FFL retains the ultimate discretion to transfer a firearm, or not, to the subject.

Do commenters believe the new status would have unforeseen impacts? What further information would the public find useful or necessary before approving or rejecting the new, proposed status? Should a different status be proposed, and if so, why?

A prospective transferee who is under 21 years of age could have a possibly disqualifying juvenile record under 18 U.S.C. 922(d) or a possibly disqualifying record (incurred as an adult or juvenile) under 18 U.S.C. 922(g) or (n), or State, local, or Tribal law.³⁴

³³ As part of this rulemaking, the FBI is proposing an amendment to the definition of “Proceed” to clarify that the response indicates that all relevant systems have in fact been checked and all requests for records have in fact received responses.

³⁴ For instance, suppose a person who is now 20 years old attempts to receive a firearm from an FFL. The NICS check reveals that, at 17 years old, this person was adjudicated as a “juvenile delinquent”

The following examples clarify the types of records that NICS may receive during an under-21 transaction and how the Department proposes to have NICS process the different scenarios.

Scenario 1: No adult or juvenile disqualifying records are found in NCIC, III, or the NICS Indices, and the under-21 enhanced background checks rule out cause for additional delay before the end of the third business day. The transaction is placed in a “Proceed” status.

Scenario 2: Only a possibly disqualifying adult record is located, but cause for additional delay, related to a possibly disqualifying juvenile record, is ruled out before the end of the third business day. Although cause for additional delay of the transaction was ruled out, the transaction will remain “Delayed” (in an “Open” status) due to the possibly disqualifying adult record being found. The FFL may transfer the firearm after the third business day if the FFL has not first received a “Denied” status update. NICS will continue to research to establish or rule out the possible adult prohibition until the transaction is proceeded, denied, or purged in compliance with 28 CFR 25.9.

Scenario 3: No possibly disqualifying adult record is located, but cause for additional delay is established based on a possibly disqualifying juvenile record. NICS will notify the FFL of the additional delay being applied up through the tenth business day (if necessary) to further research whether there is a disqualifying juvenile record. If cause for the additional delay of the transaction is ruled out, the transaction will be updated to “Proceed” status. If cause for additional delay cannot be ruled out by the end of the tenth business day, the transaction will remain “Delayed” (in an “Open” status), and under Federal law, the FFL

under State law for an offense that would have been a felony had the person been an adult. Within the next day, all three agencies contacted under the enhanced contacts for the under-21 transaction respond and provide no other potential juvenile prohibitions. Further suppose that, under the law of the State where the adjudication occurred, that adjudication is not considered a “conviction.” As a result, Federal law cannot consider that adjudication for purposes of 18 U.S.C. 922(d) or (g). *See* 18 U.S.C. 921(a)(20). Further, because that juvenile disposition would not fall within the reach of 18 U.S.C. 922(d), it would not qualify for consideration under 34 U.S.C. 40901(l) for application of further delay of an under-21 transaction. However, suppose the law of the State where the adjudication occurred imposes a 10-year firearm prohibition for persons adjudicated as a juvenile delinquent for an offense that would have been a felony. The adjudication would not qualify for purposes of 18 U.S.C. 922(d), but it would prohibit that person from receiving or being transferred a firearm in accordance with 18 U.S.C. 922(t).

³² As noted earlier, *see supra* note 10, a full residential address, as reflected on the amended Form 4473, includes the number and full street address; city, State, and ZIP Code; county, parish, or borough of residence; and whether the subject resides within the city (to include town or other municipal boundary) limits.

may transfer the firearm after the tenth business day if the FFL has not first received a “Denied” status update. NICS will continue research to establish or rule out the relevant possible juvenile prohibition until the transaction is proceeded, denied, or purged in compliance with 28 CFR 25.9.

Scenario 4: A possibly disqualifying adult record is found and cause for additional delay is established based on a possibly disqualifying juvenile record on or before the third business day. Because cause for additional delay has been found to exist, the FFL is notified of additional delay being applied, up through the tenth business day (if necessary), to further research whether there is a disqualifying juvenile record. In accordance with Federal law, the FFL may transfer the firearm after the tenth business day if the FFL has not first received a “Denied” status update. NICS will continue researching any possible prohibition until the transaction is proceeded, denied, or purged in compliance with 28 CFR 25.9.

Scenario 5: No potentially prohibiting adult or juvenile records return from NCIC, III, or the NICS Indices, but, after 10 business days have elapsed, one of the agencies contacted during the enhanced background check still has not responded in substance or by telling NICS that the laws of the jurisdiction prohibit the agency from disclosing the juvenile records sought. The Department proposes that the transaction’s status be updated to “No Known Prohibitors: At least one state or local agency has not responded or cannot respond.” Federal law would then allow the FFL to transfer the firearm.

Scenario 6: After the transaction has been “Delayed,” and prior to the firearm being transferred, a firearm disqualification (as described in 18 U.S.C. 922(t)) is established. The transaction is placed into a “Denied” status and the FFL is notified of the status. The FFL is prohibited from transferring the firearm to the prospective transferee.

In any under-21 transaction, as soon as all possible disqualifications are ruled out, the transaction will be placed into “Proceed” status. If a transaction has been placed into “Proceed” status, or when Federal law otherwise allows the firearm to be transferred, the FFL is permitted to transfer the firearm to the prospective transferee if the person returns to the FFL to receive the firearm within 30 days from when the FFL first contacted NICS. See 27 CFR 478.102(c). POCs are currently required to complete any research for possible prohibiting records outside of system responses

from NCIC, III, and the NICS Indices. This proposed rule would amend the definition of “POC (Point of Contact)” in 28 CFR 25.2 to reflect that, similarly, POCs that receive and process under-21 transactions³⁵ will also be required to conduct the enhanced background checks for under-21 transactions now required under 34 U.S.C. 40901. To the extent POCs process under-21 transactions, those POCs have begun conducting the enhanced background checks. To account for BSCA’s requirement to conduct the enhanced background checks, if finalized, and in contrast to current practice under 28 CFR 25.6(h), NICS will not presume that a POC proceeded a “newly created” under-21 transaction if the applicable POC has not provided NICS with a “Delayed” or “Denied” determination message by “the end of the operational day on which the transaction was initiated.” The FBI proposes that 28 CFR 25.6(h) be amended to reflect that change. As indicated previously, the FBI has shared any identified contacts, centralized or otherwise, with POCs so that POCs have the same contacts as the NICS Section. Both the NICS Section and POCs will utilize their own existing contact methods for contacting local law enforcement agencies during under-21 transactions.

D. Attestation Process for Enhanced Background Checks

The Department seeks public comments about a potential attestation process that is not a part of the current under-21 transaction process. The Department envisions that this attestation process would allow State agencies to voluntarily provide the FBI with an attestation that State law prohibits sharing juvenile mental health or juvenile justice records (or both). The attestation could be completed by a government official in the jurisdiction (State, District of Columbia, or Territory). For example, the head of the chief law enforcement agency for the jurisdiction, or that person’s designee, whether that be the jurisdiction’s Attorney General or the head of another agency, could submit this attestation. In addition to noting that State law prohibits the sharing of juvenile mental health or juvenile records (or both), such an attestation could include additional information regarding the law in the jurisdiction, including, for example, whether the State’s laws also

prohibit local law enforcement agencies from sharing juvenile records.

This potential attestation process also could be applicable to State agencies that have informed NICS that they already send the requested juvenile mental health or juvenile justice records to NCIC, III, or the NICS Indices, as applicable. An option would be to make the attestation renewable at some defined interval (for example every 6 months or annually), unless rescinded due to a change in State law. If an attestation process were implemented, the submission of an attestation would be discretionary; States could choose, for example, to decline to submit an attestation and to instruct their agencies to continue responding individually to NICS inquiries even if State law generally prohibits the sharing of relevant records. Also, reliance on an attestation would similarly be voluntary. Thus, even in States that have executed attestations, agencies could still reply to individual requests that they receive from the FBI or POCs. Finally, an agency would remain free to reply to individual requests in circumstances in which a State prohibition on disclosing the records has been lifted or when the agency has potentially responsive adult records for a subject. This potential attestation process may therefore afford the Department, the States, and local jurisdictions more flexibility in deciding how to process under-21 transactions.

Under this potential attestation process, the FBI and POCs would continue to submit the requests for juvenile records as described in the enhanced background check provisions of 34 U.S.C. 40901(l)(1). With respect to a request involving a State jurisdiction that has submitted an attestation that conveys that the State agency is prohibited by State law from sharing the pertinent records, if the agency does not individually respond by the end of the third business day, then the attestation would prevent enhanced delay from being applied due to that agency’s non-response. The FBI in such circumstances would provide the status “No Known Prohibitors: At least one state or local agency has not responded or cannot respond.” In addition, where the State has already verified by attestation that the requested juvenile records are already shared, as applicable, with NCIC, III, or the NICS Indices, the NICS Section would “Proceed” that transaction no later than the expiration of the third business day if no other potential prohibition exists needing further research, any other enhanced background check requests have responses or are covered by an

³⁵ Again, persons under 21 are federally prohibited from receiving a handgun through an FFL, and the NICS Section currently processes only long gun transactions for all partial POCs.

attestation similarly indicating that the relevant records are already shared, and the State has not individually responded to that enhanced background check request.

For example, this potential attestation process could be used in the following scenario: NICS receives an under-21 transaction from an FFL in a State that is unable to share juvenile justice records or juvenile mental health records pursuant to existing State law. No other (potentially) prohibiting records are returned from NCIC, III, or the NICS Indices. NICS collects the subject's full residence address to complete the enhanced background checks. Using the full residence address, NICS immediately sends the enhanced background check requests as required by BSCA. These requests are sent to the State's established contacts for juvenile justice and mental health records, as well as to the relevant local law enforcement agency. The State has provided an attestation conveying that State law prohibits sharing both types of requested juvenile records. At the end of the third business day, all responses to which the attestation applies will be considered received and the transaction status will be updated to "No Known Prohibitors: At least one state or local agency has not responded or cannot respond," provided there are no further prohibiting or potentially prohibiting records returned during the enhanced background checks. Federal law would then allow the FFL to transfer the firearm. If, under the same facts but, before the end of the third business day, the State and local agencies provide individual responses that the attestation no longer applies (because, for example, State law has changed to allow sharing of the relevant records) but that the agencies have found no potentially disqualifying records to share with NICS, the transaction will be updated to "Proceed" status. Federal law would then allow the FFL to transfer the firearm.

If an attestation process is adopted, the FBI anticipates that the FBI would continue working with State entities to encourage discrete responses for each individual transaction where possible, even if a response notes that State law prohibits the agency from providing the juvenile records sought and would likewise prohibit the agency from providing similar records for other transactions. However, the attestation process may benefit the Department, prospective transferees, and the agencies contacted during enhanced background checks of under-21 transactions, as it could reduce, if not end, problematic results that Congress

likely did not intend during the enhanced background check process.

During the FBI's current implementation of enhanced background checks for under-21 transactions, it has found that agencies have grown frustrated with NICS's continued requests for juvenile records that cannot be shared. Consequently, some agencies have stopped responding at all to NICS, even if they had just been responding that they were prohibited from providing any records. The Department does not believe Congress intended to require State and local partners to carry out a potentially inconvenient process of repetitively providing responses to requests for juvenile records even in circumstances where the State and local partners know (and have already advised the FBI) that State law prohibits the sharing of the records. Currently, the Department is aware of 22 States and Territories that have laws that prohibit the sharing of both juvenile mental health and juvenile criminal history records,³⁶ 6 States that have laws prohibiting the sharing of juvenile mental health records,³⁷ and 8 States (and the District of Columbia) that have laws prohibiting the sharing of juvenile criminal history records.³⁸ Four States have changed their laws to allow for sharing juvenile criminal history records, and one State has changed its laws to allow for sharing juvenile mental health records since the passage of BSCA.³⁹

Accordingly, the Department seeks comments as to whether a potential attestation process could foster strong relationships with State and local agencies while benefiting the

³⁶ Based on the FBI's experience in conducting background checks for under-21 transactions, States and Territories with laws that prohibit sharing of both juvenile mental health and juvenile criminal history records are Arkansas, Alaska, Arizona, Colorado, Georgia, Hawaii, Indiana, Iowa, Louisiana, Montana, Nebraska, New Hampshire, North Dakota, Northern Mariana Islands, Puerto Rico, Rhode Island, South Dakota, Tennessee, the U.S. Virgin Islands, West Virginia, Wisconsin, and Wyoming.

³⁷ Based on the FBI's experience in conducting background checks for under-21 transactions, the States with laws that currently prohibit sharing of juvenile mental health records are Connecticut, Florida, Idaho, Massachusetts, New Mexico, and Oklahoma.

³⁸ Based on the FBI's experience in conducting background checks for under-21 transactions, the States with laws that currently prohibit sharing of juvenile criminal history records are Mississippi, Missouri, New York, North Carolina, Oregon, Pennsylvania, South Carolina, and Virginia. The District of Columbia also prohibits such sharing.

³⁹ Through correspondence with State agencies, the FBI learned that Connecticut, Kentucky, Nevada, and Vermont have changed their State laws to allow for sharing juvenile criminal history records. Texas has changed its State law to allow for sharing juvenile mental health records.

Department and subjects of under-21 transactions by more promptly resolving many under-21 transactions. The Department also seeks public comments as to any potential benefits or costs of an attestation process. What further information would the public find useful or necessary before the attestation process proceeds? If an attestation process is adopted, who do commenters believe should provide the attestation for the agencies? Are commenters aware of any State with laws that would allow local law enforcement agencies in that State to share juvenile justice or juvenile mental health records where State-level agencies would be limited or prohibited from sharing the same juvenile records? Are commenters aware of any local government passing a law or laws that limit or prohibit sharing juvenile records in circumstances where the laws of the State in which the local government is located do not similarly limit or prohibit such sharing? How frequently should attestations be renewed? Would attesting agencies prefer to craft their own attestations or use a template supplied by the FBI?

E. Severability

The CAA and BSCA address critical but distinct components of the NICS background-check process. The Department believes that its proposals to implement these statutes are well-supported in law, reflect sound policy, and, once finalized, should be upheld against any legal challenge. However, if any portion of the proposed rule, once finalized, is declared invalid, the Department intends that the proposals contained herein, once finalized, be viewed as independent, necessary, and severable from each other to the maximum extent possible. Further, the Department intends that the provisions contained herein and in any resulting final rule be viewed as independent, necessary, and severable from the current NICS regulations under 28 CFR part 25. Accordingly, the Department proposes adding a severability provision in 28 CFR 25.1.

As further described above, the CAA enacted the NDNA and added consideration of relevant firearm prohibitions imposed by local and Tribal governments during NICS checks under 18 U.S.C. 922(t). Further, as relevant to this rule, BSCA mandated enhanced background checks during each under-21 transaction and allowed for an extended delay (potentially up through the tenth business day) of some under-21 transactions before an FFL may lawfully transfer the firearm(s) under Federal law. Each of those statutory mandates is independently

significant to the functioning of the NICS background-check process and thus independently requires updates to the Department's NICS regulations. While certain features of the FBI's implementation efforts overlap between proposals, these amendments remain severable proposals necessary to accomplish each of the statutory mandates. For example, residential address collection is necessary both to effectuate denial notifications in satisfaction of the NDNA and, separately, to conduct the enhanced State and local outreach required in connection with under-21 transactions pursuant to BSCA. If a court were to invalidate one or more of the provisions of the final rule resulting from the FBI's proposals pertaining to (1) local and Tribal prohibitions, (2) under-21 transactions, or (3) denial notifications, the Department intends that the remaining provisions of the final rule be severed from the invalidated provision(s) and that all remaining provisions stand.

To obviate any doubt as to the Department's intent, even if some provision(s), once finalized, were deemed invalid (which, again, the FBI does not believe is supported), the Department would still have proposed each of the other provisions in this rule. *Cf. American Fuel & Petrochemical Manufacturers v. E.P.A.*, 3 F.4th 373, 384 (D.C. Cir. 2021) (EPA expressly stating the severability of sections of its rule in issue eliminated the potential for substantial doubt of the agency's intent). Each proposed amendment in this rule stands on its own with no reliance on another proposed amendment. Each proposed amendment is necessary, for example, to notify the public, update relevant NICS regulations, or to implement the provisions of the CAA or BSCA.

F. Separate Rulemakings

BSCA also contained two provisions pertaining to FFLs for which the Department is conducting separate rulemakings, as discussed below.

In RIN 1110-AA34, the Department has published an interim final rule to address the new provision allowing FFLs to receive information from the FBI's NCIC system relating to stolen firearms (specifically, for the purpose of determining whether a firearm offered to the FFL has been reported stolen). *See Bipartisan Safer Communities Act—Access to Records of Stolen Firearms in the National Crime Information Center*, 89 FR 54344 (July 1, 2024). The amendments made by RIN 1110-AA34 do not impact NICS regulations; please consult RIN 1110-AA34 for further

information about the regulatory amendments made therein. The Department requests that any public comments concerning FFLs receiving stolen gun information from NCIC be provided within and as directed by RIN 1110-AA34.

Additionally, in RIN 1110-AA35, the Department is planning to issue a proposed rule amending the NICS regulations in compliance with a congressional mandate to promulgate regulations that will help limit firearms trafficking by allowing FFLs to voluntarily conduct NICS background checks with respect to current or prospective employees of the FFL if the person does, or will, transfer or otherwise handle firearms or ammunition for the FFL and has provided written consent for the NICS check. The Department proposes to describe those FFL employee checks as “firearm handler background checks” (also referred to as “FHCs”).

The Department anticipates that RIN 1110-AA35 will be published as a proposed rule prior to finalizing the present rulemaking. Several regulations in 28 CFR part 25 contain provisions for which this notice of proposed rulemaking proposes amendments and which may also be the subject of proposed amendments in the forthcoming proposed rule in RIN 1110-AA35. The Department will coordinate the final rules resulting from these rulemakings to ensure clarity and consistency.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, Executive Order 13563, and Executive Order 14094. 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (“OMB”) has determined that this proposed rule is a “significant

regulatory action” under Executive Order 12866, as amended by Executive Order 14094, and accordingly, this proposed rule has been reviewed by OMB.

1. Need for Federal Regulatory Action

The Department is publishing this proposed rule to amend NICS regulations to implement various parts of the CAA, Public Law 117–103, and BSCA, Public Law 117–159.

2. Population

Although manufacturers and importers may also initiate NICS checks when transferring firearms to non-licensees, dealers and pawnbrokers initiate most of the background checks on non-licensees. As of December of 2021, there were an estimated 50,588 FFLs that the FBI served across 31 States and 5 Territories that will be impacted by this rule.⁴⁰ There are also an estimated 10 or fewer computer software vendors that may be affected by this proposed rule. As further set out below, the FBI estimates, based on FBI subject matter experts' further internal analysis of 2021 annual transaction numbers,⁴¹ this proposed rule will impact approximately 2 million NICS transactions per calendar year.⁴²

3. Benefits

This proposed rule benefits the public, public safety, and interested populations in several ways. First, this proposed rule benefits the public and interested populations by further clarifying how NICS procedures and regulations comply with the relevant mandates imposed by the CAA and BSCA. As discussed above and below, public safety will benefit from this proposed rule in several ways. Rather than only a single State-level entity receiving a denial notification, State and local law enforcement in multiple jurisdictions will, under the proposed rule, each receive a timely notification

⁴⁰ See FBI, National Instant Criminal Background Check System Operational Report 2020–2021 7 (Apr. 2022), <https://www.fbi.gov/file-repository/nics-2020-2021-operations-report.pdf/view> (“Operational Report”).

⁴¹ See Operational Report at 13.

⁴² This number is based upon the transactions about which full addresses are collected from FFLs for denial notifications (approximately 1.428 million transactions) and under-21 transactions (approximately 340,000 transactions), for a total of approximately 1.7 million transactions. That total would be increased by the number of transactions that are impacted by local or Tribal firearm prohibitions, but that number of transactions cannot be estimated at this time. As described below, some FFLs will also be impacted by needing to update additional delays of some under-21 transactions; however, those under-21 transactions have already been included due to the need to collect address information.

containing (1) the name of a prohibited person who has been denied the receipt of a firearm during a NICS transaction, (2) information on where that prohibited person claims to reside, and (3) information about the FFL where that transaction took place. Authorities in the jurisdiction in which the attempted transaction occurred will be able to take more timely action(s) when prohibited persons attempt to obtain firearms through FFLs in their jurisdiction. If the attempt is made outside of the prohibited person's jurisdiction of residence, the State and local law enforcement in the jurisdiction of residence will also have timely awareness and be able to take any actions necessary. This information will allow for potential retrievals of firearms, apprehensions of prohibited persons, interviews of witnesses, and collection of other potentially relevant evidence.

There are also public safety benefits in applying the NDNA to delayed transactions. When a NICS transaction is denied after the third business day, such circumstances are known as "delayed denials." Delayed denials impact public safety because those transactions may have resulted in an FFL transferring at least one firearm to a prohibited person before the transaction could be denied. When a delayed denial occurs, the FFL is contacted to determine whether the transfer of one or more firearms occurred. If a transfer did occur, ATF is notified by the NICS Section of the need to retrieve any firearms. Providing address information up front in delayed transactions will benefit public safety because prohibited persons' residential addresses will be readily available to immediately provide to applicable local law enforcement authorities, who can then take any applicable action. Critical time will not be lost waiting for another contact with the FFL to collect the address at that point in time (or perhaps await confirmation as to whether the firearm was in fact transferred). If, for example, the FFL happens to be closed and NICS cannot connect with the FFL in a timely manner (to update the denial or collect the full address), particularly after the third business day, at which time the firearm may have already transferred, the resulting delays jeopardize public safety by potentially increasing the time that a prohibited person has a firearm.

This proposed rule also would benefit interested populations by minimizing impacts to prospective transferees and FFLs by requiring further residential address information only if the prospective transferee has been denied by NICS, has had a prospective firearm

transfer delayed, may be subject to an applicable local or Tribal firearm prohibition, or is under 21 years of age. The Department does not propose that all prospective firearm transferees have their full residential address information submitted to NICS simply because that information is now required for some NICS transactions. Limiting the scope of the proposed rule in this way benefits prospective transferees because most will not need to have further address information provided to NICS. Similarly, limiting the scope of the rule in this fashion benefits FFLs as well by not requiring FFLs to spend time providing NICS with unnecessary additional address information in every transaction they submit. Further, by requiring the information be provided upon the initial contact (where an instantaneous review of available information about the person reveals that the transaction must be delayed or denied, the person is under 21, or to determine if the person is potentially subject to an applicable local or Tribal firearm prohibition), this rule reduces the need to contact the FFL at a later time to obtain this information.

4. Costs

This proposed rule will affect NICS transactions that: (1) may be impacted by local or Tribal prohibitions; (2) have been delayed or denied; or (3) involve persons under 21 years of age wishing to receive or be transferred a firearm from an FFL. Because the scope of applicable local or Tribal prohibitions is still being researched, it is unknown how many such prohibitions exist, but the FBI does not anticipate many will be identified. Notably, FBI research currently reveals that 43 States have preempted local jurisdictions from imposing firearms prohibitions that exceed the firearms prohibitions imposed by State law.⁴³ States cannot preempt Tribal laws, however, so the FBI is continuing its research for applicable Tribal firearm prohibitions. There are 574 federally recognized Tribes, *see* Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian

Affairs, 88 FR 54654, 54654 (Aug. 11, 2023), exercising jurisdiction in Indian country, 18 U.S.C. 1151. More than 300 of these Tribes are currently located within the States of Alaska, California, and Oklahoma.⁴⁴ An initial review of publicly available resources revealed that a number of these federally recognized Tribes may have enacted laws regulating the possession or use of firearms within their respective jurisdictions.⁴⁵ Review of Tribal codes is ongoing to determine to what extent the use of Tribal firearm possession prohibitions will arise during NICS background checks and will, therefore, impact FFLs, prospective transferees, or Tribes. More specifically, to reasonably assess any applicable impact such prohibitions may have, the FBI will review active Tribal codes for firearm prohibitions that differ from existing Federal (or applicable State) prohibitions. The Department welcomes comments from the public that, for example, may assist the FBI in effectively and accurately identifying the federally recognized Tribes that have imposed their own firearm prohibitions. Many Tribes already contribute relevant orders to FBI CJIS systems to help determine possible Federal firearm prohibitions in individual cases, and the FBI encourages Tribes to continue to do so. Given the number of Tribes and the diverse nature of Tribal firearms laws, the FBI is unable, at this time, to reasonably estimate the impact the additional Tribal firearm possession prohibitions will have during NICS background checks. The FBI will be conducting outreach with representatives of federally recognized Tribes and seeking comment from the public generally as the FBI moves to incorporate additional Tribal firearm prohibitions into the analysis of prospective firearm transfers. Consequently, the fiscal impact analysis of this proposed rule will focus upon the other impacts that denial notifications and research associated with enhanced outreach during under-21 transactions may have upon firearm transfers submitted by FFLs.

As described above, under the NDNA, the FBI is required to send denial notifications to the local law

⁴³ See Nat'l League of Cities, *City Rights in an Era of Preemption: A State-by-State Analysis* 23 (2018), <https://www.nlc.org/resource/city-rights-in-an-era-of-preemption-a-state-by-state-analysis/>; see also Giffords Law Ctr., *Preemption of Local Laws*, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/preemption-of-local-laws/> (last visited Oct 4, 2024) (reporting that there are five States with "no state laws expressly preempting local authority to regulate firearms or ammunition" and two additional States that "allow local governments to retain substantial authority to regulate firearms and ammunition," but where "the state legislature has expressly removed this authority in certain areas").

⁴⁴ See, e.g., U.S. Dep't of the Interior, *Indian Affairs, Tribal Leaders Directory*, <https://www.bia.gov/service/tribal-leaders-directory> (last visited Oct. 4, 2024); Nat'l Cong. of Am. Indians, *Tribal Nations & the United States: An Introduction* (Feb. 2020), <https://www.ncai.org/about-tribes/demographics>.

⁴⁵ See, e.g., Nat'l Indian Law Library, *Tribal Law Gateway: Find Tribal Law Material by Tribe*, <https://narl.org/nill/triballaw/index.html> (last visited Oct. 4, 2024).

enforcement authority of the State or Tribe in whose jurisdiction a firearm was sought and, if different, where the denied person resides when the FBI denies a NICS transaction that would violate 18 U.S.C. 922(g) or (n) or State, local, or Tribal law. The FBI needs to collect more specific residency information during a subset of NICS transactions to comply with the NDNA.

For under-21 transactions, as set out above, an enhanced NICS background check entails contacting State and local entities to determine if the prospective transferee has a possibly disqualifying juvenile record as described in 18 U.S.C. 922(d). Some enhanced outreach during under-21 transactions may show that cause exists to further investigate a possibly disqualifying juvenile record under 18 U.S.C. 922(d). If such cause exists, the under-21 transaction will be placed into an additional delay period not to exceed the tenth business day from when the licensee contacted NICS.

For all of these described transactions, FFLs must, using information the prospective transferee places on the revised Form 4473, provide to the FBI the prospective transferee's complete residential address so that NICS can determine whether a local or Tribal prohibition should be considered and for investigation and reporting when a NICS transaction has otherwise been delayed or denied. Further, where cause exists for additional delay of an under-21 transaction, and the FFL has been so notified before expiration of the third business day, the FFL will be prohibited from transferring the firearm until after the tenth business day, unless the FFL first receives a "Proceed" response. In

such instances, conveying the additional delay period to an FFL will likely require an additional contact—telephonically or electronically—beyond what was previously necessary, as well as an obligation by an FFL to record the additional delay on the revised Form 4473.

i. Costs: Updated Prohibitions

In order to determine whether a local or Tribal prohibition would be applicable to a prospective transfer, the Department proposes requiring FFLs to provide the residential addresses (and city limits information) of a prospective firearm transferee for certain transactions. Address information would be based upon the State of residence of the prospective transferee, State of purchase, and initial results from the three primary databases NICS searches during each transaction. As noted previously, State law preempts many local firearm prohibitions, and initial research has not revealed a substantial number of existing local firearm prohibitions.

As noted above, review of Tribal codes is ongoing to determine to what extent the use of Tribal firearm possession prohibitions will arise during NICS background checks and will, therefore, impact prospective transferees or Tribes. The FBI is, however, unable at this time to reasonably estimate the costs, if any, that the added consideration of Tribal firearm possession prohibitions will have during NICS background checks.

Ultimately, the FBI does not anticipate that a large number of NICS transactions will involve local or Tribal prohibitions that would preclude

transfers permitted by applicable Federal or State law. Further, the FBI believes that most instances would fall under the broader delayed or denied circumstances noted below and would impose nominal to no financial impact upon FFLs. The Department requests public comments regarding potential costs that may impact Tribes, prospective transferees, and FFLs.

ii. Costs: Under-21 Transactions

Federal law authorizes FFLs to transfer only long guns to individuals under the age of 21. *See* 18 U.S.C. 922(b). In 2021, internal FBI subject matter experts estimated there were approximately 6.5 million total transactions involving the prospective transfer of a long gun.⁴⁶ Subject matter experts within the FBI also anticipate 5 percent, or lower, of annual long gun transactions constitute under-21 transactions. That percentage equates to approximately 325,000 under-21 transactions.⁴⁷ For the purposes of this analysis, the FBI estimates that it would take 30 seconds (0.0083 hours) per under-21 transaction to provide address information from the Form 4473 to NICS (telephonically or electronically). That process is therefore estimated to result in an additional 2,698 work hours from FFLs per year.⁴⁸

The FBI uses some possible wage rates from the Bureau of Labor Statistics ("BLS") and uses the average wage rate as the wage rate for FFLs. The FBI uses a loaded wage rate to account for fringe benefits such as insurance. The "load rate" used for this proposed rule is 1.42.⁴⁹ Table 1.0 shows the estimated wage rates and loaded wage rates.

TABLE 1.0—WAGE CATEGORIES USED FOR THE FFL COMMUNITY⁵⁰

Job category	Wage rate	Loaded wage rate
11—2022 Sales Managers	\$68.46	\$97.22
41—2011 Cashiers	12.87	18.28
41—2031 Retail Salespersons	15.35	21.80
Average	32.23	45.77

Using an average, loaded wage rate for staff of BLS job categories that the FBI

anticipates may be involved in prospective firearm transfers for FFLs,

which is \$46.00 per hour (rounded up), providing address information to NICS

⁴⁶ FBI, *NICS Firearm Checks: Year by State/Type*, https://www.fbi.gov/file-repository/nics_firearm_checks_-_year_by_state_type.pdf/view (last visited Oct. 4, 2024).

⁴⁷ 325,000 transactions = 6.5 million NICS checks * 5 percent of transactions involving individuals under the age of 21.

⁴⁸ 2,698 aggregate hourly burden = 325,000 transactions * 30 seconds (.0083 hours) per transaction.

⁴⁹ BLS Series ID CMU2010000000000D, CMU2010000000000P (average of 2021 quarterly Private Industry Compensation = \$37.15)/BLS Series ID CMU2020000000000D, CMU2020000000000P (average of 2021 quarterly Private Industry Wages and Salaries = \$26.23) = load rate of 1.42 (rounded up). *See* BLS, *BLS Data Finder 1.1*, [https://beta.bls.gov/dataQuery/find?fq=survey:\[cm\]&s=popularity:D](https://beta.bls.gov/dataQuery/find?fq=survey:[cm]&s=popularity:D) (last Oct. 4, 2024). The "load rate" takes into account additional compensation for fringe benefits such as insurance.

⁵⁰ Chart sources for Wage Categories used for the FFL community from BLS:

BLS, *Occupational Employment and Wages, May 2021: 11—2022 Sales Managers* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes112022.htm>.

BLS, *Occupational Employment and Wages, May 2021: 41—2011 Cashiers* (Mar. 31, 2022) <https://www.bls.gov/oes/2021/may/oes412011.htm>.

BLS, *Occupational Employment and Wages, May 2021: 41—2031 Retail Salespersons* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes412031.htm>.

for under-21 transactions would result in an estimated annual cost to the FFL community of \$125,000.⁵¹ Even if the FBI's address collection time from an FFL is estimated at 1 minute (.0167 hours) per transaction, this would only be an anticipated yearly cost of approximately \$250,000.

For a subset of these under-21 transactions, there may be an additional delay notification. For the purposes of this analysis, the Department assumes 50 percent (162,500) of all under-21 transactions will have cause established and require that the FFL be notified of additional delay being applied to the transaction (which includes providing the FFL with the amended Brady transfer date⁵²). Estimating an average of 3 minutes (.05 hours) per additional delay notification, this may require an additional 8,125 work hours per year for all FFLs in total.⁵³ Multiplying 8,125 hours by the estimated BLS average loaded wage rate of \$46.00 (rounded up), this additional delay notification will impose an estimated yearly combined cost to FFLs of approximately \$374,000. The aggregate estimated impact to all FFLs in total for under-21 transactions is therefore anticipated to be \$499,000 per year.⁵⁴

In conjunction with the impacts to FFLs, there are a limited number of vendors that will also incur cost to provide software programming updates to some FFLs' electronic systems used to communicate with NICS. These updates will be required for the FFL to receive the amended Brady transfer date during an under-21 transaction when cause for additional delay exists. This

cost will only impact those FFLs who submit their background checks by E-Check and are eXtensible Markup Language ("XML") users.⁵⁵ There are approximately 10 total vendors serving all XML users. XML users predominantly are within the larger, corporate FFLs (some of which have in-house personnel that would perform these system updates), but the FBI estimates 95 FFLs that would be considered small entities also utilize XML to communicate with NICS and are served by these vendors. Using the same load rate (1.42) used in Table 1.0 above for calculating costs to FFLs, the FBI calculates below the average loaded wage rate for anticipated job categories of vendors providing XML software updates for the FFLs. The Department has identified BLS job categories within these 10 vendors that are anticipated to be involved with these software updates. Table 2.0 provides the wage rates and loaded wage rates for such vendor employees as well as their averages.

TABLE 2.0—WAGE CATEGORIES USED FOR THE SOFTWARE UPDATES⁵⁶

Job category	Wage rate	Loaded wage rate
15–1251 Computer Programmers	\$46.46	\$65.97
15–1252 Software Developers	58.17	82.60
Average	52.32	74.29

Assuming that it would take 100 hours to update their software, multiplied by an estimated average loaded wage rate (rounded up) of \$75.00, the FBI anticipates a one-time cost to each vendor of \$7,500 or less to make these updates. The FBI anticipates this would not be a significant financial impact to the vendors because the costs would likely be passed onto the particular FFLs that would require the updates or the costs would be covered by existing contracts or agreements between the vendors and FFLs.

iii. Costs: Notifications Required by the NDNA

In addition to requiring that FFLs provide address information for under-21 transactions and where needed to determine whether a local or Tribal prohibition may apply, the proposed rule will require FFLs to provide the residential addresses of prospective firearm transferees for all delayed and denied transactions to allow the FBI and POCs to implement the NDNA's requirement of sending denial notifications as described above. In 2021, internal FBI subject matter experts estimated that 1,428,000⁵⁷ firearm background checks processed by the FBI⁵⁸ were either delayed or denied.⁵⁹

⁵⁷ According to internal FBI subject matter experts' estimate of transactions the NICS Section performed in 2021, 1,388,000 were delayed and approximately 40,000 more were immediately denied without being placed into delay. An example of an immediate denial would be a transaction denied based upon a biographic match to a NICS Indices entry. The NICS Section reported performing a total of 11,106,931 NICS background checks in 2021. See Operational Report at 13.

⁵⁸ The NDNA will impact POCs but, due to a variety of factors, the Department anticipates the address collection necessary to implement the NDNA will have little to no economic impact (let alone a significant economic impact) on small entity FFLs in POC States. FBI internal subject matter experts estimate there are 10,300 FFLs in POC States that would be considered small entities. In addition to the Form 4473 needing to be completed by prospective firearm transferees, some POC States have laws that also require separate State paperwork to be completed and provided to the POC. Those State forms will often require FFLs in those States to collect and provide the POC with the subject's full residence address. See, e.g., California Dep't of Just., Bureau of Firearms, Dealer's Record of Sale (DROS) Worksheet (May 2023), https://des.doj.ca.gov/forms/DROS_Worksheet_BOF-929.pdf. Also, as discussed in Section II.B of this preamble, before the NDNA was enacted, most POC States already had their own denial notification procedures in place, and those procedures would require the FFLs to produce the subject's residence information at some point. Some POCs may collect full residence address information through means other than the FFL, such as by completing a driver's license check on the subject. Some POC States have laws that require that permits to purchase be obtained before any firearms can be purchased in those States; as a result, some of those permit applicants may never be approved for a permit that would allow them to attempt a firearm transfer through FFLs in that State. These State processes mean there are a variety of ways in which FFLs in POC States are already required to collect and report residence address information of subjects or where State laws reduced the pool of (potentially) prohibited persons that could be subject to the NDNA because they are ineligible to attempt firearm purchases in those POC States.

⁵⁹ The NICS Section reported denying 153,565 transactions in 2021. See Operational Report at 18–19. FBI subject matter experts note that this total includes an estimated 3,000 denials of non-Brady NICS background checks, which would not be denied transactions where the NDNA mandates notification to local law enforcement authorities. These other checks include checks for the Nuclear Disposition of Firearms and for the Nuclear

⁵¹ 2,698 work hours * \$46 loaded hourly wage rate = \$124,108 (\$125,000, rounded up).

⁵² The amended Brady transfer date would be the day after the tenth business day.

⁵³ FBI internal subject matter experts have noted that almost all POCs have some form of State-implemented processes that, even before BSCA, already required FFLs in those States to collect and report the full residence addresses of some subjects. Further, FFLs in some POC States will not be impacted by enhanced delay for some subjects of under-21 transactions because those States have mandatory waiting periods that meet or exceed 10 business days. Additionally, many POC States currently have laws that, generally, do not allow even long guns to be transferred to persons who are under 21 years of age. See, e.g., Giffords Law Ctr., Minimum Age to Purchase & Possess, <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/> (last visited Oct. 4, 2024).

⁵⁴ \$499,000 = \$374,000 (50 percent additional delay of under-21 transactions total of 162,500) + \$125,000 (aggregate cost to provide under-21 address information at 30 seconds (.0083 hours) per transaction). The aggregate cost impact to the FFL community for under-21 transactions is approximately \$635,000 (\$374,000 + \$261,000) if estimating 1 minute (.0167 hours) average for FFLs to provide address information during each under-21 transaction.

⁵⁵ XML provides FFLs an additional, electronic secure server-to-server method (in addition to E-Check) of submitting a NICS background check to the FBI. Operational Report at 10.

⁵⁶ Chart sources for Wage Categories used for the FFL community from BLS:

BLS, *Occupational Employment and Wages, May 2021: 15–1251 Computer Programmers* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes151251.htm>.

BLS, *Occupational Employment and Wages, May 2021: 15–1252 Software Developers* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes151252.htm>.

As above for under-21 transactions, if it takes 30 seconds (0.0083 hours) per transaction for the FFL to provide the NICS Section with the applicant's address as required, then providing this information will require an additional 11,853 (rounded up) working hours per year for the FFL community. The average loaded wage rate used for the FFL community (see Table 1.0) is estimated at \$46.00 per hour (rounded up). This address collection for delayed and denied transactions will impose an estimated yearly cost of \$545,238⁶⁰ to the FFL community.⁶¹

Between anticipated yearly under-21 transaction costs and other costs anticipated from yearly delay or denial address collections stemming from the NDNA, the FBI anticipates an aggregate economic impact of approximately \$1.04 to \$1.18 million for all FFLs in States in which the FBI processes NICS background checks and an estimated cost of \$75,000 for the vendor community, which is expected to be passed onto the FFLs.⁶² The total impact to the FFL community is estimated to be \$1.12 to \$1.26 million. This amount includes the requirement to produce to NICS further address information during under-21 transactions and for purposes of the NDNA; some FFLs receiving subsequent notification for (and recording on the revised Form 4473) the amended Brady transfer date during under-21 transactions as required by BSCA; and the estimated vendor costs that are anticipated to be passed on to the FFLs.⁶³

iv. Costs: Government

State, local, and Tribal agencies that enforce juvenile criminal justice and mental health laws, as well as any State repositories of such records, may

receive requests for juvenile record information from NICS that they have not received in years past; however, those entities are under no obligation to respond, and some government entities are prohibited under State laws from providing juvenile records to NICS. The Department seeks comments from State, local, and Tribal entities on costs of processing a contact for juvenile records for an under-21 transaction. In addition to the State, local, and Tribal agencies described in 34 U.S.C. 40901(l) receiving the FBI's requests for juvenile justice and mental health records, any records those agencies provide to the FBI may lead to the FBI requesting further records from additional State, local, or Tribal agencies (such as courts or prosecuting authorities). Again, Federal law does not require State, local, or Tribal agencies to respond to the FBI's requests for records (and, in some instances, State, local, or Tribal laws may prohibit those agencies from disseminating records concerning a juvenile's mental health or juvenile justice history).

Should the Department ultimately decide to use the enhanced under-21 outreach or denial notifications during other authorized uses of NICS, there would be some additional contacts of some State and local entities. That additional number of contacts cannot be currently estimated because there are unknown numbers of persons determined to be prohibited or under 21 years of age who may be checked through NICS. While some statistics are available concerning denials recommended through use of NICS, those numbers also cannot be reasonably estimated after enactment of BSCA.⁶⁴

B. Executive Order 13132 (Federalism)

This proposed rule may have direct effects on the States; however, such effects will not be substantial, nor will such impact concern the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation

of a federalism summary impact statement.

C. Executive Order 12988 (Civil Justice Reform)

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

D. Regulatory Flexibility Act

This proposed rule amends the Department's regulations to incorporate changes made by statutory provisions enacted as part of the CAA and BSCA. The FBI is developing systematic solutions for collections, notifications, and contacts required by the CAA and BSCA. The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, generally requires that when an agency issues a proposed rule or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. See 5 U.S.C. 603, 604. An initial regulatory flexibility analysis ("IRFA") is not required if the head of the agency certifies that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). While the statistics below support a conclusion that this proposed rule, if promulgated, would not result in a significant economic impact on a substantial number of small entities, the FBI has, in an abundance of caution, nonetheless prepared an IRFA.

In accordance with the RFA, the FBI prepared an IRFA that examines the impacts of the proposed rule on small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people. The FBI performed an IRFA of the impacts on small businesses and other entities of this proposed rule. The FBI performed this IRFA using the known or estimated statistical and cost information discussed below.

Based on the information from this analysis, the FBI found:

- The FBI's internal subject matter experts estimate that in States in which the FBI processes NICS background checks, the FBI served 47,100 FFLs (rounded up) in 2021 that would have been considered small businesses under

Regulatory Commission, *see id.* at 25, as well as those conducted for ATF under their National Firearms Act and Gun Control Act responsibilities, *see, e.g., id.* at 21. Further, also not subject to this rule, the totals for explosives checks, *see id.* at 14, would be in addition to the totals provided in this footnote and footnote 57 above.

⁶⁰ Even if the address collection time were estimated at 1 minute (.0167 hours) per transaction, this would be an anticipated yearly cost of \$1.1 million.

⁶¹ The FBI notes that there were 7,711,803 total, non-permit NICS checks conducted by all POCs in 2021. *See* Operational Report at 13.

⁶² Not taken into account is the fact that use of the 2021 total of delayed and denied transactions will include some persons who also fall into the under-21 transaction category, resulting in some duplication of FFL costs related to address collection needs described in this preamble.

⁶³ The total estimated cost incurred by FFLs for under-21 transactions is \$499,000 (\$635,000 if estimating 1 minute per address collection) + \$545,238 (FFL total costs incurred by the NDNA address collection) + \$75,000 (estimated vendor costs passed on to FFLs), for a total of between \$1.12 million and \$1.26 million.

⁶⁴ For example, 2021 saw ATF run about 138,500 NICS checks for explosives licensing, *see* 18 U.S.C. chapter 40, with 1656 being recommended for denial; there were 133 total backgrounds of security personnel under 42 U.S.C. 2201a in 2021; and there were 121,961 Disposition of Firearms checks through NICS, with 2150 denied. Operational Report at 14, 25. The FBI routinely publishes such statistics.

Small Business Administration sizing standards.⁶⁵

○ The FBI estimates that this proposed rule would potentially affect most FFLs that use NICS to determine whether a potential firearm transfer may “Proceed,” is “Denied,” or is “Delayed.”

○ The highest anticipated cost will be for under-21 transactions, where personnel for a small entity FFL, within the third business day, would need to take time to locate the prospective transferee’s Form 4473 and indicate that additional delay of that transaction has been established and that there is a new Brady transfer date (the day after the tenth business day). The Brady transfer date reflects when Federal law would allow that firearm to be transferred if the FFL is not first provided with a “Proceed” or “Denied” response from the FBI or a POC. The FBI anticipates these scenarios will average 3 minutes (.05 hours) of time for the FFL to complete this new process.

○ FFLs would need to make \$2,200 or less in revenue in order to incur an impact of 1 percent or more. This estimate is based upon the following analysis: The FBI estimates a \$2.65 cost per small-entity FFL to provide address information for under-21 transactions (\$125,000 aggregate cost to FFL community/47,100 estimated small entity FFLs) + a \$7.82 cost per FFL for additional delay notifications (\$373,000 aggregate/47,100) + a \$11.58 cost per FFL for the NDNA address collection (\$545,238/47,100) = estimated \$22 (rounded down) per small entity FFL, per year to implement these new provisions.⁶⁶

⁶⁵ There are an estimated 3,500 FFLs in States where the FBI processes NICS background checks and that the FBI anticipates would not be considered small entities because they are larger, retail, or corporate stores that have chains of locations throughout the United States. As noted in footnotes 53 and 58 of this preamble, for a variety of reasons, internal FBI subject matter experts anticipate that, because of State processes required in many POC States before the NDNA or BSCA were effective, the processes this rule reflects or proposes to implement for denial notifications and under-21 transactions will not result in a significant economic impact to most of the 10,300 small entity FFLs in POC States. For those same reasons, however, the Department cannot reasonably estimate a more precise economic impact that those FFLs in POC States may experience due to denial notifications or under-21 transactions; again, however, it is anticipated that most FFLs in POC States will experience little to no economic impact due to this rule.

⁶⁶ The total impact to each FFL using the larger estimates provided earlier is \$37.00 (rounded up) cost per small entity FFL (\$5.54 (for under-21 address collection of \$261,000/47,100 FFLs) + \$23.36 (for NDNA address collection at \$1.1 million/47,100) + \$7.94 (for additional delay notifications \$374,000/47,100)). This results in an FFL needing to earn \$3,700 or less in revenue to

○ The FBI estimates that 10 or fewer software vendors that serve a limited portion (estimated to be 100 or fewer) of these 47,100 small entity FFLs may indirectly have a one-time significant impact as a result of the mandates from Congress reflected in this proposed rule, but that they may redistribute the overall costs in small fees to the FFLs they serve.

○ There will be an impact on government entities, but that impact will not be significant, and those government entities are not obligated to take any particular actions based upon the notifications or requests that are submitted to them by the FBI.

Preliminary Initial Regulatory Flexibility Analysis

The RFA establishes that agencies must try to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this goal, agencies must solicit and consider flexible regulatory proposals and explain the rationale for their actions to assure that such proposals are given serious consideration.

Under the RFA, agencies are required to consider what, if any, impact a proposed rule would have on small entities. Although the FBI anticipates that this proposed rule will not have a significant economic impact upon a substantial number of small entities, the FBI has prepared an IRFA. Under 5 U.S.C. 603(b), the regulatory flexibility analysis must provide or address:

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of

incur an impact of one percent or more. Again, not taken into account is the fact that the use of the 2021 total delayed and denied transactions will include some persons who also fall into the under-21 transaction category, resulting in some duplication of FFL costs related to address collection needs described in the preamble. Also not included here are FFLs located in POC States because there are variety of factors that may exclude many of those FFLs from the equations noted above. For example, not all FFLs in POC States will conduct under-21 transactions because several of those States, like Florida and Hawaii, have laws that do not (or with limited exceptions, do not) allow persons under 21 years of age to purchase firearms. See footnotes 53, 58, and 65.

the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, under 5 U.S.C. 603(c), the IRFA must also contain a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

Following is an analysis of each of these factors:

A description of the reasons why action by the agency is being considered.

The Department is publishing this proposed rule to amend NICS regulations to implement various parts of the CAA and BSCA.

A succinct statement of the objectives of, and legal basis for, the proposed rule.

The objective of this proposed rule is to comply with procedures mandated by Congress to prevent prohibited persons from obtaining firearms from FFLs. The Department is publishing this proposed rule to amend NICS regulations to implement various parts of the CAA and BSCA.

A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

Based on the FBI’s statistics reported from 2021,⁶⁷ there are an estimated 50,855 FFLs that may be impacted by this rule, the majority of which would be considered as small entities. The FBI’s internal subject matter experts note that, indirectly, an estimated 10 or fewer computer software vendors may be affected by this proposed rule. The FBI’s internal subject matter experts also estimate the majority of these FFLs and vendors would be considered small.

A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

As described previously, FFLs currently collect the information about prospective transferees necessary for NICS to implement the congressional mandates of the CAA and BSCA as relevant to this proposed rule. This rule proposes that FFLs would now be

⁶⁷ See Operational Report at 7.

required to provide this information to NICS for (1) under-21 transactions subject to an enhanced background check under BSCA; (2) individuals who may be subject to a firearm prohibition under applicable local or Tribal law; and (3) individuals whose background has led to their NICS transaction being delayed for further research of a possible disqualification or denied due to a disqualification as described in 18 U.S.C. 922(t). Each FFL will also, on an annual basis, likely have to record the additional delay of a limited number of under-21 transactions that the FFL processes (moving the allowed Brady transfer date from the day after the third business day to the day after the tenth business day) after the FBI has notified the FFL the transaction has been placed into additional delay. Where an FFL utilizes electronic recordkeeping, the FBI anticipates updates to those computer systems by software vendors necessary to capture the additional delay information.

An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

There are no duplicate or overlapping rules. While there may be similar rulemakings from ATF associated with BSCA, these rulemakings are coordinated with each other and do not overlap.

A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

There are no significant alternatives to the proposed rule. This proposed rule puts in place the minimum changes to NICS regulations needed to accomplish the mandates of the CAA or BSCA and avoid any significant impact on small entities.

E. Congressional Review Act

This rule, when finalized, is not expected to be a major rule as defined for purposes of the legislation commonly known as the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 847, 868 (1996). *See* 5 U.S.C. 804(2).

F. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed

necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48. *See* 2 U.S.C. 1532.

G. Paperwork Reduction Act

The Department believes any collections of information needed to implement the above requirements, such as further residential address information, are or will be generally covered under the collection of information through ATF Form 4473. All address information sought by these amendments, except for whether an individual resides within city or municipal limits, is currently collected by the FFL on the Form 4473. To further implement any “local” firearm prohibitions added by the CAA, the Department is proposing to require the FFL to inquire and collect whether the prospective transferee lives within city or municipal limits if that information is known by the transferee. A revised Form 4473 received approval by OMB on August 30, 2023, and was renewed for another 3-year period. Use of the new form by the industry becomes mandatory on February 1, 2024, and will continue through August 31, 2026.⁶⁸ The revisions add this question and make other modifications relevant to carrying out the new requirements imposed by the NDNA and BSCA. ATF has published the revised Form 4473.⁶⁹ The Department is amending relevant NICS regulations through this proposed rule to reflect that, for some transactions as noted herein, the FBI will require the FFL to provide all address information already collected on the revised Form 4473 to NICS regarding a prospective transferee.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has determined that formal Tribal consultation under Executive Order 13175 is not required because this proposed rule is provided as part of a public collaboration that includes Tribes and is being issued to implement congressional mandates regarding Tribal law prohibitors, enhanced background checks for transferees under the age of 21 years, and NICS denial notifications. Further, implementation of these provisions is not discretionary, nor do there appear to be any policy decisions in this proposed

rule that would affect federally recognized Tribes.

List of Subjects

Administrative practice and procedure, Arms and munitions, Computer technology, Crime, Firearms, Juvenile delinquency, Law Enforcement, Penalties, Privacy, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons set forth in the preamble, 28 CFR part 25, subpart A, is proposed to be amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

■ 1. The authority citation for part 25 is revised to read as follows:

Authority: Public Law 103–159, 107 Stat. 1536, 49 U.S.C. 30501–30505; Public Law 101–410, 104 Stat. 890, as amended by Public Law 104–134, 110 Stat. 1321; Public Law 117–103, 136 Stat. 49; Public Law 117–159, 136 Stat. 1313; 34 U.S.C. 40901; 18 U.S.C. 921; 18 U.S.C. 922; 18 U.S.C. 925B; 18 U.S.C. 925C.

Subpart A—the National Instant Criminal Background Check System

■ 2. Revise § 25.1 to read as follows:

§ 25.1 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103–159, 107 Stat. 1536. The Brady Act requires the Attorney General to establish a National Instant Criminal Background Check System (NICS) to be contacted by any licensed importer, licensed manufacturer, or licensed dealer of firearms for information as to whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of law as described in subsection (t) of 18 U.S.C. 922. The regulations in this subpart A are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542 (18 U.S.C. 922 note), and include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been denied the right to obtain a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency. The regulations in this subpart A are also issued pursuant to Public Law 117–103 (18 U.S.C. 925B, 925C), and Public Law 117–159 (34 U.S.C. 40901) to reflect the need to contact local law enforcement for purposes of providing denial

⁶⁸ ATF, *Updated ATF Form 4473—Firearms Transaction Record (August 2023 Revisions)* (last reviewed Feb. 12, 2024), <https://www.atf.gov/firearms/updated-atf-form-4473-firearms-transaction-record-august-2023-revisions>.

⁶⁹ *See id.*

notification reports in accordance with 18 U.S.C. 925B and reporting certain data in accordance with 18 U.S.C. 925C; and with respect to enhanced background checks of prospective transferees who are under 21 years of age. The provisions of this subpart A shall be construed as being severable from one another and any remaining upheld or unchallenged provisions shall be treated independently of any invalidated provision.

■ 3. Amend § 25.2 by:

- a. Revising the definitions of “Delayed”, “Denied”, and “Denying agency”;
- b. Adding the definition of “Local Law Enforcement Authority,”
- c. Revising the definition of “NICS”;
- d. Adding the definition of “NICS Indices”;
- e. Removing the definitions of “NICS Index” and “NICS Operations Center”;
- f. Revising the definition of “NICS Representative”;
- g. Adding the definitions of “NICS Section,” and “No Known Prohibitors: At least one state or local agency has not responded or cannot respond;” and
- h. Revising the definitions “Open,” “POC (Point of Contact),” and “Proceed;”

The revisions and additions read as follows:

§ 25.2 Definitions.

* * * * *

Delayed means the response given to the FFL indicating that the transaction is in an “Open” status and that more research is required prior to a NICS “Proceed” or “Denied” response.

(1) Except as provided in paragraph (2) of this definition, a “Delayed” response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up “Proceed” response from the NICS or the expiration of three business days without notification of a “Denied” response, whichever occurs first.

(2) For a prospective transferee under 21 years of age, if the NICS has notified the FFL before three business days have elapsed from initial contact that additional delay is required to determine whether the prospective transferee has a prohibiting record under 18 U.S.C. 922(d), a “Delayed” response to the FFL indicates it would be unlawful to transfer the firearm until receipt of a follow-up “Proceed” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response from the NICS or the expiration of 10 business days from initial contact without notification of a “Denied” response, whichever occurs first.

Denied means denial of a firearm transfer based on a NICS response, or through the enhanced background check of a person under 21 years of age as provided in 34 U.S.C. 40901, indicating one or more matching records were found providing information demonstrating that a prospective transferee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t).

Denying agency means a POC or the NICS Section, whichever determines that the subject is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t).

* * * * *

Local Law Enforcement Authority means a bureau, office, department, or other authority of a state or local government or tribe that has jurisdiction to investigate a violation or potential violation of, or enforce, a state, tribal, or local law.

* * * * *

NICS means the National Instant Criminal Background Check System, which an FFL must, with limited exceptions, contact for information on whether a person who is not licensed under 18 U.S.C. 923 can lawfully receive, or be transferred, a firearm as described in 18 U.S.C. 922(t).

* * * * *

NICS Indices means the database, to be managed by the FBI, containing information provided by Federal, state, tribal and local agencies about persons prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The NICS Indices is separate and apart from the NCIC and the Interstate Identification Index (III). For purposes of this subpart, the term NICS shall be understood to refer to the NICS Indices.

* * * * *

NICS Representative means a person who receives telephone or electronic inquiries to the NICS Section from FFLs requesting background checks and provides a response of “Proceed,” “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” “Delayed,” or “Denied.”

NICS Section means the section of the FBI that receives telephone or electronic inquiries from FFLs to perform background checks, makes a determination based upon available information as to whether the receipt or transfer of a firearm would be prohibited as described in 18 U.S.C. 922(t), researches criminal history records, tracks and finalizes appeals, and conducts audits of system use. For purposes of this subpart, the term NICS

Operations Center shall be understood to refer to the NICS Section.

No Known Prohibitors: At least one state or local agency has not responded or cannot respond means, for a prospective transferee under 21 years of age, a NICS response indicating that the information available to the system at the time of the response did not demonstrate that the prospective transferee would be prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t), and: (1) all agencies contacted during the enhanced background checks required by 34 U.S.C. 40901(l) have responded and at least one of those responses is that state law prohibits juvenile justice records, juvenile mental health records, or both from being shared; or (2) at the end of the tenth business day if at least one of the state or local agencies contacted during the enhanced background checks required by 34 U.S.C. 40901(l) has not responded to the request for records. A “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response to the FFL indicates that Federal law does not prohibit the licensee from transferring the firearm.

* * * * *

Open means those non-canceled transactions related to the prospective transfer of a firearm where the FFL has not been notified of a final determination. In cases of “Open” responses, the NICS continues researching potentially prohibiting records regarding the prospective transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a “Proceed” or a “Denied” response.

(1) Except as provided in paragraph (2) of this definition, an “Open” response does not prohibit an FFL from transferring a firearm after three business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.

(2) For an individual under 21 years of age, if the NICS has notified the FFL within three business days that additional research is required, an “Open” response does not prohibit an FFL from transferring a firearm after 10 business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.

(3) An “Open” response, whether under paragraph (1) or (2) of this definition, does not relieve an FFL from compliance with other provisions of Federal, state, local, or tribal law that

may be applicable to firearms transfers. For example, under 18 U.S.C. 922(d), an FFL may not lawfully transfer a firearm if the FFL knows or has reasonable cause to believe that the prospective transferee is prohibited by law from receiving or possessing a firearm for certain reasons.

* * * * *

POC (Point of Contact) means a state or local law enforcement agency serving as an intermediary between an FFL and the Federal databases checked by the NICS. A POC will receive NICS background check requests from FFLs, check available state, local, or tribal record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that the prospective transferee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t), and respond to FFLs with the results of a NICS background check. For an individual under 21 years of age, the POC will contact state and local agencies, in accordance with 34 U.S.C. 40901(l) and as further described in § 25.6, to determine if the individual has a possibly disqualifying juvenile record under 18 U.S.C. 922(d). When a POC processes a NICS transaction and notifies the FFL of a denial determination, the POC shall report that denial notification to local law enforcement authorities in accordance with 18 U.S.C. 925B. A POC shall also provide applicable statistics necessary for the FBI to comply with the requirements of 18 U.S.C. 925C. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order.

Proceed means a NICS response indicating that all relevant systems have been checked, all requests for records have received responses, and the information available to the system at the time of the response did not demonstrate that the prospective transferee would be prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). A “Proceed” response does not relieve an FFL from compliance with other provisions of Federal, state, local, or tribal law that may be applicable to firearms transfers. For example, under 18 U.S.C. 922(d), an FFL may not lawfully transfer a firearm if the FFL knows or has reasonable cause to believe that the prospective transferee is prohibited by law from receiving or possessing a firearm for certain reasons.

* * * * *

§ 25.6 [Amended]

■ 4. Amend § 25.6 by revising paragraphs (c)(1)(iii), (c)(1)(iv), (f)(1), (g), (h) and (i) to read as follows:

§ 25.6 Accessing records in the system.

* * * * *

(c) * * *
(iii) Search the relevant databases (*i.e.*, NICS Indices, NCIC, III) for any matching records and, for a prospective transferee under 21 years of age, perform the contacts required by 34 U.S.C. 40901(l), specifically: the criminal history repository or juvenile justice information system, as appropriate, of the state in which the person resides; the appropriate state custodian of mental health adjudication records in the state in which the person resides; and a local law enforcement agency of the jurisdiction in which the person resides. These contacts are made for the purpose of determining whether the prospective transferee has a disqualifying juvenile record under 18 U.S.C. 922(d). If a state has identified to the NICS Section that it does not have a criminal history repository, juvenile justice information system, or state custodian of mental health adjudication records, a contact to an alternative agency (if one is identified by the state) shall be made; and

(iv) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:

(A) “Proceed” response, if no disqualifying information was found:

(1) As a result of searching the NICS Indices, NCIC, or III; and

(2) During the enhanced background check required by 34 U.S.C. 40901 for transactions involving a person under 21 years of age.

(B)(1) “Delayed” response, except as provided in paragraph (c)(1)(iv)(B)(2) of this section, if the NICS search finds a record that requires more research to determine whether the prospective transferee is disqualified from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). A “Delayed” response to the FFL indicates that the firearm transfer should not proceed until the receipt of a follow-up “Proceed” response from the NICS or the expiration of three business days (exclusive of the day on which the query is made), whichever occurs first. (Example: An FFL requests a NICS check on a prospective firearm transferee at 9:00 a.m. on Friday and shortly thereafter receives a “Delayed” response from the NICS. If state offices in the state in which the FFL is located are closed on Saturday and Sunday and open the following Monday, Tuesday,

and Wednesday, and the NICS has not yet responded with a “Proceed” or “Denied” response, the FFL may transfer the firearm at 12:01 a.m. Thursday.)

(2) In the case of a prospective transferee under 21 years of age at the time of the NICS check, if NICS notifies the FFL that additional delay is needed to further investigate whether the prospective transferee has a disqualifying juvenile record under 18 U.S.C. 922(d), the firearm transfer shall not proceed until receipt of a follow-up “Proceed” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response from the NICS, or the expiration of 10 business days (exclusive of the day on which the query is made) without a “Denied” response, whichever occurs first.

(C) “Denied” response, when at least one matching record is found as a result of searching the NICS Indices, NCIC, III, or through the enhanced background checks described in 34 U.S.C. 40901 for persons under 21 years of age, that provides information demonstrating that the prospective transferee would be prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The “Denied” response will be provided to the requesting FFL by the NICS Section during its regular business hours.

(D) “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response, when available information does not demonstrate the subject would be (potentially) prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t) and: (1) all agencies contacted during the enhanced background checks required by 34 U.S.C. 40901(l) have responded and at least one of those responses is that state law prohibits juvenile justice records, juvenile mental health records, or both from being shared; or (2) at the end of the tenth business day if at least one of the state or local agencies contacted during the enhanced background checks required by 34 U.S.C. 40901(l) has not responded to the request for records. A “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response to the FFL indicates that Federal law does not prohibit the licensee from transferring the firearm.

* * * * *

(f) * * *

(1) “No record” response, if the NICS determines, through a complete search, that no matching record exists. A “no record” response does not relieve a POC

from its obligation under § 25.6 to perform an enhanced background check described in 34 U.S.C. 40901 for persons under 21 years of age.

* * * * *

(g) Generally, based on the response(s) provided by the NICS, and other information available in the state and local record systems, a POC will:

(1) Confirm any matching records;

(2) Notify the FFL with a response of “Proceed,” “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” “Delayed,” or “Denied.” “Proceed,” “Delayed,” and “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” notifications will be accompanied by the NTN or STN traceable to the NTN. The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a “Denied” response; and

(3)(i) Report denial notifications to local law enforcement authorities in accordance with 18 U.S.C. 925B (NICS Denial Notification Act) when a POC provides denial determination to FFLs; and

(ii) Provide the NICS Section with applicable statistics necessary for the FBI to comply with the requirements of 18 U.S.C. 925C.

(h) *POC Determination Messages.* POCs shall transmit electronic NICS transaction determination messages to the FBI for the following transactions: “Delayed” transactions that are not resolved before the end of the operational day on which the check is requested; “Denied” transactions; transactions reported to the NICS as “Delayed” or “Open” and later changed to “Proceed” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond;” and “Denied” transactions that have been overturned. The FBI shall provide POCs with an electronic capability to transmit this information. These electronic messages shall be provided to the NICS immediately upon communicating the POC determination to the FFL. For transactions where a determination has not been communicated to the FFL, the electronic messages shall be communicated no later than the end of the operational day on which the check was initiated. With the exception of permit checks and NICS transactions of persons under 21 years of age, newly created POC NICS transactions that are not followed by a determination message (“Denied” or “Delayed”) before the end of the operational day on which they were initiated will be assumed to have resulted in a “Proceed”

notification to the FFL. The information provided in the POC determination messages will be maintained in the NICS Audit Log described in § 25.9(b). The NICS will destroy its records regarding POC determinations in accordance with the procedures detailed in § 25.9(b).

(i) *Response recording.* FFLs are required to record the system response, whether provided by the FBI NICS Section or a POC, on the appropriate ATF form for audit and inspection purposes, under 27 CFR part 478 recordkeeping requirements. The FBI NICS Section response will always include an NTN and associated “Proceed,” “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” “Delayed,” or “Denied” determination. POC responses may vary as discussed in paragraph (g) of this section. In these instances, FFLs will record the POC response, including any transaction number or determination.

* * * * *

■ 5. Revise § 25.7(a) to read as follows:

§ 25.7 Querying records in the system.

(a)(1) The following search descriptors will be required in all queries of the system for purposes of a background check:

- (i) Name;
- (ii) Sex;
- (iii) Race;
- (iv) Complete date of birth;
- (v) State of residence;

(2) For a transaction that involves a subject under 21 years of age, or where initial background check results of the subject reveal the transaction will be delayed or denied, or may be subject to a local or tribal prohibition preventing the transfer or receipt of a firearm, the following information will also be required prior to the FFL being provided with the NTN (or applicable STN) and initial status:

- (i) Residence address of the subject of the NICS check, to include the number and full street address, city, state, and ZIP Code;
- (ii) County, parish, or borough of residence; and
- (iii) Whether the individual resides within the city (to include town or other municipal boundary) limits.

* * * * *

■ 6. In § 25.8, revise paragraphs (f)(2) and (g)(2) to read as follows:

§ 25.8 System safeguards.

* * * * *

(f) * * *

(2) FFLs will provide the NICS Representative with their FFL Number and code word, the type of sale, and the

name, sex, race, date of birth, and state of residence of the prospective buyer. For those transactions that are delayed or denied, may be subject to a local or tribal prohibition on the transfer or receipt of a firearm (based on initial background check results), or involve a prospective transferee under 21 years of age, the FFL must provide additional residence address information, to include the number and street address, city, state, and ZIP Code; county, borough, or parish of residence; and whether the residence is within the city (to include town or other municipal boundary) limits.

* * * * *

(g) * * *

(2) The NICS Representative will provide only a response of “Proceed” or “Delayed” (with regard to the prospective firearms transfer) and will not provide the details of any record information about the transferee. In cases in which potentially disqualifying information is found in response to an FFL query, the NICS Representative will provide a “Delayed” response to the FFL. Follow-up “Proceed,” “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” or “Denied” responses will be provided by the NICS Section during its regular business hours.

* * * * *

■ 7. In § 25.9, revise paragraphs (a), (b)(1)(ii) and (iii), (b)(2)(i), and (b)(3), to read as follows:

§ 25.9 Retention and destruction of records in the system.

(a) The NICS will retain NICS Indices records indicating that the individuals to whom the records pertain would be prohibited from receiving or being transferred firearms as described in 18 U.S.C. 922(t). The NICS will retain such records indefinitely unless they are canceled by the originating agency. In cases where a firearms disability is not permanent (e.g., a disqualifying restraining order), the NICS will automatically purge the pertinent record when it is no longer disqualifying. Unless otherwise removed, records contained in the NCIC and III files that are accessed during a background check will remain in those files in accordance with established policy.

(b) * * *

(1) * * *

(ii) NICS Audit Log records relating to transactions in an “Open status, except the NTN and date, will be destroyed after not more than 90 days from the date of inquiry; and

(iii) In cases of NICS Audit Log records relating to allowed transactions, all identifying information submitted by

or on behalf of the transferee will be destroyed within 24 hours after the FFL receives a determination of “Proceed,” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond.” All other information, except the NTN and date, will be destroyed after not more than 90 days from the date of inquiry.

(2) * * *

(i) In addition to denial information required by law to be shared with relevant local law enforcement authorities, information in the NICS Audit Log, including information not yet destroyed under § 25.9(b)(1)(iii), that indicates, either on its face or in conjunction with other information, a violation or potential violation of law or regulation, may be shared with appropriate authorities responsible for investigating, prosecuting, or enforcing such law or regulation; and

* * * * *

(3) *Limitation on use.* The NICS, including the NICS Audit Log, may not be used by any department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of NICS data.

* * * * *

■ 8. In § 25.10, revise paragraph (g) to read as follows:

§ 25.10 Correction of erroneous system information.

* * * * *

(g) An individual may provide written consent to the FBI to maintain information about that individual in a Voluntary Appeal File to be established by the FBI and checked by the NICS for the purpose of preventing the future erroneous denial or extended delay by the NICS of a firearm transfer. Such file shall be used only by the NICS for this purpose. In accordance with 34 U.S.C. 40901 and applicable regulations of this part, for persons under 21 years of age, entry into the Voluntary Appeal File may not prevent that transaction from being subject to additional delay as described in paragraph (2) of the “Delayed” definition provided in § 25.2. The FBI shall remove all information in the Voluntary Appeal File pertaining to an individual upon receipt of a written request by that individual. However, the FBI may retain such information contained in the Voluntary Appeal File as long as needed to pursue cases of

identified misuse of the system. If the FBI finds a disqualifying record on the individual after the individual’s entry into the Voluntary Appeal File, the FBI may remove the individual’s information from the file.

* * * * *

■ 9. In § 25.11, revise paragraph (b)(1) to read as follows:

§ 25.11 Prohibited activities and penalties.

* * * * *

(b) * * *

(1) State or local agencies’, FFLs’, or individuals’ purposefully furnishing incorrect information to the system to obtain a “Proceed” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response, thereby allowing a firearm transfer;

* * * * *

Dated: November 29, 2024.

Merrick B. Garland,

Attorney General.

[FR Doc. 2024–28712 Filed 12–11–24; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 25

[Docket No. FBI–159; AG Order No. 6099–2024]

RIN 1110–AA35

Bipartisan Safer Communities Act of 2022—Criteria for National Instant Criminal Background Check System (“NICS”) Background Checks of Firearm Handlers

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Department of Justice (“Department”) proposes several amendments to regulations pertaining to the National Instant Criminal Background Check System (“NICS” or “system”) of the Federal Bureau of Investigation (“FBI”). The proposed amendments implement parts of the Bipartisan Safer Communities Act (“BSCA”), which, in relevant part, require the Attorney General to promulgate regulations authorizing certain Federal Firearm Licensees (“FFLs” or “licensees”) to use NICS for purposes of voluntarily conducting employment background checks relating to certain current or prospective employees. As this Notice of Proposed Rulemaking (“NPRM”) describes in more detail, the Department proposes allowing FFLs to use NICS for employment background checks of their

“firearm handlers” and other “eligible employees.”

DATES: Written comments must be postmarked, and electronic comments must be submitted, on or before January 13, 2025. Commenters should be aware the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by RIN 1110–AA35 or Docket No. FBI–159, by either of the following methods:

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

■ *Mail:* Charles Klebe, Assistant General Counsel, Federal Bureau of Investigation, Office of the General Counsel, Module C–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0110; ATTN: Docket No. FBI–159.

Instructions: All submissions received must include the agency name and RIN (1110–AA35) or docket number (FBI–159) for this NPRM. In general, all properly completed comments received will be posted without change to the Federal eRulemaking portal, <https://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jill A. Montgomery, NICS Business and Liaison Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, NICS Section. Telephone: (304) 625–0606 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Comments Sought

The Department welcomes public comments from any interested person on any aspect of the changes proposed in this rule. In particular, and as discussed in more detail in the parts of this preamble that describe specific changes, the Department seeks comments from the public on the proposed amendments to NICS regulations to allow FFLs, as required by Congress under BSCA, Public Law 117–159, 136 Stat. 1313 (2022), to use NICS for purposes of conducting voluntary employment background checks of the FFLs’ current and prospective employees. The Department seeks comments regarding that use in

general as well as regarding the proposed revisions related to the processes surrounding that use of NICS. The Department will carefully consider all properly submitted public comments in drafting any final rules.

All comments must reference RIN 1110-AA35 or this document's docket number, FBI-159, and be legible. Please do not submit, under this proposed rule, any comments pertaining to a different rule that may be discussed in limited detail below. Public comments concerning those proposed rules should be submitted as directed within those rules.

Please note that all comments received are considered part of the public record and may be made available for public inspection online at <https://www.regulations.gov>. Information made available for public inspection may include personal identifying information (such as name, address, etc.) submitted by the commenter.

B. Confidentiality

In general, the Department will make all comments, whether submitted electronically or on paper, available for public viewing on the internet through the Federal eRulemaking Portal. If you do not want your name or other personal identification information posted on the internet as part of your comment, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the Department to redact. Personal identifying information identified and located as set forth above will be placed in the Department's public docket file but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the Department may choose not to post that comment (or to post only part of the comment) on <https://www.regulations.gov>. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

C. Submitting Comments

Submit comments in either of the following ways (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted.

- *Federal eRulemaking Portal*: The Department recommends that you submit your comments via the Federal eRulemaking portal at <https://www.regulations.gov> and follow the instructions. Please keep the comment tracking number that is provided after you have successfully uploaded your comment.

- *Mail*: Send written comments to the address listed in the **ADDRESSES** section of this document.

II. Background and Purpose

A. National Instant Criminal Background Check System

1. NICS Procedures

The Brady Handgun Violence Prevention Act of 1993 ("Brady Act"), Public Law 103-159, 107 Stat. 1536, required the Attorney General to establish NICS, a system that certain FFLs must contact before selling or otherwise transferring a firearm. Brady Act sec. 103. NICS provides, when possible, immediate information on whether receipt of a firearm by an unlicensed person would violate 18 U.S.C. 922(g) or (n), or State, local, or Tribal law. See 18 U.S.C. 922(t). The FBI manages and operates NICS by delegation of the Attorney General pursuant to 28 CFR 25.3. The NICS Section of the FBI's Criminal Justice Information Services Division processed the first NICS background check on November 30, 1998.¹

The Brady Act provides that persons federally licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") as manufacturers, dealers, and importers under 18 U.S.C. 923 are required to initiate a NICS background check before transferring firearms to unlicensed persons. See 18 U.S.C. 922(t)(1); see also 921(a)(9)–(11). Persons licensed under 18 U.S.C. 923 as "collectors," see 18 U.S.C. 923(b),² are not required to submit NICS transactions under 18 U.S.C. 922(t) because licensed collectors are not

defined as "licensees" under the Brady Act. See 34 U.S.C. 40901(j)(1).

An FFL initiates a NICS background check by contacting the FBI NICS Section³ or a State or local law enforcement agency known as a point of contact ("POC")—i.e., certain State or local law enforcement agencies with express or implied authority to perform NICS inquiries and respond to FFLs with the results. See 28 CFR 25.2, 25.6(a), (d).⁴ As of December 31, 2021, the NICS Section supported NICS background checks for 50,588 dealer and pawnbroker licensees conducting business in 31 States, 5 U.S. Territories, and the District of Columbia.⁵ The NICS Section processed 11,106,931 firearm transactions from January 1, 2021, through December 31, 2021.⁶ In addition, the NICS Section processed 138,518 explosive permit background checks for this same timeframe.⁷

Relevant databases for background checks are the NICS Index (now called

³ The NICS Section was known as the "NICS Operation Center" until July 24, 2002. However, 28 CFR part 25 has not since been updated to reflect that change. The Department's initial NICS regulations included definitions for "NICS Operations Center" and "NICS Operations Center's regular business hours." See 63 FR 58308. In 2001, "NICS Operations Center" was inadvertently deleted from the *Federal Register* publication. See *FindLaw.com, Code of Federal Regulations Title 28, Judicial Administration § 28.25.2 Definitions*, <https://codes.findlaw.com/cfr/title-28-judicial-administration/cfr-sect-28-25-2/> (last visited Nov. 5, 2024) (observing that the "official CFR appears to have inadvertently deleted [the] definition" of NICS Operations Center). The relevant intent of those 2001 revisions was only to delete the definition for and references to "NICS Operations Center regular business hours." See National Instant Criminal Background Check System Regulation, 69 FR 43892, 43896, 43900 (July 23, 2004). The Department has proposed revisions here and within RIN 1110-AA36, FBI-158, to update references to the "NICS Operation Center" to the "NICS Section." See proposed revisions in 28 CFR 25.2, 25.6, and 25.10.

⁴ 28 CFR 25.2 defines "POC (Point of Contact)" as "[a] state or local law enforcement agency serving as an intermediary between an FFL and the federal databases checked by the NICS." That provision further states that a POC will receive NICS background check requests from FFLs, check State or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm, and respond to FFLs with the results of a NICS background check. In addition, a POC must be an agency with express or implied authority to perform POC duties pursuant to State statute, regulation, or executive order. POCs perform NICS inquiries on either all or only a subset of the NICS background checks that FFLs submit in the POC's State. See *NICS Participation Map*, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics#NICS-Participation%20Map> (last visited Nov. 5, 2024).

⁵ FBI, National Instant Criminal Background Check System Operational Report 2020–2021 7 (Apr. 2022), <https://www.fbi.gov/file-repository/nics-2020-2021-operations-report.pdf/view>.

⁶ *Id.* at 12–13.

⁷ *Id.* at 13.

¹ See National Instant Criminal Background Check System Regulation, 63 FR 58303, 58303 (Oct. 30, 1998).

² See also 27 CFR 478.11 (defining "[c]ollector" as "[a]ny person who acquires, holds, or disposes of firearms as curios or relics," and "[l]icensed collector" as "[a] collector of curios and relics only [who is] licensed under the provisions of this part").

the “NICS Indices”),⁸ the National Crime Information Center (“NCIC”), and the Interstate Identification Index (“III”). See 28 CFR 25.2, 25.4, 25.6. The NICS Indices is a database of information provided by Federal, State, local, and Tribal agencies about persons who are prohibited from receiving firearms under Federal or State law. See 28 CFR 25.2. NCIC is searched for other criminal justice data, such as active warrants and protection orders, which would also demonstrate that a person is prohibited from receiving firearms.⁹ III is part of the FBI’s Next Generation Identification system and is used to search for criminal justice records such as arrests, charges, or case dispositions demonstrating the subject of the NICS transaction is prohibited from receiving firearms.¹⁰ See also 28 CFR 25.6(c), (f).

After initiating a background check for the prospective transfer of firearms, FFLs receive one of three responses from NICS: “Proceed,” “Delayed,” or “Denied.”¹¹ As currently defined, a “Proceed” response means the background check revealed no disqualifying (e.g., matching) records. 28 CFR 25.6(c)(1)(iv)(A). A “Denied” response means that receipt of a firearm by the prospective transferee would violate applicable law described in 18 U.S.C. 922(t). 28 CFR 25.6(c)(1)(iv)(C). For those transactions in which a search of NICS cannot provide a definitive response of either “Proceed” or “Denied” because additional research of a possible disqualification is required, the FFL receives a response of “Delayed.” 28 CFR 25.6(c)(1)(iv)(B). FFLs do not review the record sources searched during a background check by NICS, nor does a response from NICS provide the FFL with any of the underlying information reviewed during the background check. 28 CFR 25.6(c)(2). Beyond one of the previously noted responses, the only other information an FFL receives as part of

a NICS background check is the NICS transaction number (“NTN”) and, for “Delayed” transactions,¹² a prospective transfer date, which is the day after “3 business days . . . have elapsed since the licensee contacted” NICS. 18 U.S.C. 922(t)(1)(B)(ii); see also 28 CFR 25.6(c)(1).

Under one of several BSCA provisions, “the Attorney General shall promulgate regulations allowing licensees to use [NICS] for purposes of voluntarily conducting an employment background check relating to a current or prospective employee.” 34 U.S.C. 40901(b)(2). Again, per 34 U.S.C. 40901(j)(1), “licensee[s]” include licensed importers, licensed manufacturers, and licensed dealers as those terms are defined under 18 U.S.C. 921(a)(9)–(11), respectively. An unlicensed person for purposes of 18 U.S.C. 922(t) is someone “not licensed under” chapter 44 of title 18. 18 U.S.C. 922(t)(1); see also 18 U.S.C. 923 (providing for licensing).¹³

Persons who fall within any of the prohibitions noted under 18 U.S.C. 922(g) or (n) are generally prohibited by Federal law from shipping, transporting, possessing, or receiving firearms and ammunition.¹⁴ The Brady Act also prohibits the transfer of firearms to persons prohibited from receiving firearms under sections 922(d), (g), or (n), as appropriate, or State, local, or Tribal law. See 18 U.S.C. 922(t).¹⁵

¹² See 28 CFR 25.2 (defining “Delayed” and “NTN (NICS Transaction Number)”; see also 28 CFR 25.6(c)(1)(iv)(B).

¹³ Licensed collectors are also considered unlicensed persons during firearm transactions that involve firearms other than curios and relics. See 18 U.S.C. 921(a)(13); see also ATF, *Does a Collector’s License Afford Any Privileges to the Licensee with Respect to Acquiring or Disposing of Firearms Other than Curios or Relics in Interstate or Foreign Commerce?* (last reviewed May 26, 2020), <https://www.atf.gov/firearms/qa/does-collector%E2%80%99s-license-afford-any-privileges-licensee-respect-acquiring-or-disposing>.

¹⁴ Federal law prohibits receipt of a firearm by a person under a qualifying indictment but does not prohibit mere possession of the firearm by the indicted individual. See 18 U.S.C. 922(n) (making it unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding 1 year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce). However, a State “possession” prohibition may also apply. See, e.g., Haw. Rev. Stat. 134–7.

¹⁵ Section II.E of this preamble contains a brief discussion of RIN 1110–AA36, FBI–158, another NPRM the Department has published. That rulemaking includes discussion regarding, among other topics, further disqualifying categories that Congress added to 18 U.S.C. 922(t) in 2022.

2. Current Access to NICS for Purposes Other Than Firearm Transfers

Federal statutes authorize access to NICS for certain entities for reasons other than a prospective firearm transfer under 18 U.S.C. 922(t). See, e.g., 42 U.S.C. 2201a (authorizing use of NICS for background checks related to security personnel of Nuclear Regulatory Commission licensees and certificate holders). NICS regulations also permit access to NICS “for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922(t)” in three limited circumstances. 28 CFR 25.6(j). First, NICS may be used to provide information to Federal, State, local, or Tribal criminal justice agencies in connection with the issuance of firearm- or explosives-related licenses. 25 CFR 25.6(j)(1). Second, NICS may be used in responding to an inquiry from ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. chapter 44) or the National Firearms Act (26 U.S.C. chapter 53). 25 CFR 25.6(j)(2). Third, Federal, State, local, and Tribal criminal justice agencies may use NICS to dispose of firearms in their possession. 25 CFR 25.6(j)(3).

Since their issuance, the Department’s NICS regulations have expressly prohibited FFLs from initiating NICS background checks for any purpose other than the prospective transfer of firearms as required by the Brady Act. See 28 CFR 25.6(a). With the enactment of BSCA, however, the Department must issue new regulations that allow FFLs to use NICS for another specified purpose: determining whether certain current or prospective employees are prohibited from possessing firearms.¹⁶ This NPRM proposes amendments to the Department’s NICS regulations to allow licensees to voluntarily initiate NICS background checks for this new purpose.

B. Using NICS for Voluntary Employment Background Checks

Section 12004(h)(1)(B) of BSCA amended the Brady Act by requiring the Attorney General to promulgate rules allowing licensees to use NICS for purposes of voluntarily conducting an employment background check relating to a current or prospective employee (“employee”). 34 U.S.C. 40901(b)(2)(A).

¹⁶ In addition to BSCA, Congress in 2022 passed the Consolidated Appropriations Act, 2022, Public Law 117–103, 136 Stat. 49, which amended 18 U.S.C. 922(t) to reference firearm prohibitions imposed by “local” and “Tribal” governments. See 136 Stat. at 919, 921. Those provisions are accounted for where relevant in this rule’s preamble and the proposed regulatory revisions.

⁸ The NICS Index has become known by most NICS users as the “NICS Indices.” The Department has proposed revisions here and in RIN 1110–AA36, FBI–158, to update references to the “NICS Index” to the “NICS Indices.” See proposed revisions in 28 CFR 25.2, 25.4–25.6, 25.8, and 25.9.

⁹ See FBI, 2022 NICS Operations Report 7 (2022), <https://www.fbi.gov/file-repository/nics-2022-operations-report.pdf/view>.

¹⁰ See *id.*

¹¹ Through RIN 1110–AA36, FBI–158, the Department has proposed a new status (“No Known Prohibitors: A state or local agency has not responded or cannot respond”) and discusses new processes applicable when FFLs submit NICS background checks for prospective firearm transfers to persons under 21 years of age (“under-21 transactions”). However, because the provisions discussed in that rulemaking do not apply to FHCs, this rule has generally omitted discussion of proposed regulatory updates related to under-21 transactions.

The Department interprets “voluntarily” in this context to mean that licensees are not required to use NICS to conduct background checks of employees; rather, licensees have discretion to submit requests for NICS background checks. Licensees may not request a NICS background check without first providing written notice to and obtaining written consent of the affected employee. *See* 34 U.S.C. 40901(b)(2)(B). This consent requirement is discussed in Section II.E of this preamble.

Consistent with BSCA, the Department is proposing amendments to NICS regulations to generally allow licensees to initiate background checks of certain employees. *See* 34 U.S.C. 40901(b)(2)(A). This rule proposes to clarify that FFLs may voluntarily initiate NICS background checks of persons who are or would be “eligible employees” as further defined in proposed amendments to 28 CFR 25.2.

C. Firearm Handler Background Checks

1. Synopsis of Proposed Rule

This rule proposes allowing licensees to use NICS as part of employment background checks of certain employees. Although other categories of employees are discussed further in this preamble, the core group of employees covered by this proposed rule consists of “firearm handlers.” Accordingly, the Department will generally refer to these NICS background checks as “firearm handler background checks” or “FHCs.” This rule proposes to define a “firearm handler” to include, with exceptions discussed in Section II.C.3.a of this preamble, a person who has or may have an opportunity to access firearms or ammunition because of the person’s duties as an employee of an FFL, regardless of whether the employee’s duties include or may include the actual or constructive transfer or handling of firearms or ammunition. This rule also proposes that licensed manufacturers may submit FHCs for persons who do not have access to firearms or ammunition, but whose employment duties allow or may allow them access to the materials or tools used in firearms or ammunition manufacturing. Further, this rule proposes that FHCs would not be available for any employee who does not or will not have employment duties that would allow the employee access to firearms or ammunition or any materials or tools necessary to manufacture firearms or ammunition. This rule’s proposed approach satisfies the text of section 12004 of BSCA, fulfills Congress’s purpose in enacting section 12004 of BSCA, and addresses

important policy and operational interests of the FBI and FFL employees.

Next, the Department notes that FHC results indicating that an FFL is prohibited from transferring a firearm to an employee should not be construed to prohibit the licensee from employing that individual in a position that does not require the handling of or having access to a firearm or ammunition or the materials or tools used in firearms or ammunition manufacturing. Current responses to FFLs when they submit a request for a NICS background check for a firearm transfer are limited to “Proceed,” “Delayed,” or “Denied,” which could cause confusion if they were also used in response to FHCs. Licensees may mistake a “Proceed” or “Denied” response during an FHC as a determination that the licensee must either hire or reject the subject of the FHC. Consequently, this NPRM proposes to amend 28 CFR 25.2 to reflect new responses to be used during FHCs: “Pass,” “Pending,” and “Did Not Pass.”¹⁷ These terms and their definitions are discussed more fully in Section II.C.3.b of this preamble.

Section 40901(b)(2)(B) of title 34, as added by BSCA, also requires a licensee to provide the employee written notice “that the licensee intends to conduct the [NICS] background check” and to obtain the employee’s written consent to the NICS background check.¹⁸ Finally,

¹⁷ This rule also proposes a technical amendment to 28 CFR 25.9(b)(1)(i) to reflect that “Denied” firearm transfer records in the NICS Audit Log are retained for 110 years under approved records schedules filed with the National Archives and Records Administration. *See* Request for Records Disposition Authority, National Instant Criminal Background Check System, Schedule Number NI–065–10–005 at 4 (Nov. 18, 2009), https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/departments-of-justice/rg-0065/n1-065-10-005_sf115.pdf (superseding, in part, Request for Records Disposition Authority, National Instant Criminal Background Check System, Schedule Number NI–065–07–003 at 4 (Oct. 13, 2006), https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/departments-of-justice/rg-0065/n1-065-07-003_sf115.pdf). Because there is no statute of limitations for appealing a “Denied” transaction, the FBI may sometimes need to access very old records of these transactions; retaining such records for 110 years ensures that the records are retained for a period that exceeds the relevant person’s expected life span. *See* Off. of Just. Programs, Comparison of Criminal History Information Systems in the United States and Other Countries 105 (Apr. 2, 2020), <https://www.ojp.gov/pdffiles1/bjs/grants/253816.pdf>.

¹⁸ This rule proposes no specific method for licensees to document having obtained their eligible employees’ informed consent in writing. However, ATF’s proposed FHC form will include a notice that the information on the form may be used by the FFL to conduct a background check to determine whether the employee is prohibited from possessing or receiving firearms by Federal, State, local, or Tribal law, and that the employee’s signature on the FHC form constitutes consent for the FFL to conduct the voluntary background check.

Congress mandated through amendments to section 40901(b)(2)(D) that, when the “employment background check” for an individual “indicates that the individual is prohibited from possessing a firearm or ammunition” under 18 U.S.C. 922(g) or (n), the individual may appeal the result “in the same manner and to the same extent as if the individual had been the subject of a background check relating to the transfer of a firearm.”¹⁹ The appeal of FHC results is discussed in Section II.C.4 of this preamble.

2. Purpose and Authority

This rule proposes to amend 28 CFR 25.1 to add FHCs as an additional authorized use of NICS in the subpart of the Department’s regulations governing NICS background checks. It would add BSCA as a source of authority for the subpart.

3. Definitions

The proposed rule would amend 28 CFR 25.2 to add several definitions relevant to FHCs.

a. Eligible Employee and Firearm Handler

Section 103 of the Brady Act established NICS to enable licensed manufacturers, dealers, and importers to receive information about whether the transfer of a firearm to a non-licensee would violate section 922 or State law. *See* 34 U.S.C. 40901(b)(1). Section 12004(h) of BSCA amended section 40901(b) to require the Attorney General to promulgate rules to allow “licensees” to use NICS “for purposes of voluntarily conducting an employment background check relating to a current or prospective employee.” 34 U.S.C. 40901(b)(2)(A). Neither the text nor the legislative history provides further guidance as to the meaning of “current or prospective employee.”

If the language were read to cover any employee of any licensee, as well as any potential future employee, the number of people who could be subject to an FHC, as well as the burden on NICS, would be much greater than what Congress likely intended. Thus, the NPRM proposes to limit the employees for whom an FFL may seek a background check to certain “eligible employees.”

i. Statutory Context and Congressional Purpose

Section 12004 of BSCA, entitled the “Stop Illegal Trafficking in Firearms Act,” is focused on combating the straw

¹⁹ BSCA also exempted this new use of NICS from provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* *See* 34 U.S.C. 40901(b)(2)(C).

purchasing and trafficking of firearms. Among other things, section 12004 added 18 U.S.C. 932 and 933, which criminalize straw purchasing and firearms trafficking, respectively, with punishments up to 25 and 15 years of imprisonment, respectively, as well as forfeiture pursuant to 18 U.S.C. 934. *See* BSCA sec. 12004(a)(1). Section 12004 also amended 18 U.S.C. 922(d), which prohibits selling or otherwise disposing of firearms or ammunition to listed categories of persons, to include in the prohibition those individuals who intend to sell or dispose of the firearm or ammunition in furtherance of a felony, a Federal crime of terrorism, or a drug trafficking offense or to a person in any of the other prohibited categories. 18 U.S.C. 922(d)(10) and (11). These measures demonstrate that, through BSCA, Congress sought to ensure that individuals prohibited from receiving firearms would not be able to obtain them.

Section 12004 also advances this congressional purpose by allowing a new use of NICS. As already explained, section 12004(h) requires the Attorney General to promulgate regulations that allow “licensees” to access NICS “for purposes of voluntarily conducting an employment background check relating to a current or prospective employee.” This provision recognizes that FFLs may inadvertently employ prohibited persons, who would then have access to firearms through their employment duties and who may be able to use their positions to engage in illegal trafficking of firearms or to otherwise illegally possess or use firearms. The expanded authorization to use NICS to conduct background checks of certain prospective and current employees is an additional tool for FFLs to help prevent illegal firearms trafficking and ensure prohibited persons do not obtain firearms.

FFLs collectively submit millions of NICS background checks related to firearm transfers each year.²⁰ Moreover, FFLs employ thousands of individuals who, through their employment, have access to firearms and the ability to enable straw purchasing and illegal firearm trafficking. The Department believes that, by amending 34 U.S.C. 40901(b) through section 12004(h) of BSCA, Congress sought to provide a powerful new tool to reduce illegal firearm trafficking by giving FFLs the ability to use NICS to identify prohibited persons among their

employees. This purpose informs the proper understanding of the term “employee.” Because Congress focused on preventing prohibited persons working for FFLs from obtaining firearms, the term “employee” in BSCA can be naturally understood to refer to the subset of individuals working for FFLs who, as a result of their employment, would be able to access firearms or related materials or tools. Reading the term “employee” to cover individuals without any opportunity to access firearms or related materials or tools would not advance the purpose of BSCA because employment of those individuals at FFLs does not create the same risk of prohibited persons obtaining firearms. *Cf. Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–46 (1997) (determining the meaning of the term “employee” under a different provision of law by considering statute itself, the context in which the word “employee” appeared, and the “primary purpose” of the law at issue).

ii. Policy and Operational Considerations: Impact on Employees

In addition to the statutory language, context, and congressional intent, the overall population of employees and several other factors relevant to employees or licensees impact the appropriate interpretation of the term “current or prospective employee.” The Department has concluded that important policy and operational factors support the Department’s interpretation of the term “employee.” As discussed in this section, permitting licensees to use NICS for employment background checks in overly broad circumstances could have negative impacts on both NICS and individuals whose employment duties with licensees are or may be wholly unrelated to firearms or ammunition. Therefore, it is important to ensure that regulations adopted under section 12004(h) have a scope that is both consistent with the statute and that accounts for the regulations’ potential impact on NICS and employees.

As noted previously, section 12004 of BSCA focuses on preventing the illegal trafficking, use, and possession of firearms. One component of that focus is a requirement that the Attorney General promulgate regulations allowing the use of NICS for employment background checks of current or prospective employees of licensees. *See* 34 U.S.C. 40901(b)(2)(A). However, not all employees of licensees will have the ability or authority to access, handle, or transfer firearms or ammunition—or, for licensed manufacturers, related materials or tools—during their employment.

ATF reports that, as of May 10, 2024, there are an estimated 130,000 total licensees and, of that total, the FBI anticipates this rule would apply to approximately 80,000 licensees throughout the United States.²¹ This includes eight types of licenses for dealers, pawnbrokers,²² manufacturers, and importers.²³ Internal FBI subject matter experts estimate that some large retail chains (colloquially known as “big box” stores) also hold approximately 3,500 dealer licenses across their locations throughout the United States. Many large manufacturers, importers, or dealers have employees with duties wholly unrelated to accessing, handling, or transferring firearms or ammunition or related materials or tools. Examples may include certain store administrators (accountants, purchasing managers, secretaries, etc.), truck drivers, shipping and receiving clerks, pharmacists, deli counter workers, bakery workers, cooks, butchers, clothing salespersons, electronic salespersons, and cashiers. Allowing FFLs to use NICS for background checks of those employees who do not and will not have access to, handle, or transfer firearms or ammunition could impose burdens on those persons by preventing them from obtaining or maintaining any employment²⁴ with that licensee.²⁵

For example, FBI subject matter experts estimate large, big box dealers of firearms currently employ nearly 1.7 million individuals in the United States.²⁶ The FBI estimates that, of those

²¹ *See* ATF, Report of Active Firearms Licenses—License Type by State Statistics (May 10, 2024), <https://www.atf.gov/firearms/docs/undefined/0524-ffl-list-completepdf/download>. This is the sum of subtracting Collectors of Curio and Relic licensees (approximately 50,000) from the estimated total licensees (130,000).

²² Pawnbrokers are defined as dealers, but they have their own license, Type 2. *See* ATF, *Complete Federal Firearms Listings*, <https://www.atf.gov/firearms/listing-federal-firearms-licensees/complete> (last visited Nov. 5, 2024).

²³ *See id.*

²⁴ *See, e.g.,* Just. Pol’y Ctr., Criminal Background Checks and Access to Jobs 1–5 (2017), https://www.urban.org/sites/default/files/publication/91456/2001377-criminal-background-checks-and-access-to-jobs_2.pdf (discussing the obstacles to employment that criminal background checks can create); Nat’l Emp. L. Project, 65 MILLION “NEED NOT APPLY”: The Case for Reforming Criminal Background Checks for Employment 1–2 (2011), https://www.nelp.org/app/uploads/2015/03/65_Million_Need_Not_Apply.pdf (similar).

²⁵ This NPRM is not intended to discourage licensees, in accordance with applicable laws, from conducting other background checks relating to any employees.

²⁶ Examples of large, big box firearm dealers include Academy, Bass Pro Shops, Big 5 Sporting Goods, Cabela’s, Sportsman’s Warehouse, and Walmart. At the end of Fiscal Year 2024, Walmart alone employed approximately 1.6 million associates in the United States. *See* Walmart, *How Many People Work at Walmart?*, <https://>

²⁰ *See* FBI, NICS Firearm Background Checks: Month and Year by State and Type (Oct. 2024), https://www.fbi.gov/file-repository/nics_firearms_checks_-_month_year_by_state_type-last-5-years.pdf/view.

nearly 1.7 million current employees, approximately 793,000 are employed within retail stores that also hold dealer licenses. These numbers do not include individuals who would annually be considered for prospective employment at those licensed locations. These numbers, for just some of the nation's retail chains with multiple locations considered as licensees, may increase or decrease based on company policy, particularly with respect to individuals who may have access to firearms or ammunition. But regardless of this uncertainty, the fact remains that FFLs, including big box retailers, employ and may consider for employment a vast number of people each year. Allowing FFLs to use NICS for background checks of all these employees (including employees who do not have access to firearms or ammunition) could have negative practical consequences for the affected individuals' employment with FFLs. These potential deleterious practical effects underscore the importance of interpreting the term "employee" in the specific context in which it appears in BSCA. And these operational concerns apply similarly to use of NICS for background checks of employees of licensed manufacturers who have or would have no access to the tools or materials necessary to manufacture firearms or ammunition.

iii. Policy and Operational Considerations: Impact on the NICS Section

In addition to the negative practical impacts on employment, an improperly broad understanding of the term "employee" could negatively impact FBI's operation of NICS. The NICS Section may require additional support staff to process the additional FHC workload. Additional staffing may also be required at the NICS Contracted Call Center to address additional incoming calls for FHCs. The NICS Section and POCs have already experienced a recent, significant increase in record research (e.g., contacting State and local criminal justice and mental health facilities) because of the implementation of BSCA, which, as mentioned in Section II.E of this preamble, required enhanced background checks of juvenile justice and mental health records of all prospective transferees under 21 years of age. Congress allotted funding for additional staff to the NICS Section because of the workload increase anticipated with the passage of BSCA; however, much of that additional staff is still being hired. Training additional

staff to process FHCs will also require adequate time. Hence, an overly broad application of FHCs could impose significant additional burdens on limited FBI resources.

Based upon initial feedback from POCs, FBI subject matter experts anticipate that the majority of POCs will not perform FHCs due to either a lack of resources or a lack of authority to conduct background checks other than for transfers of firearms.²⁷ Therefore, the Department anticipates that the majority of those FHCs submitted by licensees even in States in which POCs conduct some or all background checks for prospective firearm transfers will be processed by the FBI. Although the Department is unable to estimate the volume of requests for FHCs that will be received, any increase in volume would impact the NICS Section. The most likely impacts are a need for the NICS Section to hire more staff to receive and process the increased number of transactions this new use of NICS will likely cause, as well as an increase in overtime worked by NICS Section staff. The FBI will also need to devote additional staff resources to researching potentially prohibiting records linked to "Pending" FHCs and to processing the anticipated increase in appeals that will result from this new use of NICS.

The big box companies mentioned above are estimated to have approximately 1.7 million current employees in the United States, and the FBI estimates that 793,000 of these individuals are employed at company locations licensed under 18 U.S.C. 923. Conducting FHCs for such a large number of individuals would have significant consequences for the FBI's NICS Section. If, however, NICS access is expanded under this rule only for those individuals whose prospective employment duties have at least some connection to firearms or ammunition, then the operational impact on the FBI would be greatly reduced.²⁸ Moreover, limiting background checks specifically to those employees with at least some potential to illegally traffic or aid in straw purchases of firearms or ammunition, which are two specific activities that BSCA attempts to suppress, is consistent with both the statutory text and congressional intent of section 12004 of BSCA.

²⁷ For some POCs, the enabling State law may authorize the POC only to conduct NICS background checks for the prospective transfer of firearms.

²⁸ See Section II.C.3.a.v of this preamble for further discussion regarding the application of this rule to employees of licensed manufacturers.

iv. Policy and Operational Considerations: Economic Incentives

There could be an economic incentive for a licensee to utilize NICS for employment checks—particularly if NICS regulations allowed FHCs to be conducted on all employees regardless of their current or anticipated handling, transferring, manufacturing, or accessing of firearms or ammunition or related materials or tools. The Department cannot charge a fee for an FHC under BSCA, *see* 34 U.S.C. 40901(b)(2)(A),²⁹ and the FBI understands that many licensees currently use a private background check service that does charge a fee. The incentive for licensees to rely on the free FHC for general employee background checks in lieu of a paid service could substantially increase the NICS transaction volume if the NICS Section permits licensees to submit FHCs for all employees regardless of whether the employees have or may have access to or otherwise handle, manufacture, or transfer firearms or ammunition or related materials or tools. The inclusion of a no-fee provision in BSCA and the fact that many employers currently use private background check services that charge a fee supports the Department's proposal to limit the scope of FHCs.

v. Proposed Definition of "Eligible Employee"

Given section 12004's focus on preventing the illegal trafficking of firearms; given the number of persons who could be considered current or prospective employees of an FFL regardless of whether they will ever have access to firearms or ammunition or, for licensed manufacturers, related materials or tools; and given the operational considerations discussed above, the proposed rule would permit FFLs to use NICS for employment background checks only where the job in question has at least some connection to firearms or ammunition. This NPRM thus proposes to limit use of FHC background checks to "eligible employees." This term, as proposed, would not encompass every single employee of an FFL; instead, it would appropriately encompass those employees who have or are likely to have access to firearms or ammunition or, for licensed manufacturers, the materials or tools to make them.

²⁹ BSCA does not prohibit POCs from charging a fee for performing FHCs. But, as noted earlier, many POCs may not perform FHCs because of a lack of resources or authority; the FBI would thus be responsible for such checks, and the economic incentive to rely on the free background checks performed by the FBI would still arise.

The “eligible employee” definition, if finalized, would include “firearm handler[s].” A “firearm handler,” in turn, would be defined as “a person whose current or prospective employment duties for an FFL include or will include the opportunity to access firearms or ammunition, regardless of whether the person’s employment duties include or will include the actual or constructive transfer or handling in any way of firearms or ammunition.” The term also includes “persons whose employment duties allow them entry to any device, room, or facility where firearms or ammunition of the licensee are stored.” The FBI estimates that only 57,000 of the roughly 793,000 individuals employed within retail stores that also hold dealer licenses at this time would be considered “firearm handlers” under the definition proposed in this rule.

If finalized, the “eligible employee” definition would also include certain other employees of licensed manufacturers. Employees of licensed manufacturers may, for example, never have access to or otherwise handle a weapon that meets the Federal definitions of “firearm” or “ammunition” under 18 U.S.C. 921 and 27 CFR 478.11. Employees of licensed manufacturers may have access to or handle only the raw, unfinished materials or the tools or other equipment used to manufacture firearms or ammunition. However, access to the materials and tools used during the manufacturing of firearms or ammunition can also facilitate illegal firearms trafficking. Based on the Department’s experience, when those materials or tools fall into the hands of prohibited persons, they can be used to illegally manufacture firearms or ammunition. Consequently, this rule proposes that licensed manufacturers may submit FHCs for persons whose employment duties include or will include access to any forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a firearm or ammunition (e.g., unformed block of metal, liquid polymer, or other raw material); or any tool or other equipment used to manufacture a firearm or ammunition or otherwise finish a component part of a firearm or ammunition.

The Department also intends to exclude from the definition of “eligible employee” “responsible persons”—i.e., those individuals of an FFL with the power to direct the management, policies, and practices of the business or

activity as it pertains to firearms. See proposed § 25.2 (excluding “responsible person[s]” from the proposed definition of “Eligible Employee”). ATF already requires responsible persons to submit fingerprints, a photograph, and specific forms so that a background check can be conducted as part of the prospective FFL’s licensing requirements.³⁰ See 27 CFR 478.44. As part of ATF’s background check for a potential responsible person, NICS already responds if available information demonstrates that the individual is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t), and conducting a separate FHC for responsible persons would accordingly be duplicative.³¹

The proposed rule thus proposes excluding any “responsible person” from the definition of “eligible employee.” In turn, this NPRM defines “Responsible Person” as “a sole proprietor or, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the corporation, partnership, or association, insofar as they pertain to any FFL.”

b. New NICS Status Responses for FHCs

As noted in Section II.C.1 of this preamble, after receiving an FFL’s request for a NICS background check for a prospective firearm transfer, NICS responses are currently limited to “Proceed,” “Delayed,” or “Denied.” The Department believes using these same responses during FHCs could confuse FFLs. In particular, the Department notes that FHC responses should not be construed to prohibit a licensee from employing an individual in a position that does not require the handling of or access to a firearm or ammunition or, as applicable, related materials or tools. Licensees may mistake a “Denied” response during an FHC as a determination that the licensee must deny all employment to the subject of that FHC. Consequently, this rule proposes new responses to be used during FHCs: “Pass,” “Pending,” and “Did Not Pass.” As a general matter, a “Pass” response would convey that available information revealed no firearm prohibitions for the eligible employee; a “Pending” response would convey that further research is needed; and a “Did Not Pass” response would

convey that available information revealed a firearms prohibition applicable to that eligible employee.

A response from the system (or a POC) that the person “Did Not Pass” the FHC should not be construed to indicate that the FFL cannot employ the person. Rather, a “Did Not Pass” response indicates only that, based on information available to NICS, the person is not eligible to ship, transport, possess, or receive firearms. Thus, circumstances in which that person handles a firearm during the person’s employment could lead to criminal liability for the person (and potentially the licensee) under applicable Federal, State, local or Tribal law. This response, whether “Pass” or “Did Not Pass,” will allow the licensee to make an informed decision of whether to hire the person.

4. Appeals

When information available to NICS “indicates [the employee] is prohibited from possessing a firearm or ammunition pursuant to” 18 U.S.C. 922(g) or (n), the FHC will result in a “Did Not Pass” response. In such circumstances, BSCA requires that the employee be permitted to appeal that response “in the same manner and to the same extent as if the individual had been the subject of a background check relating to the transfer of a firearm.” 34 U.S.C. 40901(b)(2)(D).

Under the Brady Act and its implementing regulations, when NICS has determined that a prospective firearm transferee is ineligible to receive a firearm, the FBI provides the FFL with a “Denied” response. See 18 U.S.C. 922(t); 28 CFR 25.2 (defining “Denied”); see also 28 CFR 25.6(c)(1) and (g) (further describing responses to FFLs). A denied transferee can then request the reasons for a denial and challenge the denial if the denied transferee believes it was erroneous. See 34 U.S.C. 40901(f) and (g);³² 28 CFR 25.10(a) through (c) (further describing administrative

³² 34 U.S.C. 40901(f) allows individuals to request the reasons for a “determination” when NICS “determines that [the] individual is ineligible to receive a firearm.” Reasons are to be provided “in writing, within 5 business days after the date of the request.” *Id.* Similarly, 34 U.S.C. 40901(g) allows prospective transferees to request the reasons why NICS informed an FFL “that receipt of a firearm by a prospective transferee would violate subsection (g) or (n)” of 18 U.S.C. 922 or State law. That person may also “submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee.” *Id.* If such a request is made, the FBI (under authority delegated by the Attorney General) has 60 days to determine if that denial was erroneous. *Id.*; see also 28 CFR 25.3 (establishing NICS within the FBI). If the denial is determined to have been erroneous, the FBI must correct any erroneous records. See 34 U.S.C. 40901(g).

³⁰ See ATF, Application for Federal Firearms License (Oct. 2020), <https://www.atf.gov/file/61506/download> (“ATF Application”).

³¹ ATF requires renewed background checks of responsible persons every 3 years. See ATF Application, *supra*.

appeals of denied firearm transfers). Federal law also allows any person denied a firearm due to erroneous information from a NICS background check to bring a limited civil action against the State or political subdivision responsible for providing the erroneous information, against the denying State or political subdivision, or against the United States. 18 U.S.C. 925A.³³ These provisions, however, do not apply where NICS has only “Delayed” the prospective firearm transfer.³⁴ See 28 CFR 25.2 (defining “Delayed”).

Because BSCA provides for appeals of FHCs “in the same manner and to the same extent” as appeals of firearm transfer background checks, the Department interprets the term “appeal” for FHCs to include the same administrative and civil action procedures as those for firearm transfer background checks. And because appeals for firearm transfer background checks are limited to appeals from “Denied” responses, the Department interprets the phrase “in the same manner and to the same extent” to limit FHC appeals to the question whether a “Did Not Pass” response provided by the FBI or the POC³⁵ was correctly issued. Just as “Delayed” responses for prospective firearm transfers cannot be appealed, the FHC appeal processes will not be available to challenge “Pending” responses from the system. Consistent with this limitation, the NPRM proposes to amend 28 CFR 25.10 to make these procedures available to individuals whose FHC led to a “Did Not Pass” response. Finally, the FHC appeal process will also not be used to reconsider or overturn a licensee’s decision to not hire (or not retain) an employee, regardless of the employment position sought or held.

When prospective firearm transfers are “Delayed” for further research,

prospective transferees sometimes pursue improper administrative challenges or civil actions regarding those responses. Accordingly, the NPRM also proposes some provisions to reduce operational burdens on the FBI related to processing administrative appeals (or defending actions brought under 18 U.S.C. 925A) with respect to FHCs, including meritless appeals filed by persons who were not seeking a position that included access to firearms or ammunition but were nevertheless denied employment by a licensee.

Similar to what sometimes occurs during NICS transactions involving the prospective transfer of a firearm, the Department anticipates improper attempts to appeal NICS-related decisions. First, some individuals might attempt to appeal while a decision is still “Pending;” such an appeal is premature. Second, some individuals might attempt to appeal the decision of an FFL not to hire the individual. Appeals, however, are available only to challenge the response of NICS itself. Whether to hire or retain someone on account of any response NICS provides is a decision belonging to the FFL; it is not a result required by BSCA or this rule, and hence FFL employment decisions cannot be appealed.

In situations involving these inappropriate appeals, the FBI will have to expend resources defending administrative challenges or civil actions that do not meet the criteria of 34 U.S.C. 40901(b)(2)(D). Thus, to further aid in reducing the time it takes NICS to respond to some FHCs, as well as to limit unnecessary and inappropriate appeals of “Pending” responses, this NPRM proposes to clarify that eligible employees of FFLs may use the Voluntary Appeal File (“VAF”) as described in 28 CFR 25.10(g) for FHC purposes. Any individual may provide written consent to the FBI to maintain information about the individual in the VAF.³⁶ Those individuals approved for the VAF are issued a Unique Personal Identification Number (“UPIN”) to use during future NICS transactions.³⁷ When provided during future transactions, a valid UPIN is placed on the ATF Form 4473 and transmitted to NICS to query the VAF.³⁸ NICS currently uses UPINs to compare records, if any, at the time the UPIN was issued with any current records. NICS conducts this comparison to prevent erroneous “Denied” or extended

“Delayed” responses during prospective firearm transfers. See 28 CFR 25.10(g). Consistent with use of the VAF and UPINs with respect to firearm transfers, this NPRM proposes that the VAF and UPINs may be used by eligible employees of FFLs to prevent future erroneous “Did Not Pass” or extended “Pending” responses during FHCs.

The parameters this rule proposes regarding FHCs, such as applying FHCs only to “eligible employee[s]” of licensees and resolving appeals only when NICS responds that the person “Did Not Pass” the person’s FHC, will mitigate the appellate-related operational impacts highlighted previously. Such parameters will help prevent the FBI and courts from expending resources defending or overseeing voluminous appeals submitted by persons seeking to appeal an employment decision of an FFL or seeking to appeal even when NICS did not provide a “Did Not Pass” result for that FHC.

5. Frequency of FHCs

The earlier-referenced statistics regarding big box stores show that, if licensees submit FHCs on the same employee daily, weekly, or even monthly (even if only submitting for eligible employees), then FHCs could add millions of NICS background checks to current yearly totals. That volume of submissions could negatively impact transactions involving prospective transfers of firearms. With millions of NICS background checks being conducted, NICS staff would have to work overtime or be moved from another position to assist in working on FHCs during busier times of the year.

To address this concern, the proposed regulations would allow employers to ask for an FHC for a particular eligible employee only once every 12 months. This limit would not apply if the licensee believes it has received information demonstrating the employee has become subject to a potentially prohibiting event. For example, suppose that in June 2025 a licensee submits an initial FHC for an eligible employee who is expected to handle firearms, and the licensee then receives a “Pass” response from NICS. However, in February 2026, the licensee sees the employee’s picture on a local news segment stating that a grand jury indicted the employee for several felony-level offenses. Because that felony indictment results in a firearm restriction under 18 U.S.C. 922(n), the licensee would be authorized under this rule to submit another FHC of the eligible employee so long as the FFL had previously provided written notice

³³ Such actions may only seek an order directing that the erroneous information be corrected or that the transfer be approved, except that prevailing parties may also seek to recover costs, including a reasonable attorney’s fee. 18 U.S.C. 925A.

³⁴ Actions under 18 U.S.C. 925A are limited to persons who were “denied.” Similarly, the FBI’s website pertaining to administrative appeals provides, “[i]f you believe you have been wrongfully denied a firearm, you can request a firearm-related challenge (appeal). You may only challenge a denied firearm transaction, not a delayed one.” FBI, *Firearm-Related Challenge (Appeal) and Voluntary Appeal File (VAF)*, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/national-instant-criminal-background-check-system-nics-appeals-vaf> (last visited Nov. 5, 2024) (“*Appeal and VAF web page*”) (emphasis omitted). The website also notes how persons can submit a “Summary Request” to the FBI to obtain copies of their identification records.

³⁵ Further discussion of POCs is provided in Section II.A.1 of this preamble.

³⁶ For further information about the VAF and for the VAF application, see *Appeal and VAF web page*, *supra*.

³⁷ *Id.*

³⁸ See *id.*

to the employee that it intends to conduct the background check and had obtained written consent to conduct the background check from the employee. *See* 34 U.S.C. 40901(b)(2)(B). This rule does not provide for a licensee to initiate an FHC without the eligible employee's prior written consent and does not address what, if any, recourse might be available to an employee or licensee where the licensee has not obtained that consent.³⁹

6. Conforming Amendments

To account for the proposed revision of the regulations to permit use of NICS for FHCs, some definitions in the current regulations will need small changes. This NPRM proposes amendments to the definitions for "Appeal," "FFL," "NICS," "NICS Section," "NICS Representative," and "POC," consistent with the addition of FHCs to these regulations.

In addition, the Department proposes to amend 28 CFR 25.1, 25.2, 25.6, 25.8, 25.10, and 25.11 to establish procedures for FHCs that are separate from those concerning prospective firearm transfers. Proposed amendments to 28 CFR 25.6 provide the process for how an FFL or POC will submit a request for an FHC and the requirements of the submission. This amendment also describes the responses the NICS Section or POC can provide to licensees. Further, FBI proposes amendments to 28 CFR 25.8 that parallel existing safeguards for background checks for prospective firearm transfers. Lastly, when a person or entity purposefully provides false information to NICS in order to obtain a "Proceed" response, the person or entity is subject to a fine of up to \$10,000.00 and to potential loss of access to NICS. *See* 28 CFR 25.11. This NPRM proposes that 28 CFR 25.11 be amended to also apply monetary or access penalties to those persons who purposely provide misinformation to NICS to obtain a "Pass" response for an FHC.

³⁹ This rule is not intended to address any and all employment-related matters that may arise and does not take a position on whether notice and consent are required to be obtained prior to each FHC or whether the employee can consent to subsequent FHCs when the employee consents to the initial FHC. This rule does not address whether, for example, an eligible employee can provide written consent once, with that consent then being used for future FHCs; or if the employee must provide written consent for each FHC. This rule also does not provide any guidance on whether it would be proper for a licensee to require an eligible employee to submit to an FHC as a (pre)condition of obtaining or maintaining employment with the licensee. System misuse is discussed at 28 CFR 25.11, where a non-exhaustive list of examples of system misuse is provided.

D. Severability

BSCA addresses critical but distinct components of the NICS background check process. The Department believes that its proposals to allow FFLs to conduct FHCs are well-supported in law, reflect sound policy, and, once finalized, should be upheld against any legal challenge. However, if any portion of the proposed rule, once finalized, is declared invalid or unenforceable by a court, the Department intends that the proposals contained herein, once finalized, be viewed as independent, necessary, and severable from each other to the maximum extent possible. As described previously, BSCA mandated that the Attorney General "promulgate regulations allowing licensees to use [NICS] for purposes of voluntarily conducting an employment background check relating to a current or prospective employee." 34 U.S.C. 40901(b)(2)(A). Each of the policy and operational considerations described in Section II of this preamble is independently significant to the functioning of this rule. If a court were to invalidate one or more of the provisions of the final rule resulting from this NPRM, the Department intends that the remaining provisions of the rule be severed from any invalidated provision and that all remaining provisions stand.

To obviate any doubt as to the Department's intent, even if a provision were deemed invalid (which, again, the Department does not believe is supported), the Department would still have proposed each of the other provisions in this NPRM. *Cf. American Fuel & Petrochemical Manufacturers v. E.P.A.*, 3 F.4th 373, 384 (D.C. Cir. 2021) (severing one section of a rule that the court found invalid where the agency had stated that it intended that relevant section to be "severable from" another section that "operate[d] independently"). Each proposed amendment in this rule stands on its own with no reliance on another proposed amendment. Each proposed amendment is necessary, for example, to notify the public, to provide for the implementation of FHCs, or to account for the potential application of existing regulations (such as appellate procedures and penalty provisions) to FHCs. Consequently, the Department is also proposing an amendment of 28 CFR 25.1 to include a general statement about the severability of the provisions within 28 CFR, part 25, subpart A.

E. Related Issues

As noted several times in Sections II.B and II.C of this preamble, BSCA requires

licensees to provide an employee notice of the background check and obtain the employee's written consent prior to conducting the check. BSCA does not address particular requirements related to recordkeeping (*e.g.*, form or retention period) or reporting to the Department with respect to FHCs. *See* 34 U.S.C. 40901(b)(2)(B)(i)–(ii). This rule also does not propose to impose a specific requirement on licensees to maintain records showing that the FFL provided notice of the FHC to the eligible employee or that the eligible employee provided written consent to conduct the FHC. ATF has drafted a new form that, when available, may be used by licensees for purposes of submitting FHCs. The Department anticipates that ATF will have acquired approval for the new form in time to facilitate FHCs conducted under the final rule resulting from this rulemaking. ATF's FHC Form (5300.47) currently proposes to include places to document NICS responses ("Pass," "Did Not Pass," or "Pending") and a statement indicating that the eligible employee's signature on the form constitutes the required written consent. The information provided by a licensee about an eligible employee for the purpose of conducting an FHC will be the same information provided by a licensee to NICS about a transferee for purposes of a prospective firearm transfer through the current ATF Form 4473. *See* 28 CFR 25.7.

The purpose of this rule is solely to propose updates to relevant NICS regulations to provide for the new use of NICS for FHCs, as mandated by Congress. This rule is not meant or intended to address matters that may or may not be impacted by jurisdiction-specific employment laws.

In addition to this proposed rule, the Department has issued two other rulemakings to address relevant provisions in the Consolidated Appropriations Act, 2022, Public Law 117–103, 136 Stat. 49 (2022), and other provisions of BSCA. *See* RIN 1110–AA36, FBI–158 (proposing regulations related to mandated NICS denial notifications, collection of additional residence address information for a prospective firearm transferee during some NICS transactions, expansion of the existing prohibiting categories to include firearm prohibitions Congress added to 18 U.S.C. 922(t) concerning restrictions imposed by applicable Tribal and local laws and 18 U.S.C. 922(d), and expanded background checks and additional delays during under-21 transactions); and RIN 1110 AA34, FBI–157 (allowing FFLs to receive information from NCIC's Gun File to check whether a firearm offered

to the FFL has been reported as stolen).⁴⁰ Please consult those rulemakings for further substantive information about the regulatory amendments the Department is proposing on to those subjects.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), The Principles of Regulation; Executive Order 13563, section 1(b), General Principles of Regulation; and Executive Order 14094. Both 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). Executive Order 13563 emphasizes the importance of using the best available methods to quantify both costs and benefits, and of reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094, among other things, amends section 3(f) of Executive Order 12866.

The Office of Management and Budget (“OMB”) has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), as amended, and accordingly this rule has been reviewed by OMB.

The Department has, to the extent possible, assessed the costs and benefits of this proposed rule and believes that the proposed regulatory approach selected maximizes net benefits. This proposed rule will benefit public safety and interested populations. First, this proposed rule benefits interested populations by further clarifying for the public how NICS may be used for FHCs. Next, this proposed rule benefits licensees, as specifically authorized by Congress, by allowing NICS to be used to submit requests for FHCs with respect to consenting eligible employees. This use of NICS, although voluntary, will benefit licensees and promote public safety by identifying eligible employees of the licensee who are subject to

firearm prohibitions as described in 18 U.S.C. 922(t).

The anticipated costs to the public of this rule are likely to be small. There is no charge for this use of NICS. Although licensees will incur costs in terms of time necessary to notate system responses (“Pass,” “Did Not Pass,” or “Pending”) or obtain an eligible employee’s written consent, this rule does not propose mandating that licensees submit FHCs. There will be no costs for licensees to modify or upgrade their current means of accessing NICS. POCs may incur costs to conduct FHCs, including, for example, a minimal one-time cost to upgrade their existing systems, but POCs will incur these costs only if the POCs voluntarily choose to add FHC-related duties to their current duties as POCs. It is anticipated that FHCs could result in some costs to State, local, and Tribal government entities such as courts, prosecuting offices, and law enforcement agencies if those entities choose to respond to requests for records when contacted during further research of a “Pending” response. But those governmental agencies are not required by this rule to respond to the NICS Section. Hence, any costs incurred would be voluntary.

The exact cost of the proposed regulations cannot be calculated. The full impact on the NICS Section due to the increase in NICS background checks resulting from the addition of FHCs cannot be projected due to uncertainty about the number of licensees that will choose to use NICS for this purpose. And the FBI cannot determine whether State, local, and Tribal governments will voluntarily choose to respond to record requests stemming from FHCs. Moreover, the FBI does not have historical information to use to estimate the number of eligible employees whose backgrounds would require the NICS Section or participating POCs to contact Federal, State, local or Tribal governmental entities, such as courts and law enforcement agencies, to request those agencies provide further information about (potentially) prohibiting records. In addition, the FBI can neither predict the frequency nor the volume of checks each licensee will initiate, and the FBI cannot determine the number of eligible employees who will provide written consent for an FHC. As a result, a quantitative impact analysis cannot be provided.

B. Executive Order 13132 (Federalism)

This proposed rule may have effects on the States to the extent State entities respond to NICS inquiries during research of a “Pending” transaction. Any such effects, however, will be only

an indirect result of this rule because State entities may freely choose whether to respond to such NICS inquiries. In addition, such effects will not be substantial, nor will such effects concern the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988 (Civil Justice Reform)

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

D. Regulatory Flexibility Act

This proposed rule amends the Department’s regulations to incorporate changes made by some provisions of BSCA. These changes are proposed to provide FFLs the ability to use NICS to voluntarily request background checks for eligible employees. The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601 *et seq.*, generally requires that when an agency issues a proposed rule or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. See 5 U.S.C. 603, 604. An initial regulatory flexibility analysis is not required if the head of the agency certifies that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

“[T]he term small entity shall have the same meaning as the terms ‘small business’, ‘small organization’ and ‘small governmental jurisdiction’ defined in paragraphs (3), (4) and (5) of this section[.]” 5 U.S.C. 601(6). The term “small entities,” therefore, 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 fewer than 50,000 people. See 5 U.S.C. 601(3)–(6). The Department anticipates that a majority of the licensees that will request FHCs under this rule would be considered small entities for purposes of the RFA.

The FBI anticipates that costs for FFLs that voluntarily undertake FHCs would

⁴⁰ The Department’s interim final rule found at RIN 1110-AA34, FBI-157, was signed by the Attorney General on June 24, 2024, and published in the **Federal Register** on July 1, 2024. See Bipartisan Safer Communities Act—Access to Records of Stolen Firearms in the National Crime Information Center, 89 FR 54344.

be insignificant, consisting only of the minimal time it would take for the FFL to collect the employee's consent and any information necessary to complete the ATF Form 5300.47, submit the FHC, and receive the response. Further, whether to take part in FHCs of any eligible employees is the voluntary choice of each FFL. *See* 34 U.S.C. 40901(b)(2)(A). Therefore, the rule has no impact, economic or otherwise, on any licensee, including small entity licensees, unless the licensee voluntarily chooses to request FHCs through NICS. Again, neither the FBI, nor this rule, imposes any fee upon any licensee to conduct a NICS background check. *See* 34 U.S.C. 40901(b)(2)(A).

As is the case with respect to further research during a "Delayed" NICS background check for purposes of a prospective firearm transfer, when the NICS Section (or a POC) contacts a State, local, or Tribal governmental unit (such as a police department or municipal court) for further information when researching a "Pending" response for an FHC, that governmental unit will not necessarily be burdened. This is because this rule does not require the governmental unit to take any specific action upon being contacted by NICS. This remains true regardless of whether that governmental unit would be considered a small entity.

An FFL will initiate an FHC and receive a response in the same manner the FFL uses to submit a NICS background check for the prospective transfer of a firearm. The FBI will not charge a fee for this service, and there are no mandatory maintenance or compliance costs imposed by this proposed rule. Because an FHC is a voluntary check; because there is no mandatory requirement that POCs process these checks, *see* proposed § 25.2 (requiring that POCs process checks only for prospective firearm "transfers," not FHCs); and because State, local, and Tribal agencies contacted for supplemental records are not required to respond to NICS contacts, the FBI certifies there will not be a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not necessary for this rule.

The FBI welcomes any public comments concerning potential impacts or burdens that this rule may or will have on current or future NICS users and entities that may be contacted during research of NICS transactions.

E. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48. *See* 2 U.S.C. 1532.

F. Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163. *See* 44 U.S.C. 3501-3521.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has determined that formal Tribal consultation under Executive Order 13175 is not required because this proposed rule is provided as part of a public collaboration that includes Tribes and is being issued in order to implement Congress's mandate that the Attorney General promulgate regulations that allow licensees under 18 U.S.C. 923 to use NICS for purposes of FHCs as described in this proposed rule. Implementation of these regulations will not have any substantial direct effects on federally recognized Tribes.

List of Subjects

Administrative practice and procedure, Arms and munitions, Computer technology, Privacy, Security measures, Telecommunications.

Authority and Issuance

Accordingly, for the reasons set forth in the preamble, 28 CFR part 25, subpart A, is proposed to be amended as follows:

PART 25

Subpart A—the National Instant Criminal Background Check System

- 1. The authority citation for 28 CFR part 25 is revised to read as follows:

Authority: Public Law 103-159, 107 Stat. 1536, 49 U.S.C. 30501-30505; Public Law 101-410, 104 Stat. 890, as amended by Public Law 104-134, 110 Stat. 1321; Public Law 117-159, 136 Stat. 1313; 34 U.S.C. 40901; 18 U.S.C. 921, 922.

- 2. Revise § 25.1 to read as follows:

§ 25.1 Purpose and authority.

The purpose of this subpart is to establish policies and procedures

implementing the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103-159, 107 Stat. 1536. The Brady Act requires the Attorney General to establish a National Instant Criminal Background Check System (NICS) to be contacted by any licensed importer, licensed manufacturer, or licensed dealer of firearms for information as to whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of subsection (t) of 18 U.S.C. 922. The NICS may also be contacted, pursuant to the Bipartisan Safer Communities Act, Public Law 117-159, 136 Stat. 1313, by any Federal Firearms Licensee (FFL) for purposes of a firearm handler background check (FHC). The regulations in this subpart A are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542 (18 U.S.C. 922 note) and section 12004(h)(1) of the Bipartisan Safer Communities Act, 136 Stat. 1330-31 (34 U.S.C. 40901(b)(2)(A)), and include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been determined not to have the right to receive a firearm as a result of a NICS background check, including an FHC, performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency. The provisions of this subpart A shall be construed as being severable from one another and any remaining upheld or unchallenged provisions shall be treated independently of any invalidated provision.

- 3. Amend § 25.2 by:
 - a. Revising the definitions of "Appeal" and "ARI";
 - b. Adding in alphabetical order the definitions of "Did Not Pass" and "Eligible employee";
 - c. Revising the definitions of "FFL";
 - d. Adding in alphabetical order the definitions of "Firearm handler" and "Firearm handler background check (FHC)";
 - e. Revising the definitions of "NICS," "NICS Representative," "NICS Section," "NRI (NICS Record Identifier)"; and
 - f. Adding in alphabetical order the definitions of "Pass," "Pending,"
 - g. Revising the definition of "POC (Point of Contact)"; and
 - h. Adding in alphabetical order the definitions of "Responding agency," and "Responsible person."

The revisions and additions read as follows:

§ 25.2 Definitions

Appeal means a formal procedure to challenge the denial of a firearm transfer or a "Did Not Pass" response for an FHC.

ARI means a unique Agency Record Identifier assigned by the agency submitting records for inclusion in the NICS Indices.

* * * * *

Did Not Pass means the response given by the NICS, in the case of an FHC, to indicate that at least one matching record was found that demonstrates the eligible employee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The receipt of a “Did Not Pass” response should not be construed to indicate the person is not eligible for any employment with the FFL, but rather is solely a determination, based on information available to the NICS, that the person is not eligible to receive or be transferred firearms under 18 U.S.C. 922(t). Circumstances in which that person handles a firearm during the person’s employment could lead to criminal liability for the person (and potentially the FFL) under applicable Federal, State, local or Tribal law.

Eligible employee: (1) For purposes of conducting FHCs, *eligible employee* means a person who is not listed as a responsible person of the FFL and is a

(i) Firearm handler; or a

(ii) Person whose current or prospective employment duties for a licensed manufacturer include, or will include, access to, or the handling of, any

(A) Forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a firearm or ammunition (e.g., unfired block of metal, liquid polymer, or other raw material); or

(B) Tool or other equipment used to manufacture a firearm or ammunition, or to otherwise finish a component part of a firearm or ammunition.

(2) Persons who have or will have access to tools or other equipment as described in paragraph (1)(B)(ii) of this definition include, but are not limited to, persons whose employment duties allow them entry to any device, room, or facility where such tools or other equipment of the manufacturer are used or stored.

FFL (Federal firearms licensee) means:

(1) For purposes of a prospective firearm transfer under 18 U.S.C. 922(t), a person licensed by ATF as a manufacturer, dealer, or importer of firearms; and

(2) For purposes of an FHC, any licensee as defined under 34 U.S.C. 40901.

Firearm handler means a person whose current or prospective

employment duties for an FFL include or will include the opportunity to access firearms or ammunition, regardless of whether the person’s employment duties include or will include the actual or constructive transfer or handling in any way of firearms or ammunition.

Persons who have or will have access to firearms or ammunition include, but are not limited to, persons whose employment duties allow them entry to any device, room, or facility where firearms or ammunition of the licensee are stored.

Firearm handler background check (FHC) means a NICS background check voluntarily initiated by an FFL pursuant to 34 U.S.C. 40901(b) for an eligible employee after that eligible employee has provided the FFL with the employee’s written consent to the FHC.

* * * * *

NICS means the National Instant Criminal Background Check System, which an FFL must, with limited exceptions, contact for information on whether receipt of a firearm by a person who is not licensed under 18 U.S.C. 923 would be prohibited as described in 18 U.S.C. 922(t). An FFL also may voluntarily contact the NICS for the purpose of conducting FHCs.

* * * * *

NICS Representative means a person who receives telephone or electronic inquiries to the NICS Section from FFLs requesting background checks and provides a response as to whether the receipt or transfer of a firearm may proceed or is delayed or, for FHCs, whether an eligible employee “Passed” or “Did Not Pass” a NICS background check or whether the FHC is “Pending.”

NICS Section means the section of the FBI that receives telephone or electronic inquiries from FFLs, performs NICS background checks, including FHCs, makes determinations based upon available information as to whether the receipt or transfer of a firearm would be prohibited as described in 18 U.S.C. 922(t), researches criminal history records, tracks and finalizes appeals, and conducts audits of system use. For purposes of this subpart, the term NICS Operations Center shall be understood to refer to the NICS Section.

NRI (NICS Record Identifier) means the system-generated unique number associated with each record in the NICS Indices.

* * * * *

Pass means, in the case of an FHC, the response given by the NICS to indicate that, at the time of the response, no information was available to the NICS demonstrating that the eligible employee is prohibited from receiving

or being transferred a firearm as described in 18 U.S.C. 922(t).

Pending means, in the case of an FHC, the response given by the NICS to indicate that more research is required prior to the NICS being able to provide a “Pass” or “Did Not Pass” response.

POC (Point of Contact) means a state or local law enforcement agency serving as an intermediary between an FFL and the Federal databases checked by the NICS. A POC will receive NICS background check requests from FFLs for prospective firearm transfers, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from receiving or being transferred a firearm as described in 18 U.S.C. 922(t), and respond to FFLs with the results of a NICS background check. A POC may also, if its state law allows, receive FHC requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an eligible employee is disqualified from receiving or being transferred a firearm as described in 18 U.S.C. 922(t), and respond to FFLs with the results of an FHC. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order.

* * * * *

Responding agency means, in the case of an FHC, a POC or the NICS Section, whichever provides the response that information available to the NICS demonstrates that the eligible employee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t).

Responsible person means a sole proprietor or, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the corporation, partnership, or association, insofar as they pertain to any FFL.

* * * * *

■ 4. Revise § 25.4 to read as follows:

§ 25.4 Record source categories.

It is anticipated that most records in the NICS Indices will be obtained from Federal agencies. It is also anticipated that a limited number of authorized state, local, and tribal law enforcement agencies will voluntarily contribute records to the NICS Indices. Information in the NCIC and III systems that will be searched during a background check has been or will be contributed voluntarily

by Federal, state, local, tribal, and international criminal justice agencies.

■ 5. Revise and republish § 25.5 to read as follows:

§ 25.5 Validation and data integrity of records in the system.

(a) The FBI will be responsible for maintaining data integrity during all NICS operations that are managed and carried out by the FBI. This responsibility includes:

(1) Ensuring the accurate adding, canceling, or modifying of NICS Indices records supplied by Federal agencies;

(2) Automatically rejecting any attempted entry of records into the NICS Indices that contain detectable invalid data elements;

(3) Automatically purging records in the NICS Indices after they have been on file for a prescribed period of time; and

(4) Performing quality control checks in the form of periodic internal audits by FBI personnel to verify that the information provided to the NICS Indices remains valid and correct.

(b) Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Indices and will immediately correct any record determined to be invalid or incorrect.

■ 6. Amend § 25.6 by:

■ a. Revising paragraphs (a), (c)(1) introductory text, (c)(2) and (3);

■ b. Adding paragraph (c)(4);

■ c. Revising paragraphs (d)(2), (f) introductory text and (f)(2);

■ d. Adding paragraph (g)(3); and

■ e. Revising paragraphs (h), (i), and (j) introductory text;

The revisions and additions read as follows:

§ 25.6 Accessing records in the system.

(a) FFLs shall initiate a NICS background check in connection with a proposed firearm transfer as required by the Brady Act and may initiate a NICS background check in connection with an FHC. FFLs are strictly prohibited from initiating a NICS background check for any other purpose. The process of accessing the NICS for the purpose of conducting a NICS background check is initiated by an FFL's contacting the FBI NICS Section (by telephone or electronic dial-up access) or a POC. FFLs in each state will be advised by ATF whether they are required to initiate NICS background checks with the NICS Section or a POC and how they are to do so.

(c)(1) The FBI NICS Section, upon receiving an FFL's request for a background check for the transfer of a firearm, will:

(2) The FBI NICS Section, upon receiving an FFL telephone or electronic dial-up request for a background check for an FHC, will:

(i) Verify the FFL Number and code word;

(ii) Assign a NICS Transaction Number (NTN) to a valid inquiry and provide the NTN to the FFL;

(iii) Search the relevant databases (*i.e.*, NICS Indices, NCIC, III) for any matching records; and

(iv) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:

(A) "Pass" response, if no disqualifying information is found demonstrating the eligible employee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t).

(B) "Pending" response, if a NICS search requires more research to determine whether the eligible employee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t).

(C) "Did Not Pass" response, when at least one matching record is found that provides information demonstrating that the eligible employee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t).

(3) None of the responses provided to the FFL under paragraph (c)(1) or (c)(2) of this section will contain any of the underlying information in the records checked by the system.

(4) Except where an FFL believes it has received sufficient information demonstrating the eligible employee has become subject to a potentially prohibiting event (for example, a new criminal charge, conviction, or protection order), an FFL may conduct only one FHC for each eligible employee every 12 months.

(d) * * *

(2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm or an FHC; and

(f) When the NICS receives an inquiry from a POC, it will search the relevant databases (*i.e.*, NICS Indices, NCIC, III) for any matching record(s) and will provide an electronic response to the POC. This response will consolidate the search results of the relevant databases and will include the NTN. The following types of responses may be provided by the NICS to a state or local agency conducting a background check:

(2) Partial response, if the NICS has not completed the search of all of its

records. This response will indicate the databases (*i.e.*, NICS Indices, NCIC, and III) that have been searched and the databases that have not been searched. It will also provide any potentially disqualifying information found in any of the databases searched. A follow-up response will be sent as soon as all the relevant databases have been searched. The follow-up response will provide the complete search results.

* * * * *

(g) * * *

(2) In the case of a prospective firearm transfer, notify the FFL that the transfer may "Proceed," is "Delayed" pending further record analysis, or is "Denied." "Proceed" notifications made within 3 business days will be accompanied by the NTN or STN traceable to the NTN. The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a "Denied" response.

(3) In the case of an FHC, notify the FFL of a "Pass" or "Did Not Pass" result for the FHC, or that the FHC is "Pending." The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a "Did Not Pass" result.

(h)(1) POCs shall transmit electronic NICS transaction determination messages to the FBI for the following transactions:

(i) In the case of a prospective firearm transfer, "Delayed" transactions that are not resolved before the end of the operational day on which the check is requested; "Denied" transactions; transactions reported to the NICS as "Delayed" or "Open" and later changed to "Proceed;" and "Denied" transactions that have been overturned.

(ii) In the case of FHCs that a POC conducts, transactions resulting in a "Pass" or "Did Not Pass" response; and transactions that have been overturned.

(2) The FBI shall provide POCs with an electronic capability to transmit the information identified in paragraphs (h)(i) and (h)(ii) of this section. These electronic messages shall be provided to the NICS immediately upon communicating the POC determination to the FFL. For firearm transfer checks where a determination has not been communicated to the FFL, the electronic messages shall be communicated no later than the end of the operational day on which the check was initiated. With the exception of permit checks and FHCs, newly created POC NICS firearm transfer checks that are not followed by a determination message ("Denied" or "Delayed") before the end of the operational day on which they were initiated will be assumed to have

resulted in a “Proceed” notification to the FFL. The information provided in the POC determination messages for firearm transfer checks will be maintained in the NICS Audit Log described in § 25.9(b). The NICS will destroy its records regarding POC determinations for firearm transfer checks in accordance with the procedures detailed in § 25.9(b).

(i)(1) In the case of a background check for the transfer of a firearm, FFLs are required to record the system response, whether provided by the FBI NICS Section or a POC, on the appropriate ATF form for audit and inspection purposes, under 27 CFR part 478 recordkeeping requirements. The FBI NICS Section response will always include an NTN and associated “Proceed,” “Delayed,” or “Denied” determination. POC responses may vary as discussed in paragraph (g) of this section. In these instances, FFLs will record the POC response, including any transaction number or determination.

(2) In the case of a background check for an FHC, FFLs may record the system response, whether provided by the FBI NICS Section or a POC, on the appropriate form for FHC checks. The FBI NICS Section response will always include an NTN and associated response of “Pass,” “Pending,” or “Did Not Pass.” POC responses may vary as discussed in paragraph (g) of this section. In these instances, FFLs may record the POC response, including any transaction number or determination. FFLs should follow the instructions on the applicable FHC form when recording responses.

(j) *Access to the NICS Indices for purposes unrelated to NICS background checks required by the Brady Act or an FHC.* Access to the NICS Indices for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922(t) or an FHC shall be limited to uses for the purposes of:

* * * * *

■ 7. In § 25.8:

■ a. Revise paragraphs (a), (f)(2), and (g)(1);

■ b. Redesignate paragraph (g)(2) as (g)(2)(i); and

■ c. Add new paragraph (g)(2)(ii).

The addition and revisions read as follows:

§ 25.8 System safeguards.

(a) Information maintained in the NICS Indices is stored electronically for use in an FBI computer environment. The NICS central computer will reside inside a locked room within a secure facility. Access to the facility will be restricted to authorized personnel who have identified themselves and their

need for access to a system security officer.

* * * * *

(f) * * *

(2) FFLs will provide the NICS Representative with their FFL Number and code word, the type of sale or whether the background check is an FHC, and the name, sex, race, date of birth, and state of residence of the prospective buyer or eligible employee.

* * * * *

(g) * * *

(1) Access will be restricted to the initiation of a NICS background check in connection with the proposed transfer of a firearm or an FHC.

* * * * *

(ii) The NICS Representative will only provide a response of “Pass,” “Pending,” or “Did Not Pass” (with regard to an FHC) and will not provide the details of any record information about the subject of the FHC. In cases where potentially disqualifying information is found in response to an FFL query, the NICS Representative will provide a “Pending” response to the FFL. Follow-up “Pass” or “Did Not Pass” responses will be provided by the NICS Section during its regular business hours.

* * * * *

■ 8. Revise and republish § 25.9 to read as follows:

§ 25.9 Retention and destruction of records in the system.

(a) The NICS will retain NICS Indices records that indicate that receipt of a firearm by the individuals to whom the records pertain would be prohibited as described in 18 U.S.C. 922(t). The NICS will retain such records indefinitely unless they are canceled by the originating agency. In cases where a firearms disability is not permanent (e.g., a disqualifying restraining order), the NICS will automatically purge the pertinent record when it is no longer disqualifying. Unless otherwise removed, records contained in the NCIC and III files that are accessed during a background check will remain in those files in accordance with established policy.

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) *Contents.* The NICS Audit Log will record the following information: Type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI or FFL identifier, and inquiry/response data (including the name and other identifying information about the prospective transferee or, with

respect to FHCs, employee and the NTN).

(i) NICS “Denied” and “Did Not Pass” transaction records obtained or created in the course of the operation of the system will be retained in the Audit Log for 110 years.

(ii) NICS Audit Log records relating to transactions remaining in an “Open” or “Pending” status, except the NTN and the NTN’s creation date, will be destroyed after not more than 90 days from the date of inquiry; and

(iii) In cases of NICS Audit Log records relating to allowed transactions, all identifying information submitted by or on behalf of the transferee will be destroyed within 24 hours after the FFL receives a “Pass” or “Proceed” response, as applicable. All other information, except the NTN and the NTN’s creation date, will be destroyed after not more than 90 days from the date of inquiry.

(2) *Use of information in the NICS Audit Log.* The NICS Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, and support audits of the use and performance of the system. Searches may be conducted on the Audit Log by timeframe, e.g., by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transactions may be accessed directly only by the FBI and only for the purpose of conducting audits of the use and performance of the NICS, except that:

(i) Information in the NICS Audit Log, including information not yet destroyed under § 25.9(b)(1)(iii), that indicates, either on its face or in conjunction with other information, a violation or potential violation of law or regulation, may be shared with appropriate authorities responsible for investigating, prosecuting, or enforcing such law or regulation; and

(ii) The NTNs and their creation dates for allowed transactions may be shared with ATF in Individual FFL Audit Logs as specified in § 25.9(b)(4).

(3) *Limitation on use.* The NICS, including the NICS Audit Log, may not be used by any department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of NICS data.

(4) *Creation and Use of Individual FFL Audit Logs.* Upon written request from ATF containing the name and license number of the FFL and the proposed date of inspection of the named FFL by ATF, the FBI may extract information from the NICS Audit Log and create an Individual FFL Audit Log for transactions originating at the named FFL for a limited period of time. An Individual FFL Audit Log shall contain all information on denied transactions, and, with respect to all other transactions, only non-identifying information from the transactions. In no instance shall an Individual FFL Audit Log contain more than 60 days' worth of transaction records with a status of "Delayed," "Open," "Pass," "Pending," or "Proceed" originating at the FFL. The FBI will provide POC states the means to provide to the FBI information that will allow the FBI to generate Individual FFL Audit Logs in connection with ATF inspections of FFLs in POC states. POC states that elect not to have the FBI generate Individual FFL Audit Logs for FFLs in their states must develop a means by which the POC will provide such logs to ATF.

(c) The following records in the FBI-operated terminals of the NICS will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to a background check that results in an allowed transfer or "Pass" status for an FHC; and

(2) All information (regardless of media) contained in the NICS Audit Log relating to a background check that results in an allowed transfer or "Pass" status for an FHC.

(d) The following records of state and local law enforcement units serving as POCs will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that results in an allowed transfer or "Pass" status for an FHC that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions; and

(2) All other records relating to the subject and result of a NICS check that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions.

■ 9. Revise § 25.10 to read as follows:

§ 25.10 Correction of erroneous system information.

(a) An individual may request the reasons for the denial of a firearm

transfer from the agency that conducted the check of the NICS (the "denying agency," which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide to the denied individual the name and address of the denying agency and the unique transaction number (NTN or STN) associated with the NICS background check. In the case of an FHC, an individual may request the reasons for the "Did Not Pass" response from the agency that conducted the check of the NICS (the "responding agency," which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide the individual the name and address of the responding agency and the unique NTN or STN associated with the FHC. A request for the reasons for the "Denied" or "Did Not Pass" response must be made in writing to the denying or responding agency, as applicable. (POCs at their discretion may waive the requirement for a written request.)

(b) The denying or responding agency will respond to the individual with the reasons for the "Denied" or "Did Not Pass" response within five business days of its receipt of the individual's request. The response should indicate whether additional information or documents are required to support an appeal, such as fingerprints in appeals involving questions of identity (*i.e.*, a claim that the record in question does not pertain to the individual making the request).

(c) If the individual wishes to challenge the accuracy of the record upon which a "Denied" or "Did Not Pass" response is based, or if the individual wishes to assert that the individual's right to possess a firearm has been restored, the individual may make application first to the denying or responding agency, *i.e.*, either the FBI or the POC. If the denying or responding agency is unable to resolve the appeal, the agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which "Denied" or "Did Not Pass" response was based. The individual may then apply for correction of the record directly to the agency from which it originated. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the agency that issued a "Denied" or "Did Not Pass" response, which will, in turn, verify the record correction with the originating agency (assuming the originating agency has not already notified the denying or responding agency of the correction)

and take all necessary steps to correct the record in the NICS.

(d) As an alternative to the procedure as described in paragraphs (a) through (c) of this section, where a POC was the denying or responding agency, the individual may elect to direct the individual's challenge to the accuracy of the record, in writing, to the FBI, NICS Section, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module C-1, Clarksburg, West Virginia 26306-0147. Upon receipt of the information, the FBI will investigate the matter either by contacting the POC that provided the "Denied" or "Did Not Pass" response or by contacting the source of the data on which the "Denied" or "Did Not Pass" response was based. The FBI will request that the POC or the data source verify that the record in question pertains to the individual who was the subject of the "Denied" or "Did Not Pass" response or verify or correct the challenged record. The FBI will consider the information it receives from the individual and the response it receives from the POC or the data source. If the record is corrected as a result of the challenge, the FBI shall so notify the individual, correct the erroneous information in the NICS, and give notice of the error to any Federal department or agency, or any state, local, or tribal agency, that was the data source of such erroneous records.

(e) Upon receipt of notice of the correction of a contested record from the originating agency, the FBI or the agency that contributed the record shall correct the data in the NICS, and the denying or responding agency shall provide a written confirmation of the correction of the erroneous data to the individual for presentation to the FFL. In cases where multiple disqualifying or potentially disqualifying records are the basis for the "Denied" or "Did Not Pass" response, or where further disqualifying or potentially disqualifying records otherwise exist in the subject's background, the individual must pursue a correction for each record before a "Proceed" or "Pass" response can be provided to the FFL. In the case of a prospective firearm transfer, if the appeal of a contested record is successful and 30 or fewer days have transpired since the initial check, and there are no other disqualifying or potentially disqualifying records upon which to continue the denial, the NICS will communicate a "Proceed" response to the FFL. If the appeal of a prospective firearm transfer is successful and more than 30 days have transpired since the initial check, the FFL must recheck the NICS before allowing the transfer to continue. In the case of an FHC, if the

appeal of a contested record is successful and there are no other disqualifying or potentially disqualifying records upon which to continue the “Did Not Pass” status, the NICS will communicate a “Pass” response to the FFL.

(f) An individual who is the subject of a denied transfer may also contest the accuracy or validity of a disqualifying record by bringing an action against the state or political subdivision responsible for providing the contested information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the contested information be corrected or that the firearm transfer be approved. Similarly, an individual who is the subject of a “Did Not Pass” response during an FHC may bring an action against the state or political subdivision responsible for providing the contested information, or responsible for providing the “Did Not Pass” response, or against the United States, as the case may be, for an order directing that the contested information be corrected or that the FHC be passed.

(g) An individual may provide written consent to the FBI to maintain information about the individual in a Voluntary Appeal File to be established by the FBI and checked by the NICS for the purpose of preventing future erroneous “Denied” or “Did Not Pass” responses or extended responses of “Delayed” or “Pending” by the NICS. Such file shall be used only by the NICS for prospective firearm transfers and FHCs. The FBI shall remove all information in the Voluntary Appeal File pertaining to an individual upon receipt of a written request by the individual. However, the FBI may retain such information contained in the Voluntary Appeal File as long as needed to pursue cases of identified misuse of the system. If the FBI finds a disqualifying record on the individual after the individual’s entry into the Voluntary Appeal File, the FBI may remove the individual’s information from the file.

■ 10. In § 25.11, revise paragraph (b)(1) to read as follows:

§ 25.11 Prohibited Activities and Penalties

* * * * *

(b) * * *

(1) State or local agencies’, FFLs’, or individuals’ purposefully furnishing incorrect information to the system to obtain a “Proceed” or “Pass” response.

* * * * *

Dated: November 29, 2024.

Merrick B. Garland,
Attorney General.

[FR Doc. 2024–28711 Filed 12–11–24; 8:45 am]

BILLING CODE 4410–02–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2024–7]

Electronic Payment of Royalties Using Pay.gov

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing to amend its regulations regarding the submission of royalty fees to the Copyright Office to require that all such fees be paid using *Pay.gov*.
DATES: Written comments are due by January 13, 2025.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/rulemaking/royaltypayments>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at mef@copyright.gov, or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: Section 111 of the Copyright Act (“Act”), title 17 of the United States Code, provides cable operators with a statutory license to retransmit a performance or display of a work embodied in a “primary transmission” made by a television station licensed by the Federal Communications Commission (“FCC”). Cable operators that retransmit broadcast signals in accordance with this provision are required to pay royalty fees to the Copyright Office (“Office”), among other requirements. Similarly, section 119 of the Act provides satellite carriers with a statutory license to retransmit certain primary transmissions if they satisfy

certain criteria, for which they also must pay royalty fees to the Office. In addition, sections 1003 and 1004 of the Act require manufacturers and importers of digital audio recording devices and digital audio recording media (“DART”) to pay royalty fees to the Office.

In 2006, the Office issued a rule requiring those royalty payments to be made using electronic funds transfer (“EFT”).¹ As noted when the rule was proposed, the use of EFT is beneficial to both the remitter and the Office for four reasons.² First, with Fedwire transactions, remitters gain more time to transfer funds without fear of incurring interest assessments for late payments. Second, electronic payments avoid the problems associated with lost checks or delays in processing mail. Third, copyright owners, the ultimate recipients of the funds, accrue more interest because the monies go directly to the Department of the Treasury instead of being diverted to the Copyright Office for processing first. And finally, the Office benefits from the use of the electronic payment option because it lessens its workload by reducing paperwork and related administrative costs.

Now, as part of broader efforts to make its services digitized, interconnected, searchable, and easier to navigate,³ the Office seeks to further simplify the royalty payment process by requiring remitters to use the U.S. Treasury Department’s *Pay.gov* system to submit EFT payments for all royalty and filing fees. In addition to the advantages noted above, mandating the use of *Pay.gov* benefits both remitters and the Office by (1) ensuring that the Office can receive, reconcile, and post payments in the same transaction; (2) providing remitters with the convenience of using a variety of methods, including credit or debit

¹ *Electronic Payment of Royalties*, 71 FR 45739 (Aug. 10, 2006) (final rule permitting remitters to choose between an Automated Clearing House (“ACH”) credit and a Fedwire transfer). See 37 CFR 201.11(f)(1), 201.17(k)(1), 201.28(h)(1). In 2018, the Office issued a rule allowing payments to be made with multiple EFT transfers, not just a single payment. *Streamlining Electronic Payment of DART Royalty Accounts and Electronic Royalty Payment Processes*, 83 FR 51840 (Oct. 15, 2018).

² See *Electronic Payment of Royalties*, 71 FR 24829, 24829–30 (Apr. 27, 2006) (proposed rule).

³ As part of this effort, the Office is reviewing its regulations and updating them where necessary to reflect current and anticipated practices. Among the regulations recently revised are those requiring the use of *Pay.gov* for non-royalty payments and those pertaining to statements of account for cable operators, satellite carriers, and DART remitters. See 37 CFR 201.6, 201.11, 201.17, 201.28; Statutory Cable, Satellite, and DART License Reporting Practices (published elsewhere in this issue of the *Federal Register*).

cards, as a form of payment; and (3) eliminating the need for remitters to separately complete the remittance advice form. Instead, they submit the remittance advice form through *Pay.gov* at the same time they make their payments. Thus, the proposed rule will allow more efficient collection and allocation of royalty fees. It will also harmonize payment regulations across services throughout the Office, which already mandate the use of *Pay.gov* for non-royalty electronic payments.⁴

The proposed rule does not alter the regulatory provisions allowing the Office to waive the requirement of payment by EFT. However, as the Office stated when it first required payment by EFT, waivers are “for those situations where there may be circumstances which make it virtually impossible for a remitter to use the electronic payment option or imposes a financial or other hardship.”⁵

To assist remitters unfamiliar with *Pay.gov*, the Office has created tutorials to guide remitters, which are posted on the Licensing Section’s website.⁶

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.11 by revising paragraphs (f)(1) and (h)(3)(iv) to read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(f) * * *

(1) All royalty fees shall be paid by electronic funds transfer using *Pay.gov*, and payment must be received in the designated bank by the filing deadline for the relevant accounting period. Satellite carriers must provide specific information as part of the EFT and as part of the remittance advice, as listed

in the instructions for *Pay.gov*, the Statement of Account form, and the Office’s website.

* * * * *

(h) * * *

(3) * * *

(iv)(A) All requests filed under this paragraph (h) must be accompanied by a filing fee in the amount prescribed in § 201.3(e) of this part for each Statement of Account involved. Payment of this fee must be by EFT using *Pay.gov*. No request will be processed until the appropriate filing fees are received.

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (h) must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be by EFT using *Pay.gov*. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

■ 3. Amend § 201.17 by revising paragraphs (k)(1) and (l)(4)(iv)(A) and (B) to read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(k) * * *

(1) All royalty fees must be paid by electronic funds transfer (EFT) using *Pay.gov*, and must be received in the designated bank by the filing deadline for the relevant accounting period. Cable systems must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for *Pay.gov*, the Statement of Account form and on the Office’s website.

* * * * *

(l) * * *

(4) * * *

(iv)(A) All requests filed under this paragraph (l) must be accompanied by a filing fee in the amount prescribed in § 201.3(e) of this part for each Statement of Account involved. Payment of this fee must be made by an electronic payment using *Pay.gov*. No request will be processed until the appropriate filing fees are received; and

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (l) must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be by an electronic payment using *Pay.gov*. No such request will be processed until an acceptable remittance in the full amount

of the supplemental royalty fee has been received.

* * * * *

■ 4. Amend § 201.28 by revising paragraphs (h)(1) and (j)(3)(v) to read as follows:

§ 201.28 Statements of Account for digital audio recording devices or media.

* * * * *

(h) * * *

(1) All royalty fees must be paid by electronic funds transfer (EFT) using *Pay.gov*, and must be received in the designated bank by the filing deadline for the relevant accounting period. Remitters must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for *Pay.gov*, the Statement of Account form, and the Office’s website.

* * * * *

(j) * * *

(3) * * *

(v)(A) The request must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved. Payment of this fee must be by EFT using *Pay.gov*. No request will be processed until the appropriate filing fees are received.

(B) Requests that a supplemental royalty fee payment be deposited must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be by electronic payment using *Pay.gov*. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

Dated: December 5, 2024.

Suzy Wilson,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2024–29119 Filed 12–11–24; 8:45 am]

BILLING CODE 1410–30–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3041

[Docket Nos. RM2025–5 and K2025–491; Order No. 8239]

Streamlined Negotiated Service Agreement Review and New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notification of filing.

SUMMARY: The Commission is acknowledging a recent Postal Service filing requesting the Commission

⁴ See 37 CFR 201.6(a)(1); *Remitter Payment Options and Deposit Account Requirements*, 87 FR 59306 (Sept. 30, 2022) (final rule).

⁵ 71 FR at 45739.

⁶ United States Copyright Office, Circular 74, June 2022: *How to Make Statutory License Royalty EFT Payments Using Pay.gov*, <https://copyright.gov/circs/circ74.pdf>; United States Copyright Office, *Make Statutory License Royalty Payments Using Pay.gov*, <https://copyright.gov/licensing/eftpayment>.

initiate a rulemaking to conduct advance review of a financial model, minimum rates, and Mail Classification Schedule changes to facilitate streamlined review of eligible negotiated service agreements, and a related request to add a new non-published rates negotiated service agreement product to the Competitive product list. This document invites public comment on the advance review portion of the Postal Service's filing and takes other administrative steps.

DATES: *Comments are due:* December 12, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Postal Service Request
- III. Notice and Comment
- IV. Ordering Paragraphs

I. Introduction

On November 22, 2024, the Postal Service filed a petition pursuant to 39 CFR 3041.205.¹ Rulemakings conducted under that section concern advance review of proposed financial models, minimum rates, and *Mail Classification Schedule* (MCS) changes to permit streamlined review of non-published rates (NPR) products and standardized distinct products (SDPs). 39 CFR 3041.205(a). Included with the Request, the Postal Service proposed to add a new NPR NSA product to the Competitive product list pursuant to 39 CFR 3041.320. *See* Request at 1.

II. Postal Service Request

Background. The Commission adopted rules for streamlined option rulemakings in Docket No. RM2023–5 to “address elements of 39 U.S.C. 3642 review and 39 U.S.C. 3633 pre-implementation review that are broadly applicable to qualifying [negotiated service agreements (NSAs)] and not particular to individual qualifying

NSAs.”² Specifically, such proceedings are used to establish eligibility criteria specifying the ways in which qualifying NSAs will be permitted to vary from existing offerings, to review a proposed financial model for qualifying NSAs that accounts for the financial impact of any such variations, and to establish minimum rates for qualifying NSAs. Order No. 7353 at 4.

After a financial model, minimum rates, and MCS language are approved in a streamlined option rulemaking, NPR NSA products and SDP NSAs that conform to the approved MCS language, use the approved financial model, and comply with the approved minimum rates can be added to the Competitive product list. *See* 39 CFR 3041.320(c); 39 CFR 3041.325(c). Requests to add conforming NPR NSA products to the Competitive product list are reviewed in public proceedings, and, if approved, one or more included contracts using the same contract template may be subsequently added to the product without requiring further approval from the Commission. *See* 39 CFR 3041.320. Requests to add conforming SDP NSAs to the Competitive product list are reviewed by the Commission in summary proceedings. 39 CFR 3041.325(c).

Request. The Postal Service proposes MCS language, a financial model, and minimum rates for “Mid-Market—Non-Published Rates” contracts. *See* Request at 1. The Postal Service states that such contracts will provide discounted rates for “existing end-to-end competitive products, Priority Mail Express, Priority Mail, and USPS Ground Advantage® on the same basis as, and without any material changes made to, the publicly available versions of those products.” *Id.* at 2.

The proposed financial model uses the “archetype approach” wherein cost coverage is demonstrated for the national volume distribution and each of 10 distinct volume distributions (archetypes). *See id.* at 3. When the archetype approach was first proposed, the Postal Service stated that it would assign each customer to an archetype based on a questionnaire.³ The Postal Service further stated that, within each

archetype, volume is distributed across cubic tiers and flat rate products consistent with national distribution data. *See* Order No. 7334 at 7 (citing Docket Nos. MC2024–384 and CP2024–392, Response to CHIR No. 1, question 3). The Postal Service explained that it would not use the archetype approach for customers with unique circumstances or preferences that make the archetype approach inappropriate.⁴

The proposed addition of a new NPR NSA product to the Competitive product list includes contract templates based on numerous recent Postal Service NSA filings. Request at 3. The proposed contract templates differ primarily based on how volume is calculated for purposes of the tiered pricing mechanism, with two templates apiece that rely on annual, quarterly, and rolling four-quarter volume. *See id.* at 4, 4 nn.11–12.

III. Notice and Comment

The Commission establishes Docket Nos. RM2025–5 and K2025–491 for consideration of matters raised by the Request. More information on the Request may be accessed via the Commission's website at <http://www.prc.gov>. Interested persons may submit comments regarding the proposed financial model, minimum rates, and MCS changes filed pursuant to 39 CFR 3041.205 no later than December 12, 2024. Should the Commission authorize the financial model, minimum rates, and MCS language for use pursuant to 39 CFR 3041.205(f), the Commission will separately request public comment regarding whether the Postal Service's request to add the Mid-Market—Non-Published Rates product to the Competitive product list conforms to the then-authorized version of the financial model, minimum rates, and MCS language and otherwise satisfies the requirements of 39 CFR 3041.320(g). Pursuant to 39 U.S.C. 505, Christopher Mohr is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. RM2025–5 and K2025–491 for consideration of the matters raised by the USPS Request to Establish New Mid-Market—Non-Published Rates

⁴ *See* Order No. 7334 at 8 (citing Docket Nos. MC2024–384 and CP2024–392, USPS Response to Chairman's Information Request No. 2, with Portions Filed Under Seal, July 29, 2024, question 2).

¹ USPS Request to Establish New Mid-Market—Non-Published Rates Product (MMNPR) and Notice of Filing Materials Under Seal, November 22, 2024 (Request).

² Docket No. RM2023–5, Final Order Amending Rules Regarding Competitive Negotiated Service Agreements, August 9, 2024, at 4 (Order No. 7353).

³ *See* Docket Nos. MC2024–384 and CP2024–392, Order Adding Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 123 to the Competitive Product List, August 5, 2024, at 7 (Order No. 7334) (citing Docket Nos. MC2024–384 and CP2024–392, USPS Response to Chairman's Information Request No. 1, with Portions Filed Under Seal, July 16, 2024, question 3 (Docket Nos. MC2024–384 and CP2024–392, Response to CHIR No. 1)).

Product (MMNPR) and Notice of Filing Materials Under Seal, filed November 22, 2024.

2. Comments by interested persons concerning the financial model, minimum rates, and *Mail Classification Schedule* changes proposed pursuant to 39 CFR 3041.205 are due no later than December 12, 2024.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Christopher Mohr to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these dockets.

4. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

By the Commission.
Erica A. Barker,
Secretary.
[FR Doc. 2024–29090 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2024–0411; FRL–12015–01–OAR]

RIN 2060–AW46

Renewable Fuel Standard (RFS) Program: Partial Waiver of 2024 Cellulosic Biofuel Volume Requirement and Extension of 2024 Compliance Deadline

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially waive the 2024 cellulosic biofuel volume requirement and revise the

associated percentage standard under the Renewable Fuel Standard (RFS) program due to a shortfall in cellulosic biofuel production. As a result of this proposed change, this action also proposes to extend the RFS compliance reporting deadline for the 2024 compliance year. This action also proposes several minor revisions related to the biogas provisions of the RFS program.

DATES:
Comments: Comments must be received on or before January 21, 2025.
Public hearing: EPA will hold a virtual public hearing on December 20, 2024. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES:
Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2024–0411, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa>

dockets for additional submission methods; the full EPA public comment policy; information about CBI or multimedia submissions; and general guidance on making effective comments.

Public hearing. The virtual public hearing will be held on December 20, 2024. The hearing will begin at 9 a.m. eastern standard time (EST) and end when all parties who wish to speak have had an opportunity to do so. All hearing attendees (including even those who do not intend to provide testimony) should register for the virtual public hearing by December 13, 2024. Information on how to register can be found at <https://www.epa.gov/renewable-fuel-standard-program/proposed-partial-waiver-2024-cellulosic-biofuel-volume-requirement>. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Dallas Burkholder, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4776; email address: RFS-Rulemakings@epa.gov. For questions regarding the public hearing, contact Nick Parsons at RFS-Hearing@epa.gov.

SUPPLEMENTARY INFORMATION:
Does this action apply to me?

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels (*e.g.*, gasoline and diesel fuel) and renewable fuels (*e.g.*, ethanol, biodiesel, renewable diesel, and biogas). Potentially affected categories include:

Category	NAICS ¹ code	Examples of potentially affected entities
Industry	211130	Natural gas liquids extraction and fractionation.
Industry	221210	Natural gas production and distribution.
Industry	324110	Petroleum refineries (including importers).
Industry	325120	Biogases, industrial (<i>i.e.</i> , compressed, liquified, solid), manufacturing.
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Other basic organic chemical manufacturing.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	424710	Petroleum bulk stations and terminals.
Industry	424720	Petroleum and petroleum products wholesalers.
Industry	457210	Fuel dealers.
Industry	562212	Landfills.

¹ North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action. This table lists the types of entities that EPA is now

aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you

should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

Participation in Virtual Public Hearing

Information on how to register for the virtual public hearing can be found at <https://www.epa.gov/renewable-fuel-standard-program/proposed-partial-waiver-2024-cellulosic-biofuel-volume-requirement>. The last day to pre-register to speak at the hearing is December 13, 2024. Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/renewable-fuel-standard-program/proposed-partial-waiver-2024-cellulosic-biofuel-volume-requirement>. While EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

Each commenter will have 3 minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by December 13, 2024. EPA may not be able to arrange accommodations without advance notice.

Preamble Acronyms and Abbreviations

Throughout this document the use of “we,” “us,” or “our” is intended to refer to 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, EPA defines the following terms and acronyms here:

BBD biomass-based diesel
CAA Clean Air Act
CG conventional gasoline
CNG compressed natural gas
CWC cellulosic waiver credit
FRS ID facility registration system identification
GC gas chromatograph
LNG liquified natural gas
RBOB reformulated gasoline before oxygenate blending
RFG reformulated gasoline
RFS Renewable Fuel Standard
RIN Renewable Identification Number
RNG renewable natural gas
RVO Renewable Volume Obligation

Outline of This Preamble

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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
- X. Statutory Authority

I. Executive Summary

On July 12, 2023, EPA promulgated a rule establishing the RFS volume requirements and percentage standards for 2023–2025 (the “Set Rule”).¹ As part of that rulemaking, EPA projected that 1.09 billion cellulosic Renewable Identification Numbers (RINs) would be generated in 2024 and used that volume to establish the 2024 cellulosic biofuel percentage standard of 0.63 percent.²

However, based on current projections of cellulosic biofuel production for 2024, we expect that only 0.97 billion cellulosic RINs will be generated in 2024, a shortfall of 0.12 billion RINs. As discussed in section III, this follows a shortfall in cellulosic biofuel production in 2023 that resulted in the total cellulosic RIN deficit from 2023 carried into 2024 to exceed the total number of available 2023 cellulosic carryover RINs. Given these factors and reasons further explained in sections II through IV, in this action we are proposing to partially waive the 2024 cellulosic biofuel volume requirement to 0.88 billion RINs (the sum of projected cellulosic biofuel production in 2024 less the cellulosic biofuel deficits carried into 2024) using the statutory “general waiver authority.” We are requesting comment on the magnitude of the partial waiver and the use of the cellulosic waiver authority as an alternative to the general waiver authority.

We currently project that the supply of advanced biofuel and total renewable fuel in 2024 will exceed the required volumes by a significant margin, despite the projected shortfall in cellulosic biofuel. Given the projected surplus of 2024 advanced RINs, we are not proposing to revise the volume requirements for any of the other categories of renewable fuel (*i.e.*, biomass-based diesel (BBD), advanced biofuel, and total renewable fuel). We are also not proposing any changes to any of the 2025 RFS standards, which were also finalized in the Set Rule. While EPA may possibly consider a partial waiver of the 2025 cellulosic biofuel standard in a future action, any comments on such a change to the 2025 RFS standards will be treated as beyond the scope of this action.³

As discussed in section V, we are additionally seeking comment on two issues related to the “cellulosic waiver authority”: (1) Whether this authority is available to waive the 2024 cellulosic biofuel volume requirement; and (2) Our proposal to replace the source of data for the wholesale price of gasoline that is used to calculate the price of cellulosic waiver credits (CWCs) because the data source currently identified in the regulations is no longer available.

In section VII, we are also proposing to extend the 2024 RFS compliance deadline from March 31, 2025, to the next quarterly compliance reporting

³ EPA is not reopening the 2025 RFS volumes and standards in this proceeding, nor are we reopening any of the 2024 RFS volumes and standards besides the 2024 cellulosic biofuel volume and standard.

¹ 88 FR 44468 (July 12, 2023).

² 40 CFR 80.1405(a).

deadline after the effective date of the action finalizing these amendments, as well as proposing provisions that would automatically extend the annual compliance reporting deadline for a given compliance year if EPA proposes to revise an existing RFS standard for that year, as is proposed herein. EPA requests comment on these compliance deadline proposals.

Finally, as discussed in section VIII, we are proposing minor revisions to two main areas of the RFS program's biogas regulations that were identified after EPA and market participants began implementing the regulations promulgated in the Set Rule. First, EPA is proposing to clarify and provide flexibility for how biogas, renewable natural gas (RNG), renewable compressed natural gas (CNG), and renewable liquified natural gas (LNG) are measured, sampled, and tested to demonstrate compliance.

Second, EPA is proposing the following technical amendments to the biogas regulations:

- Clarifying what constitutes a batch of RNG.
- Clarifying the requirements for the generation, assignment, and separation of RINs for RNG.
- Clarifying the registration requirements for biogas producers, RNG producers, and RNG RIN separators.
- Clarifying the attest engagement requirements for biogas producers, RNG producers, and RNG RIN separators.
- Numerous clarifications, corrections, and consistency edits to the biogas regulations.

II. Statutory Background

A. The RFS Program and the Set Authority

Clean Air Act (CAA) section 211(o)(2)(B) establishes the framework by which EPA is to establish annual, nationally applicable volume targets for each of the four categories of renewable fuel that make up the RFS program: cellulosic biofuel, BBD, advanced biofuel, and renewable fuel. CAA section 211(o)(2)(B)(i) provides specific applicable volumes for cellulosic biofuel, advanced biofuel, and renewable fuel for each year from 2010 to 2022 and specific applicable volumes for BBD for each year from 2010 to 2012.

For the years beyond those expressly enumerated (*i.e.*, after 2022 for all categories), CAA section 211(o)(2)(B)(ii) provides that applicable volumes are set by EPA in coordination with the United States Department of Agriculture (USDA) and Department of Energy (DOE), based on a review of the implementation of the RFS program to

date, and that EPA must analyze specific factors (*e.g.*, the impact of the production and use of renewable fuels on the environment, energy security, the infrastructure of the United States, and job creation). EPA calls this statutory authority to set volumes after 2022 its “set authority.” CAA section 211(o)(2)(B)(ii) additionally provides that under the set authority, EPA shall promulgate applicable volumes no later than 14 months prior to the start of the relevant year.⁴

This action concerns the 2024 cellulosic biofuel volume requirement that was established in the Set Rule, EPA's first RFS rule promulgated under the set authority. In the Set Rule, EPA established the volume requirements for 2023–2025 using the set authority and acknowledged that certain waivers may be available to adjust the volume requirements if the requisite statutory conditions are met.⁵

B. General Waiver Authority

CAA section 211(o)(7)(A) provides that EPA, in consultation with USDA and DOE, may reduce RFS volume requirements previously established pursuant to CAA section 211(o)(2) for a given compliance year, in whole or in part, under specified circumstances, including when EPA finds that “there is an inadequate domestic supply.”⁶ Notably, CAA section 211(o)(7)(A) does not include any temporal limitation on when the waiver may be used or any limitation on which category of volumes may be waived, and thus the general waiver authority may be used to waive the cellulosic volume after the volumes have been set.

In *Americans for Clean Energy v. EPA*, 864 F.3d 691 (2017) (“*ACE*”), the U.S. Court of Appeals for the D.C. Circuit held that, for this provision, the statute requires a “supply-side” assessment of the volumes of renewable fuel that can be supplied to refiners,

importers, and blenders.⁷ Thus, EPA has the authority to waive volumes under this provision only if EPA determines that there is an “inadequate domestic supply” of renewable fuel based on the volumes of renewable fuel that can be supplied to refiners, importers, and blenders (*i.e.*, EPA cannot base its finding on demand-side considerations). In calculating the supply of renewable fuel to make this threshold determination, EPA has consistently excluded carryover RINs from the previous compliance year and only assessed the quantity of actual renewable fuel projected to be (or actually) supplied to refiners, importers, and blenders in the compliance year at issue. This approach was upheld by the D.C. Circuit in *ACE*.⁸

Once EPA determines that there is an inadequate domestic supply of renewable fuel (or that the required volumes would result in severe economic or environmental harm), CAA section 211(o)(7)(A) states that EPA “may” waive RFS volume requirements. Given that the statute permits EPA to determine whether or not to issue a waiver, EPA takes into consideration the availability of carryover RINs at this point in its analysis, particularly in circumstances where EPA is considering whether to adjust the volume requirement after it has been set.⁹ If EPA finds that the number of available RINs—including carryover RINs—is sufficient to meet the standards, EPA may choose not to issue a waiver, even if it determines there is an “inadequate domestic supply.”¹⁰ Given the discretion afforded to EPA to issue waivers, EPA also considers other factors, as appropriate, when determining whether to issue a waiver under the general waiver authority.¹¹ This action proposes to implement such a general waiver to reduce the 2024 cellulosic biofuel volume requirement.

⁴ “The Administrator shall promulgate rules establishing the applicable volumes under this clause no later than 14 months before the first year for which such applicable volume will apply.” CAA section 211(o)(2)(B)(ii).

⁵ 88 FR 44479 (July 12, 2023) (“While we are establishing applicable volume requirements in this action for future years that are achievable and appropriate based on our consideration of the statutory factors, we retain our legal authority to waive volumes in the future under the waiver authorities should circumstances so warrant.”).

⁶ The CAA section 211(o)(7)(A) general waiver authority also allows EPA to waive RFS volumes if an applicable standard “would severely harm the economy or environment of a State, a region, or the United States” (“severe economic harm”). This provision is not relevant to this action and is therefore not discussed, but more information can be found at 77 FR 70756 (November 27, 2012).

⁷ *ACE* resolved challenges to EPA's rulemaking that established the 2014–2016 RFS standards (“2014–2016 Rule”). 80 FR 77420 (December 14, 2015).

⁸ *ACE*, 864 F.3d at 704, 713–716 (holding that EPA “permissibly declined to consider carryover RINs for purposes of determining the available supply.”)

⁹ 80 FR 77484–85 (December 14, 2015).

¹⁰ This was the case for 2016 and 2023, when EPA declined petitions for waiver of the cellulosic biofuel standards for those compliance years. See “Denial of AFPM Petition for Waiver of 2016 Cellulosic Biofuel Standard,” January 17, 2017, available in the docket for this action; see also “Denial of AFPM Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard,” 89 FR 20961 (March 26, 2024).

¹¹ See, *e.g.*, 73 FR 47168 (August 13, 2008) and 77 FR 70752, 70756 (November 27, 2012).

C. Cellulosic Waiver Authority

The cellulosic waiver authority at CAA section 211(o)(7)(D)(i) provides that “[f]or any calendar year for which the projected volume of cellulosic biofuel production is less than the minimum applicable volume established under paragraph (2)(B), as determined by the Administrator based on the estimate provided under paragraph (3)(A),” EPA “shall reduce the applicable volume of cellulosic biofuel required under paragraph (2)(B) to the projected volume available during that calendar year” and that this reduction shall be made “not later than November 30 of the preceding calendar year.” For those years in which EPA “makes such a reduction,” the statute further provides that EPA may also “reduce the applicable volume of renewable fuel and advanced biofuels requirement . . . by the same or a lesser volume.” As such, even when EPA exercises its cellulosic waiver authority, the determination of whether to correspondingly reduce the advanced biofuel requirement is discretionary. As recognized by EPA in the Set Rule, there may be situations in which the CAA section 211(o)(7)(D) cellulosic waiver authority remains available to waive cellulosic biofuel volume requirements after 2022.¹²

In the past, when establishing the annual volumes and percentage standards using the cellulosic waiver authority, if EPA determined that the projected volume of cellulosic biofuel production for a given year would be less than the annual applicable volume established by Congress under CAA section 211(o)(2)(B)(i)(III), then EPA had the authority to reduce the applicable volume of cellulosic biofuel in relation to the projected volume available for that calendar year. Pursuant to this provision, EPA set the cellulosic biofuel volume requirement lower than the CAA section 211(o)(2)(B)(i)(III) statutory volumes enumerated by Congress for each year from 2010 through 2022. EPA was challenged regarding its interpretation of this statutory provision, leading the D.C. Circuit to evaluate various aspects of EPA’s cellulosic waiver authority.¹³ In 2013 in

American Petroleum Institute (API) v. EPA, the court held that EPA must take a “neutral aim at accuracy” in determining the projected volume of cellulosic biofuel available.¹⁴ In *API* and *Alon Refining Krotz Springs, Inc. v. EPA*, the D.C. Circuit upheld EPA’s decision to use the Energy Information Administration’s (EIA’s) projected volume of cellulosic biofuel production to inform EPA’s projection, without requiring “slavish adherence by EPA to the EIA estimate.”¹⁵ In *Sinclair Wyoming Refining Co. LLC, et al. v. EPA*, the D.C. Circuit upheld EPA’s reading of the statutory phrase “projected volume available” to exclude carryover RINs.¹⁶

When EPA waived the cellulosic biofuel volume requirement using the cellulosic waiver authority in the past, it made CWCs available.¹⁷ As described in past RFS actions, CWCs—which, when made available, were offered for sale to obligated parties at a price established by regulation per the statute¹⁸—provided compliance flexibility for obligated parties and effectively established a ceiling for the price of cellulosic biofuel RINs.¹⁹ However, it should be noted that CWCs only satisfied an obligated party’s cellulosic biofuel obligation; unlike a cellulosic RIN, a CWC could not be used to satisfy an obligated party’s advanced biofuel or total renewable fuel obligation.²⁰ Therefore, to obtain the same compliance value as a cellulosic biofuel RIN, an obligated party using a CWC for compliance with the cellulosic biofuel standard needed to also acquire an advanced biofuel RIN to use towards meeting its advanced biofuel and total renewable fuel obligations. When CWCs were made available, they generally served to limit or cap the price of cellulosic RINs.

In section V, EPA requests comment on whether use of the cellulosic waiver authority is available to reduce cellulosic biofuel volumes in 2024, because certain stakeholders have requested that EPA waive the 2024

cellulosic biofuel volume requirement using this authority rather than, or in addition to, the general waiver authority.²¹

III. Assessment of Cellulosic RINs Available for Compliance

In the Set Rule, EPA projected that 1.09 billion cellulosic RINs would be generated in 2024, and used that volume to calculate the 2024 cellulosic biofuel percentage standard of 0.63 percent.²² While the actual number of cellulosic RINs that obligated parties will ultimately need to retire for compliance with the current standard will not be known until after the 2024 compliance deadline,²³ when obligated parties report to EPA their 2024 gasoline and diesel production and import volumes,²⁴ for purposes of making a decision to partially waive the 2024 cellulosic biofuel volume requirement, we have assumed that the actual total 2024 cellulosic biofuel obligation, if not waived, will be 1.09 billion RINs.²⁵

As of October 10, 2024, approximately 0.64 billion 2024 cellulosic RINs have been generated through September 2024.²⁶ To project total cellulosic RIN generation for 2024, we considered the seasonality of cellulosic RIN generation over the previous five years. We observed that the number of cellulosic RINs generated at the end of each month as a percentage of the total number of cellulosic RINs generated that year was

²¹ See, e.g., American Fuel & Petrochemical Manufacturers (AFPM), “Petition for Partial Waiver of the 2024 Cellulosic Biofuel Volumetric Requirements,” November 1, 2024.

²² 88 FR 44470–71 (July 12, 2023).

²³ The compliance deadline for the 2024 standards is currently March 31, 2025. However, as described in section VII.A, EPA is proposing to extend the 2024 compliance deadline in this action.

²⁴ 40 CFR 80.1451 and 80.1427(a).

²⁵ Because the compliance obligation is calculated on a percentage basis, if the actual gasoline and diesel volumes reported by obligated parties differ from the projected gasoline and diesel volumes that were used to derive the percentage standard, then the actual number of RINs required for compliance will differ from the projected volume that was used to calculate the percentage standard. Although we rely on the 1.09-billion-RIN projection for 2024 in the Set Rule that was the basis for the 2024 cellulosic biofuel percentage standard, EPA would reach the same conclusion to waive the 2024 cellulosic biofuel volume requirement, for the reasons stated below, using a higher RIN obligation (i.e., a higher gasoline and diesel projection).

²⁶ See “Total Net Generation” RIN data table at: <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rins-generated-transactions>. This table includes all reported cellulosic RINs that have been generated so far in 2024 and were not otherwise retired due to RIN generation error (i.e., an invalid RIN). Thus, the volume of 2024 cellulosic RINs in this table is the volume of RINs that have been made available for compliance with the 2024 cellulosic biofuel standard.

¹² “Renewable Fuel Standard (RFS) Program: Standards for 2023–25 and Other Changes, Response to Comments,” EPA–420–R–23–014, June 2023 (“Set Rule RTC”), p. 9.

¹³ See, e.g., *American Petroleum Institute (API) v. EPA*, 706 F.3d 474, 479 (D.C. Cir. 2013) (“*API*”) (interpreting the “projected volume available” and indicating that “the most natural reading of the provision is to call for a projection that aims at accuracy, not at deliberately indulging a greater risk of overshooting than undershooting” in projecting the available cellulosic biofuel volume); *ACE* at 730

(determining EPA’s use of the cellulosic waiver authority to reduce advanced and total renewable fuel was reasonable); *Sinclair Wyoming Refining Co. LLC, et al. v. EPA*, 101 F.4th 871, 883 (2024) (“*Sinclair*”) (rejecting biofuels producers’ challenge that EPA must include carryover cellulosic RINs in its determination of “projected volume available during that calendar year”).

¹⁴ *API*, 706 F.3d at 476.

¹⁵ *Alon Refining Krotz Springs, Inc. v. EPA*, 396 F.3d 628, 660 (D.C. Cir. 2019); *API*, 607 F.3d at 478.

¹⁶ *Sinclair*, 101 F.4th at 883–884.

¹⁷ CAA section 211(o)(7)(D)(ii).

¹⁸ CAA section 211(o)(7)(D)(iii); 40 CFR 80.1456.

¹⁹ See, e.g., 85 FR 7025 (February 6, 2020); 87 FR 39616 (July 1, 2022).

²⁰ 72 FR 14726–27 (March 26, 2010).

very consistent from year-to-year.²⁷ Based on the observed cellulosic RIN generation data from 2019–2023, we project that cellulosic RIN generation for 2024 will be approximately 0.97 billion RINs.²⁸

We have also considered the total cellulosic RIN deficit carried forward from 2023. To demonstrate compliance in 2024, obligated parties that carried a cellulosic RIN deficit from 2023 into 2024 must retire RINs to fully satisfy their cellulosic biofuel obligation, calculated to include the obligation incurred in 2024 plus the deficit carried forward from 2023.²⁹ Over 20 obligated parties—who together represent 21 percent of the total cellulosic biofuel obligation for 2023—carried a cellulosic RIN deficit into 2024, including two of the six largest obligated parties and seven of the 25 largest obligated parties.³⁰ Together, this total cellulosic RIN deficit reflects a deferred obligation of approximately 0.09 billion cellulosic RINs.³¹ If EPA were to include this cellulosic RIN deficit from 2023, the net number of RINs available to comply with the 2024 cellulosic biofuel standard would be approximately 0.88 billion RINs. This is approximately 0.21 billion fewer RINs than the 1.09 billion RINs needed to comply with the current 2024 cellulosic biofuel standard, a shortfall of approximately 18 percent.

We also have taken into consideration cellulosic RINs carried over from 2023. There are approximately 0.03 billion 2023 cellulosic carryover RINs available.³² These carryover RINs represent actual cellulosic biofuel that was produced in 2023, but these RINs were not used for compliance in 2023 and therefore remain available to obligated parties for use to comply with the 2024 cellulosic biofuel standard.³³ If EPA were to include both the 2023

cellulosic carryover RINs and total cellulosic RIN deficit from 2023, the net number of RINs available to comply with the 2024 cellulosic biofuel standard is approximately 0.91 billion RINs. This is approximately 0.18 billion fewer RINs than the 1.09 billion RINs needed to comply with the current 2024 cellulosic biofuel standard, a shortfall of approximately 16 percent.

Due to the expected shortfall in cellulosic biofuel production in 2024, the total cellulosic RIN deficit carried forward from 2023 into 2024, and the limited number of available 2023 cellulosic carryover RINs, the cellulosic RIN shortfall could be of such a magnitude that some obligated parties that carried forward a deficit from 2023 into 2024 would be forced into non-compliance with their 2024 cellulosic biofuel obligations. This is because while obligated parties that did not carry forward a cellulosic RIN deficit from 2023 into 2024 would be able to carry forward a deficit from 2024 into 2025 to demonstrate compliance—which is permitted by statute³⁴ and regulation³⁵ and is routinely done—obligated parties that carried a cellulosic RIN deficit from 2023 into 2024 are precluded by statute³⁶ and regulation³⁷ from doing so in the subsequent year (*i.e.*, from 2024 into 2025). This fact, combined with the shortfall in cellulosic biofuel production in 2024, may disrupt the functioning of the RIN market and leave some obligated parties unable to obtain the cellulosic RINs necessary to comply with their 2024 obligations, through no fault of their own.

IV. Proposal To Partially Waive the 2024 Cellulosic Biofuel Volume Requirement Using the General Waiver Authority

As discussed in section II.B, the general waiver authority authorizes EPA to reduce volume requirements promulgated under CAA section 211(o)(2) upon a finding of “inadequate domestic supply.” The general waiver authority has no temporal limitation that would prohibit its use after the volume requirements have been set, is discretionary, and does not provide direction as to the magnitude of the volume that may be waived if EPA makes a finding of “inadequate domestic supply.” As discussed in section III, EPA does not account for carryover RINs as a constituent of the available supply in making the

threshold determination. Once EPA determines that there is “inadequate domestic supply,” then EPA may consider certain additional factors regarding the RIN market—*i.e.*, the availability of RINs for the year in question, carryover RINs from the prior year, and the volume of RIN deficits carried forward from the prior year—when determining whether to waive the volume requirements, and by how much, when using the general waiver authority.³⁸

As discussed in section III, we currently project cellulosic RIN generation for 2024 will be approximately 0.97 billion RINs. Additionally, obligated parties carried a 0.09 billion total cellulosic RIN deficit from 2023 into the 2024 compliance year. If we do not account for this deficit when using the general waiver authority, then we would effectively force an even larger cellulosic RIN deficit to be carried into 2025. Further, as noted in section III, any obligated party that already carried a cellulosic RIN deficit from 2023 into 2024 is unable to subsequently carry a cellulosic RIN deficit from 2024 into 2025.³⁹ Thus, if those obligated parties are unable to acquire sufficient RINs to fully satisfy their 2024 cellulosic biofuel obligations (including the cellulosic RIN deficit carried forward from 2023), then they would be forced into noncompliance. Since more than 20 obligated parties carried a 0.09 billion total cellulosic RIN deficit from 2023 into 2024, noncompliance is a real possibility for some obligated parties. Furthermore, since we are not proposing to use the cellulosic waiver authority and EPA is only authorized to make CWCs available when reducing the cellulosic biofuel volume requirement using the cellulosic waiver authority, CWCs would not be available as a result of this action.

Given the inadequate volume of cellulosic biofuel projected to be produced in 2024 and the number of obligated parties that carried a cellulosic RIN deficit from 2023 into 2024, EPA is proposing to use the general waiver

²⁷ This data is summarized in “Seasonality of RIN Generation (2019–2023) and Projected RIN Generation for 2024 Based on Data Through September 2024,” available in the docket for this action.

²⁸ We intend to consider additional cellulosic RIN generation data throughout the remainder of 2024 as it becomes available to inform any final action.

²⁹ Under the statute and our implementing regulations, an obligated party is permitted to carry forward a deficit in lieu of retiring a sufficient number of RINs to meet its obligation. CAA section 211(o)(5)(D); 40 CFR 80.1407(a), 80.1427(b).

³⁰ See “2023 RFS0304 Annual Compliance Report Data as of October 8, 2024,” available in the docket for this action.

³¹ See “Table 6: Total Compliance Deficits by Year” at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/annual-compliance-data-obligated-parties-and>.

³² See “Cellulosic Carryover RIN Calculation for Proposed Partial Waiver of 2024 Cellulosic Biofuel Volume Requirement,” available in the docket for this action.

³³ 40 CFR 80.1427(a).

³⁴ CAA section 211(o)(5)(D).

³⁵ 40 CFR 80.1427(b).

³⁶ CAA section 211(o)(5)(D)(i).

³⁷ 40 CFR 80.1427(b)(1)(i).

³⁸ Note that once it has determined that there is “inadequate domestic supply,” EPA’s consideration of the magnitude of the volume reduction to be implemented under the general waiver authority is factually and legally distinct from EPA’s consideration of the threshold determination of the “projected volume available” when acting under the cellulosic waiver authority. While EPA permissibly excludes carryover RINs from its calculation of “projected volume available” under the cellulosic waiver authority (see *Sinclair*, 101 F.4th at 883–884), EPA is not bound to follow the same approach when implementing a volume reduction when acting under the general waiver authority.

³⁹ CAA section 211(o)(5)(D); 40 CFR 80.1427(b).

authority to reduce the 2024 cellulosic biofuel volume requirement to 0.88 billion RINs, a reduction of 0.21 billion RINs from the current volume requirement of 1.09 billion RINs. This proposed volume requirement represents the projected cellulosic RIN generation for 2024 of 0.97 billion RINs less the total cellulosic RIN deficit from 2023 of 0.09 billion RINs.⁴⁰

We recognize that this proposed volume requirement does not account for the availability of the limited number of 2023 cellulosic carryover RINs. As discussed in section III, there are approximately 0.03 billion 2023 cellulosic RINs available for use in 2024, which is 0.06 billion fewer cellulosic RINs than the 0.09 billion total cellulosic RIN deficit from 2023. As we have noted in previous RFS actions, carryover RINs provide important benefits to the RFS program, including compliance flexibility to individual obligated parties, liquidity to the RIN market, and mitigation against market impacts that could occur if RIN generation in any year falls short of the required volume of renewable fuel, as was the case for cellulosic biofuel in 2023.⁴¹ We are therefore concerned about the impacts on the RIN market and functioning of the RFS program were we to include these 2023 cellulosic carryover RINs when determining the magnitude of the appropriate reduction for the 2024 cellulosic biofuel volume requirement (*i.e.*, EPA maintains concerns with intentionally drawing down the number of available cellulosic carryover RINs for 2025 to zero), particularly since the 0.09 billion total cellulosic RIN deficit from 2023 is 0.06 billion RINs greater than the 0.03 billion 2023 cellulosic RINs available for use in 2024, and CWCs would not be available to provide compliance flexibility.

Nevertheless, we also request comment on how we should consider 2023 cellulosic carryover RINs and the total cellulosic RIN deficit from 2023 in determining the magnitude of the 2024 cellulosic biofuel volume requirement reduction. Specifically, we request comment on: (1) Using the general waiver authority to reduce the 2024 cellulosic biofuel volume requirement to 0.88 billion RINs, as proposed; and (2) Alternatively, using the general waiver authority to reduce the 2024 cellulosic biofuel volume requirement to either 0.97 billion RINs (the projected cellulosic RIN generation for 2024) or

0.91 billion RINs (0.97 billion projected cellulosic RIN generation for 2024 plus 0.03 billion 2023 cellulosic carryover RINs less 0.09 billion total cellulosic RIN deficit from 2023). We also request comment on whether there is any other 2024 cellulosic biofuel volume requirement that we should consider (*e.g.*, a volume lower than 0.88 billion RINs or a volume higher than 0.97 billion RINs).

Finally, while the general waiver authority allows EPA to reduce the volume requirements for other renewable fuel categories, we are not proposing to change the 2024 advanced biofuel and total renewable fuel standards. Based on RIN generation data through September 2024, we project that advanced and total RIN generation for 2024 will exceed the required volumes by over 2.6 billion RINs and 2.0 billion RINs, respectively, notwithstanding the projected shortfall in cellulosic biofuel production.⁴² This is in contrast to the proposed reduction in cellulosic biofuel of 0.21 billion RINs. Thus, we believe reductions to the 2024 advanced biofuel and total renewable fuel volume requirements are not necessary or warranted based on the available supply data, given that the market has already provided volumes in excess of the requirement established in the Set Rule. We seek comment on this determination.

The proposal to reduce the 2024 cellulosic biofuel volume requirement is expected to have an economic impact. However, quantitatively projecting the economic impact of this reduction is challenging for several reasons. First, the proposed partial waiver is due to an inadequate domestic supply of cellulosic biofuel in 2024. Higher volumes of cellulosic RINs cannot simply be made available at greater prices; instead, obligated parties will be unable to purchase additional quantities of 2024 cellulosic RINs at any price. The potential economic impact of this action is further complicated by the fact that while some obligated parties can defer some or all of their 2024 cellulosic biofuel obligation to 2025, other obligated parties that carried a cellulosic RIN deficit from 2023 into 2024 are required to fully satisfy their cellulosic biofuel obligations in 2024 (including the cellulosic RIN deficit carried forward from 2023). Any party that fails to do so would likely be in non-compliance and may be subject to penalties.

Despite the complications associated with estimating the economic impacts of this action, we can determine that it would result in cost savings. This action proposes to reduce only the 2024 cellulosic biofuel volume requirement. Because we are not proposing to reduce the 2024 advanced biofuel and total renewable fuel volume requirements, this action would effectively replace the waived cellulosic biofuel volume with additional volumes of advanced biofuel, which generally has a lower marginal cost than cellulosic biofuel.⁴³

Finally, we can reasonably project that because this action would reduce demand for cellulosic RINs, it is expected to directionally decrease cellulosic RIN prices. The exact magnitude of this price reduction depends on a wide range of market factors that prevent us from quantitatively projecting a RIN price impact. At the same time, because this action incrementally increases demand for advanced RINs, it is projected to directionally increase BBD and advanced RIN prices. We note, however, that this price impact is expected to be relatively small, as this action would increase demand by only about 2 percent of the projected supply of advanced biofuel.⁴⁴

V. Request for Comment on the Availability of the Cellulosic Waiver Authority for 2024

As discussed in section II.C, the CAA also provides EPA with the ability to reduce the cellulosic biofuel volume requirement using the CAA section 211(o)(7)(D) cellulosic waiver authority in certain circumstances. The cellulosic waiver authority differs from the general waiver authority in several respects. This section discusses how the general and cellulosic waiver authorities differ, how EPA could use the cellulosic waiver authority to reduce the 2024 cellulosic biofuel volume requirement if it is available in this instance, and solicits comment on the implications of such use. Specifically, we request comment on whether the cellulosic

⁴³ The nested nature of the RFS program allows cellulosic biofuel to be used to meet the advanced biofuel and total renewable fuel volume requirements. Any cellulosic that can be supplied beyond the required volume can be used in place of advanced biofuel.

⁴⁴ This action would increase the demand for advanced biofuel by the magnitude of the proposed partial waiver of the 2024 cellulosic biofuel volume requirement (0.21 billion RINs). This is approximately 2 percent of the projected supply of advanced biofuel (9.15 billion RINs). For more detail on this projection, see "Seasonality of RIN Generation (2019–2023) and Projected RIN Generation for 2024 Based on Data Through September 2024," available in the docket for this action.

⁴⁰ We intend to consider additional cellulosic RIN generation data throughout the remainder of 2024 as it becomes available to inform any final action.

⁴¹ See, *e.g.*, 88 FR 44471, 44493–96 (July 12, 2023).

⁴² See "Seasonality of RIN Generation (2019–2023) and Projected RIN Generation for 2024 Based on Data Through September 2024," available in the docket for this action.

waiver authority is available to EPA to reduce the required volume of cellulosic biofuel in the current circumstances. This section also discusses a methodological change that would be necessary for EPA to set the price of CWCs, if the cellulosic waiver authority is available to EPA and is used in the future.

A. Use of the Cellulosic Waiver Authority

In contrast to the general waiver authority, the cellulosic waiver authority provides more specificity as to when it is available and how the volume reduction should be determined when acting under the authority. When EPA determines that a waiver of the cellulosic biofuel volume requirement is appropriate under CAA section 211(o)(7)(D)(i), then EPA is to reduce the required cellulosic biofuel volume to “the projected volume available.” We have previously interpreted the phrase “projected volume available” to exclude carryover RINs when determining the volume adjustment to be made; this interpretation was affirmed by the D.C. Circuit in *Sinclair*.⁴⁵

If applied alone in the current circumstances—that is, if EPA were to use only the cellulosic waiver authority to reduce the 2024 cellulosic biofuel volume requirement and exclude consideration of the 0.09 billion total cellulosic RIN deficit from 2023 carried into 2024—then EPA could only reduce the cellulosic biofuel volume requirement to the projected volume available of 0.97 billion RINs in 2024. In accordance with the statute, EPA would also be required to make CWCs available to obligated parties, which could be used—along with additional BBD or advanced RINs—to cover the remaining shortfall. The availability of CWCs would help ensure RFS program stability by reducing the likelihood that obligated parties may be forced into non-compliance with their RFS obligations; any obligated party that is unable to acquire sufficient cellulosic RINs to comply with their 2024 cellulosic biofuel obligations—plus any cellulosic RIN deficit carried from 2023—would be able to purchase CWCs to cover the shortfall.⁴⁶ As discussed in

detail in section II.C, the availability of CWCs as an alternative compliance mechanism, along with the value of an advanced RIN, would effectively serve as a cellulosic RIN price cap.

We request comment on whether the cellulosic waiver authority is available to partially waive the 2024 cellulosic biofuel volume requirement. The initial 2024 applicable volumes and associated percentage standards are already based on an EPA-calculated “projected volume available” pursuant to the CAA section 211(o)(2)(B)(ii) and (iv) set authority (*i.e.*, not the table Congress established in CAA section 211(o)(2)(B)(i)(III)). While EPA explained its view in the Set Rule—which was the first rule promulgated using the set authority—that “our waiver authorities remain available as applied to the volumes set in this action,”⁴⁷ we also stated that, “Congress has instructed us to begin a new phase of the RFS program, one in which there are no statutory volume targets. This has important implications for the use of our cellulosic waiver authority and the availability of cellulosic waiver credits in future years”⁴⁸

If a commenter believes that the cellulosic waiver authority is available in this instance, we additionally request comment on: (1) Exercising both the general and cellulosic waiver authorities concurrently to partially waive the 2024 cellulosic volume biofuel requirement to 0.97 billion RINs;⁴⁹ (2) Using the general and cellulosic waiver authorities sequentially, rather than concurrently, to first partially waive the 2024 cellulosic biofuel volume requirement from 1.09 billion RINs to 0.97 billion RINs under the cellulosic waiver authority, and then further waive the volume requirement using the general waiver authority—from 0.97 billion RINs to a lower volume, such as 0.88 or 0.91 billion RINs; and (3) Whether to also reduce the 2024 advanced biofuel and total renewable fuel volume requirements by the same or lesser amount as the volume of cellulosic biofuel partially waived under the cellulosic waiver authority.

B. Change to Calculation of Cellulosic Waiver Credit Price

As discussed in section II.C, for any year for which EPA uses the cellulosic waiver authority to reduce the required volume of cellulosic biofuel, EPA must provide obligated parties the opportunity to purchase CWCs. The price of these credits is determined using a formula specified in CAA section 211(o)(7)(D)(ii), which is “at the higher of \$0.25 per gallon or the amount by which \$3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States,” adjusted for inflation. The RFS regulations specify that the “U.S. Total Gasoline Bulk Sales (Price) by Refiners as provided by the Energy Information Administration” is to be used to determine the average wholesale price of gasoline and the inflation adjustment.⁵⁰ However, this data source is no longer being issued by the EIA and has not been updated since March 2022.

While EPA is not proposing to use the cellulosic waiver authority in this action, EPA is nevertheless proposing to revise its regulations to point to a new data source for the average wholesale price of gasoline to be used in the calculation of the CWC price in the event the cellulosic waiver authority is used in the future. The only wholesale gasoline prices currently reported by EIA are spot prices for New York Harbor (conventional gasoline), U.S. Gulf Coast (conventional gasoline), and Los Angeles (RBOB regular gasoline).⁵¹ EPA is proposing to calculate the average wholesale gasoline price using a weighted average of EIA’s reported spot prices for wholesale gasoline using the following weighting factors:

TABLE V.B–1—WEIGHTING FACTORS FOR CALCULATING THE AVERAGE WHOLESALE GASOLINE PRICE

EIA spot price	Weighting factor ^a (%)
New York Harbor (conventional gasoline)	37.5
U.S. Gulf Coast (conventional gasoline)	37.5

⁴⁵ *Sinclair*, 101 F.4th at 885.

⁴⁶ Unlike cellulosic RINs—which apply towards an obligated party’s cellulosic biofuel, advanced biofuel, and total renewable fuel obligations—CWCs only apply towards an obligated party’s cellulosic biofuel obligation and not toward their nested advanced biofuel and total renewable fuel obligation. Obligated parties that satisfy their cellulosic biofuel obligations with CWCs would therefore also have to purchase additional BBD or advanced RINs to meet their associated advanced biofuel and total renewable fuel obligations.

⁴⁷ Set Rule RTC, p. 9.

⁴⁸ 88 FR 44513 (July 12, 2023).

⁴⁹ Although the general and cellulosic waiver authorities are separate and independent of each other, the two could potentially be used together; in the past, EPA has waived volume requirements using two distinct waiver authorities concurrently. See, *e.g.*, 87 FR 39600, 39608 (July 1, 2022) (revising 2020 RFS volumes to the volumes actually used in that year using both the cellulosic waiver authority and the reset authority).

⁵⁰ 40 CFR 80.1456(d)(2).

⁵¹ This data is publicly available at: https://www.eia.gov/dnav/pet/pet_pri_spt_s1_m.htm.

TABLE V.B–1—WEIGHTING FACTORS FOR CALCULATING THE AVERAGE WHOLESALE GASOLINE PRICE—Continued

EIA spot price	Weighting factor ^a (%)
Los Angeles (RBOB regular gasoline)	25.0

^a Weighting factors based on approximate amounts of conventional gasoline (CG) and reformulated gasoline (RFG) sold in the United States, with an equal weighting factor for the New York Harbor and U.S. Gulf Coast CG prices. EPA currently estimates that approximately 25 percent of gasoline sold in the United States is RFG (<https://www.epa.gov/gasoline-standards/reformulated-gasoline>).

Consistent with the approach used for the previous EIA data source, EPA is proposing to calculate the CWC price using average monthly gasoline spot price data from the 12-month period ending June of the year prior to the relevant year (e.g., July 2022 to June 2023 for the 2024 CWC price). For illustration purposes, if EPA were to use the cellulosic waiver authority to partially waive the 2024 cellulosic biofuel volume requirement, using the proposed data sources and weighting factors would result in a 2024 CWC price of \$1.61.⁵² We request comment on the proposed amendment to 40 CFR 80.1456(d)(2) to identify new data sources and weighting factors for the average wholesale price of gasoline and welcome comments about any alternative data sources or approaches to the weighting factors.

VI. Calculation of 2024 Cellulosic Biofuel Percentage Standard

The obligated parties to which the percentage standards apply are producers and importers of gasoline and diesel, as defined by 40 CFR 80.2. Each obligated party multiplies the percentage standards by the sum of all non-renewable gasoline and diesel they produce or import to determine their Renewable Volume Obligations (RVOs).⁵³ The RVOs are the number of RINs that the obligated party is responsible for procuring and retiring to demonstrate compliance with the applicable standards for that year. As described in section IV, we are proposing to use the general waiver authority to partially waive the 2024 cellulosic biofuel volume requirement down to 0.88 billion RINs.

The formula used to calculate the cellulosic biofuel percentage standard applicable to obligated parties as a function of their gasoline and diesel fuel production or importation is provided in 40 CFR 80.1405(c). Using the same values from the Set Rule for the variables in this formula other than RFV_{CB} (the cellulosic biofuel volume),⁵⁴ we have calculated the proposed revised cellulosic biofuel percentage standard for 2024 to be 0.51 percent, down from 0.63 percent.⁵⁵ This percentage standard is included in the proposed regulations at 40 CFR 80.1405(a) and would apply to producers and importers of gasoline and diesel.

VII. Extension of Compliance Deadlines

A. Extension of 2024 Compliance Reporting Deadline

While the current 2024 compliance reporting deadline of March 31, 2025, is still several months away, we expect that promulgation of the revised 2024 cellulosic biofuel standard will not occur until very close to or after this deadline. Therefore, in order to provide obligated parties with sufficient time to carry out and adjust their compliance strategies once we finalize the revised 2024 cellulosic biofuel standard, we are proposing to extend the 2024 compliance reporting deadline from March 31, 2025, to the next quarterly compliance reporting deadline after the effective date of the final rule establishing the revised 2024 cellulosic biofuel standard.⁵⁶ By operation of law, the 2024 attest engagement deadline would also be extended to the next June 1 annual attest engagement reporting deadline after the revised 2024 compliance deadline.⁵⁷ We request comment on the proposed 2024 compliance reporting deadline.

To illustrate the potential timing of these deadlines, if the final rule establishing the revised 2024 cellulosic biofuel standard is published in the **Federal Register** on May 15, 2025, then the effective date of the action would typically be 60 days later on July 14, 2025, and the 2024 compliance reporting deadline would be September 1, 2025, because that would be the next quarterly reporting deadline after the effective date of the revised 2024 cellulosic biofuel standard. The 2024 attest engagement reporting deadline

would then be June 1, 2026, because that would be the next June 1 annual attest engagement reporting deadline after the revised 2024 compliance deadline.

B. Extension of Future RFS Compliance Reporting Deadlines

In 2022, EPA finalized changes to the way the RFS compliance and attest engagement reporting deadlines are determined.⁵⁸ Prior to that action, the compliance and attest engagement reporting deadlines for a given compliance year were March 31 and June 1 of the subsequent year, respectively, even if EPA had not yet established the applicable RFS standards for that year. Any change to these deadlines required EPA to undertake a notice-and-comment rulemaking process to revise the RFS regulations on a case-by-case basis. However, under the new provisions finalized in 2022, the annual compliance reporting deadline is the latest date of the following:⁵⁹

- March 31st of the subsequent calendar year;
- The next quarterly reporting deadline after the effective date of the subsequent compliance year's standards (typically 60 days after publication of the final rule in the **Federal Register**); or
- The next quarterly reporting deadline under 40 CFR 80.1451(f)(2) after the annual compliance reporting deadline for the prior compliance year.

In this action, we are proposing to add a new provision that would automatically extend the annual compliance reporting deadline for a given compliance year if EPA proposes to revise an existing RFS standard for that year. Under this approach, the publication of a document in the **Federal Register** proposing to revise a renewable fuel standard in 40 CFR 80.1405(a) would automatically extend the annual compliance reporting deadline for that year to the next quarterly reporting deadline after either: (1) The effective date of the final rule that revises the existing standard (typically 60 days after publication of the final rule in the **Federal Register**); or (2) 60 days after the publication of a document in the **Federal Register** withdrawing the proposed revision. However, if EPA does not either finalize or withdraw the proposed revision within 12 months after the proposed rule is published, we are proposing to limit the extension in this specific circumstance to no more than the next quarterly reporting deadline that is 12

⁵⁴ 88 FR 44519–21 (July 12, 2023).

⁵⁵ See “Calculation of Proposed 2024 Cellulosic Biofuel Percentage Standard,” available in the docket for this action.

⁵⁶ The quarterly reporting deadlines are March 31, June 1, September 1, and December 1. 40 CFR 80.1451(f)(2).

⁵⁷ 40 CFR 80.1464(d)(1)(i).

⁵⁸ 87 FR 5696 (February 2, 2022).

⁵⁹ 40 CFR 80.1451(f)(1)(i)(A).

⁵² See “Proposed 2024 Cellulosic Waiver Credit Price Calculation,” available in the docket for this action.

⁵³ 40 CFR 80.1407.

months after the date of publication of the proposed rule.⁶⁰ We believe that this provides sufficient time for EPA to either finalize or withdraw the proposed revision to an existing RFS standard and do not want to indefinitely extend the compliance reporting deadline for a compliance year with already established RFS standards.

Essentially this new provision means that the mere proposal—as opposed to a final action—by EPA to change an existing RFS standard would change the associated compliance reporting deadline. This change is being proposed because by the time the need is evident to extend the deadline, there is often inadequate time to both propose and finalize a rulemaking to do so. As an example, under this proposed approach, if the 2025 compliance deadline was originally established as March 31, 2026,⁶¹ but then EPA proposed to revise the 2025 cellulosic biofuel standard on September 1, 2025, the 2025 compliance reporting deadline would be automatically extended until the first quarterly reporting deadline after the effective date of the final rule setting the revised 2025 cellulosic biofuel standard. And EPA would not have to separately propose to extend the 2025 compliance reporting deadline in that same action, because the deadline would be automatically extended by operation of law. If EPA then finalized the proposed revision to the 2025 cellulosic biofuel standard on January 15, 2026, with an effective date of March 15, 2026, the 2025 compliance reporting deadline would still be March 31, 2026 (*i.e.*, the next quarterly reporting deadline after the effective date of the final rule). Alternatively, if EPA chose not to finalize the proposed revision to the 2025 cellulosic biofuel standard and published a document in the **Federal Register** to withdraw the proposed revision on February 15, 2026, the 2025 compliance reporting deadline would be June 1, 2026 (*i.e.*, the next quarterly reporting deadline that is at least 60 days after publication of that document in the **Federal Register**). Finally, if EPA took no action after proposing to revise the 2025 cellulosic biofuel standard, the 2025 compliance deadline would be March 31, 2027 (*i.e.*, 12 months later than the otherwise applicable

compliance reporting deadline of March 31, 2026, under 40 CFR 80.1451(f)(1)(i)(A)).

Finally, we are also proposing to consolidate and simplify the existing provisions for the annual attest engagement deadline. Specifically, we are proposing to specify that the deadline is always the next June 1 annual attest engagement reporting deadline after the annual compliance reporting deadline. The current language at 40 CFR 80.1464(d)(1) contains redundant and year-specific attest engagement deadline language that, for a given compliance year, all result in the same June 1 deadline, making the existing structure unnecessarily complicated. The proposed simplified attest engagement deadline language would not change the deadline for any compliance year but would make it easier for obligated parties to understand when their annual attest engagement reports are due.

This proposed approach would provide regulatory certainty for obligated parties by clearly establishing future compliance deadlines when EPA proposes to change a previously established RFS standard, thereby preventing unnecessary burden on obligated parties to prepare, submit, and then possibly retract and revise compliance reports for deadlines that were later extended. This approach is consistent with EPA's prior rules extending RFS compliance reporting deadlines in different factual circumstances⁶² and with D.C. Circuit's case law.⁶³ We request comment on all aspects of this proposal to extend future RFS compliance reporting deadlines as an operation of law.

VIII. Other RFS Amendments

In addition to waiving the 2024 cellulosic biofuel volume requirement, we are also proposing several revisions to the RFS program, as further discussed in this section.

A. Biogas Regulations

1. Measurement, Sampling, and Testing

We are proposing to align the testing frequency of pipeline-specified components for RNG with the reporting

frequency. Currently, RNG producers must annually sample and test their RNG to demonstrate that the RNG production facility is producing RNG that meets applicable pipeline specifications,⁶⁴ and they must submit these results as part of their three-year registration updates.⁶⁵ Stakeholders have highlighted the disconnect between the annual testing requirement and the three-year reporting requirement. Since we only collect this information during the three-year update, we believe it appropriate to only require sampling and testing of RNG once every three years, rather than each year, and are proposing revisions to 40 CFR 80.110(f)(2)(iii) to this end.

We are also proposing to clarify the regulations to reinforce that we may approve alternative test methods for testing components of RNG and that we may exempt the testing of a component that is not required under the RNG producer's applicable pipeline specifications. Specifically, we are proposing to revise the regulations at 40 CFR 80.135(d)(6), which contain the information related to RNG quality that RNG producers must provide (including certificates of analysis for RNG components), to allow alternatives to the test methods for individual RNG components that are specified at 40 CFR 80.155(b). We would assess alternative test methods based on whether the requested alternative test method provides results that are reasonably accurate to the results provided by the method specified at 40 CFR 80.155(b). While under 40 CFR 80.135(d)(6)(v) RNG producers can already request alternative methods and exemption from non-specified parameters, we believe that adding further clarification would help alleviate stakeholder confusion concerning the sampling and testing requirements for RNG.

In order to streamline the alternative measurement protocol approval and registration acceptance process, we are proposing to remove the requirement that biogas and RNG production facilities must demonstrate that their facility is incapable of using certain specified meters in order to receive an alternative measurement protocol. After promulgation of the biogas regulatory reform provisions in the Set Rule, we have received dozens of alternative measurement protocol submissions and issued guidance for the application of the criterion that a facility demonstrate that it is incapable of using the specified

⁶⁰ We note that under any of these scenarios, the applicable compliance reporting deadline in 40 CFR 80.1451(f)(1)(i)(A) or (B) of this section would apply if it were later than the proposed extension (*e.g.*, the deadline would be no earlier than March 31 of the subsequent calendar year or the next quarterly reporting deadline after the annual compliance reporting deadline for the prior compliance year).

⁶¹ Note that the 2025 compliance deadline will not be established until the 2026 RFS standards become effective in 40 CFR 80.1405(a).

⁶² 86 FR 17073 (April 1, 2021); 87 FR 5696 (Feb. 2, 2022).

⁶³ *Wynnewood Refining Co., LLC, et al. v. EPA*, 77 F.4th 767, 779 (D.C. Cir. 2023) (“Thus, rather than task EPA with overseeing a fixed compliance schedule, the Act gives EPA flexibility to craft and adjust a compliance regime in service of the Act’s core mandate: to ensure the Act’s annual renewable fuel volumes are met.”). See also *ACE*, 864 F.3d at 718–21; *Monroe Energy, LLC v. EPA*, 750 F.3d 909, 919–20 (D.C. Cir. 2014); *Nat’l Petrochemical & Refiners Ass’n v. EPA*, 630 F.3d 145, 154–58 (D.C. Cir. 2010).

⁶⁴ 40 CFR 80.110(f)(2)(iii).

⁶⁵ 40 CFR 80.135(d)(6).

meters.⁶⁶ We have determined that many of these meters are as accurate and precise as those specified in the regulations, and have also received a number of registration submissions for facilities that have demonstrated the appropriateness of using such meters.⁶⁷ Based on our review of the alternative measurement protocol and registration submissions and the new information we have obtained in the course of this review, we believe that the first criterion whereby a facility must demonstrate that they cannot use the specified meters is not necessary to ensure the accurate and precise measurement of biogas and RNG under the RFS program.⁶⁸ We are also proposing to remove the associated requirement that biogas producers and RNG producers demonstrate at registration that they are unable to use the meters specified.⁶⁹

We are also proposing to clarify at 40 CFR 80.155(a) that the measurement of renewable CNG/LNG can be done through documentation (e.g., utility statements) obtained by the CNG/LNG dispenser. Because these statements are typically based on readings from meters that generally comport with the already-specified meter standards, we believe this is an appropriate approach for RNG RIN separators to determine the amount of renewable CNG/LNG used as transportation fuel.

Finally, we are proposing to modify the measurement requirements at 40 CFR 80.155(a) for the measurement of energy content of biogas, specifically.⁷⁰ This proposed revision would allow for the use of biogas quality analyzers accepted by EPA at registration instead of the currently specified gas chromatographs (GCs).⁷¹ As noted when finalizing the current measurement requirements, we requested but did not receive standards for alternative measurement devices that commenters suggested we allow in addition to GCs.⁷² In the absence of such standards, we provided only for the use of GCs. However, since then we have received much more extensive information and documentation on alternative devices for measuring both RNG and biogas. For

biogas heat content measurement, in particular, analyzers differ from GCs both in terms of their cost to install and operate as well as in the types of gases and other constituents of biogas that are measured. And we have learned that, unlike GCs, for biogas measurement devices there is no readily available industry standard for these analyzers to be designed and operated to. We are therefore proposing to revise the regulations to provide a different set of requirements for biogas measurement devices.

While in theory it would be appropriate for biogas analyzers to measure the same constituents and meet the same standards of precision and accuracy as GCs, our review of recently received information has revealed that, at this time, it is more reasonable to evaluate biogas measurement devices differently. We are thus proposing that such devices may forgo the alternative measurement protocol process specified at 40 CFR 80.155(a)(3). Instead, EPA would assess biogas measurement devices on a case-by-case basis at registration. We believe that for the measurement of heat content for biogas, these biogas quality analyzers serve as a reasonable method to determine the volume of biogas produced at a biogas production facility. However, we continue to believe that the measurement of RNG through a GC or a method that a party has demonstrated to be as accurate, precise, and reliable as a GC is needed. The measurement of volume of RNG is integral to the determination of the number of RINs that an RNG producer can generate for such volume. As such, only methods that comport to established industry standards (e.g., GCs meeting ASTM D7164 as specified at 40 CFR 80.155(a)(1)) or those that have been demonstrated to be just as rigorous should be allowed.

Finally, we note that due to the numerous proposed changes to the provisions of 40 CFR 80.155(a) in this action, we are proposing to restructure 40 CFR 80.155(a) to ensure that the measurement requirements for biogas, treated biogas, RNG, and renewable CNG/LNG are clearly enumerated. We request comment on the proposed changes to the measurement, sampling, and testing requirements described in this section.

2. Other Amendments

We are proposing to clarify the provisions surrounding the annual attest engagement procedures for biogas producers, RNG producers, and RNG RIN separators at 40 CFR 80.165. These changes would clarify that annual attest

engagements are only required for parties that engage in activities regulated under biogas regulatory reform in a given compliance year (e.g., an RNG RIN separator only needs to obtain an annual attest engagement if they separate RNG RINs in a compliance year).

We are proposing to clarify that all biogas production facilities registered under the previous biogas provisions (i.e., registered under 40 CFR 80.1450(b) to generate RINs under 40 CFR 80.1426(f)(10) or (11)) do not need updated engineering reviews as part of registering for the new biogas provisions. In the Set Rule, we intended to allow all previously registered biogas production facilities that did not undergo changes as a result of the new biogas provisions to rely on their existing engineering reviews until their next three-year engineering review is due. However, after promulgation of the new biogas provisions, stakeholders noted that the language in the regulations appears to limit this allowance to only those biogas production facilities in a biogas closed distribution system. Therefore, we are proposing to revise 40 CFR 80.135(b)(2)(iii) to make it clear that all previously registered biogas production facilities can use their existing engineering review until the next one is due. We note, however, that if changes to the facility are needed that would otherwise require a new engineering review, the new engineering review must be submitted regardless of this flexibility.

We are also proposing two changes to the registration requirements for RNG RIN separators under 40 CFR 80.135(f). First, we are proposing that, as part of the information submitted at registration, RNG RIN separators must provide the location on the natural gas commercial pipeline system where the RNG is withdrawn, which is information we already require to be reported in periodic reports under 40 CFR 80.140(e)(1). In addition, as part of the forms and procedures established for those reports, we require that the RNG RIN separator include an EPA-issued facility registration system identification (FRS ID) number. While most withdrawal points have previously assigned FRS ID numbers, some do not. Due to how EPA's registration system is designed, the only way to obtain those new FRS ID numbers is at the point of registration. Therefore, to aid in the timely submittal of reports, we are clarifying that RNG RIN separators must supply the withdrawal locations at registration.

⁶⁶ See "Biogas Regulatory Reform Rule Criteria for Qualifying for an Alternative Measurement Protocol Guidance," EPA-420-B-24-014, March 2024.

⁶⁷ A list of approved alternative measurement protocols can be found at: <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/alternative-measurement-protocols-biogas-and>.

⁶⁸ 40 CFR 80.155(a)(3)(i).

⁶⁹ 40 CFR 80.135(c)(3)(iii)(A) and (d)(3)(iii)(A).

⁷⁰ The proposed revisions in this paragraph would not impact the measurement of RNG nor would they affect the measurement of flow for biogas.

⁷¹ 40 CFR 80.155(a)(1).

⁷² 88 FR 44535 (July 12, 2023).

Second, we are proposing to remove the limitation at 40 CFR 80.115(b) that a CNG/LNG dispensing location may only be part of one RNG RIN separator's registration at a time. Based on our experience implementing the program, it is difficult for parties to know which RNG RIN separator has registered for a particular CNG/LNG dispensing location. Under the existing framework, there is currently a perverse incentive for an RNG RIN separator to register for a CNG/LNG dispensing location in order to block another party from registering that location and prevent that party from separating RNG RINs for transportation fuel dispensed at that location—even though the registering party does not maintain an actual relationship to that location.

Removing this restriction will allow a dispensing location to be in multiple parties' registrations, thereby avoiding the situation where one party that does not intend to actually dispense renewable CNG/LNG can block another party that does intend to dispense renewable CNG/LNG from separating RINs at that location. However, we are

maintaining the limitation at 40 CFR 80.125(d)(2)(v) that only one party may actually separate RINs for a given CNG/LNG dispensing location during a calendar month. We continue to believe that this restriction is necessary to preclude double counting of RINs because it is the limitation that only one party can separate RINs for a volume dispensed at a station during a given month that avoids double-counting, not whether multiple parties reflect that station in their registration information on file with EPA. We request comment on the proposed changes to the registration requirements for RNG RIN separators.

B. Updated Standard Specification for Biodiesel

We are proposing to update the reference to ASTM D6751–20a—which is used in the definition of biodiesel in 40 CFR 80.2—to reference the most recent industry standard of ASTM D6751–24. ASTM D6751 is used to define the quality of biodiesel that may participate in the RFS program, and we periodically update industry standards

codified in our regulations to be consistent with changes to these standards over time. However, since publication of the Set Rule, industry has updated ASTM D6751 in a way that has resulted in inconsistency of quality standards between the version currently specified in the RFS regulations (ASTM D6751–20a) and the most recent version (ASTM D6751–24), which many states use. To address potential confusion on the part of stakeholders with regards to acceptable biodiesel quality under the RFS program, we are proposing to update the regulations to reference the most recent version of ASTM D6751. As also noted in section IX.I, should a newer version of ASTM D6751 be released prior to finalization of this action, we will consider including a reference to that most recent version.

C. Technical Corrections

We are proposing several technical amendments to 40 CFR part 80. These amendments are being made to correct minor inaccuracies and clarify the current regulations. These proposed changes are described in table VIII.C–1.

TABLE VIII.C–1—MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS

Part and section of Title 40	Description of revision
80.2	Correcting a typo in the definition of “Glycerin”.
80.105(j)(3) and 80.110(j)(3)	Clarifying that batch numbers are numbered based on the compliance year of the batch, rather than the calendar year.

IX. 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 a “significant regulatory action” as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. OMB has previously approved the information collection activities related to this proposed rule and has assigned the following OMB control numbers 2060–0725, 2060–0740, and 2060–0749.

This proposed action would reduce the required cellulosic biofuel volume for 2024, make minor revisions to the RFS program's biogas regulations, and would not impose new or different reporting requirements on regulated parties than already exist for the RFS program. In fact, this proposed rule is expected to reduce the recordkeeping and reporting burden that is currently approved under OMB control number 2060–0749, because it would reduce the frequency of sampling, testing, and measurements for RNG producers. The expected reduction is 1,560 hours and \$358,800.⁷³ EPA intends to submit a non-substantive revision to OMB to reflect the reduction in hours and dollar cost with the 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. In making this

⁷³ The currently approved burdens are 83,393 hours and \$5,684,472. This proposed rule would result in 81,833 hours and \$5,325,672. The difference is a reduction in burden 1,560 hours and \$358,800.

determination, EPA concludes that the impact of concern for this proposed rule is any significant adverse economic impact on small entities and that the agency is certifying that this proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed rule relieves regulatory burden on the small entities subject to the proposed rule.

For the biogas regulations, we are modifying the biogas provisions to make compliance less burdensome for regulated parties. With respect to the other amendments to the RFS regulations, this action makes minor corrections and modifications to those regulations. As such, we do not anticipate that there will be any significant adverse economic impact on directly regulated small entities as a result of these revisions.

The small entities directly regulated by the RFS program are small refiners, which are defined at 13 CFR 121.201. This action would decrease burden via a reduction in required cellulosic biofuel volume for 2024. We have therefore concluded that this action will

relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action reduces the 2024 cellulosic biofuel volume requirement and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements of the proposed rule.

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. This action will be implemented at the Federal level and

affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they produce, purchase, and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. Therefore, this action is not subject to Executive Order 13045 because it reduces the 2024 cellulosic biofuel volume requirement and does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would reduce the required cellulosic biofuel volume for 2024 consistent with the volume of such fuel projected to actually be made available in 2024. Therefore, it is not expected to have any impact on the supply, distribution, or use of energy. In general, the RFS program is designed to achieve positive effects on the Nation’s transportation fuel supply by increasing energy independence and security.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Except for the standards discussed in this section, the standards included in the regulatory text as incorporated by reference were all previously approved for incorporation by reference (IBR) and no change is included in this action. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference the following standard from ASTM International (ASTM):

TABLE IX.I–1—STANDARD TO BE INCORPORATED BY REFERENCE

Standard	Part and section of Title 40	Summary
ASTM D6751–24, Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels, approved March 1, 2024.	80.2 and 80.12	This updated standard describes the characteristics of biodiesel.

A detailed discussion of this standard can be found in section VIII.A.2. Copies of this standard may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, by calling (877) 909–ASTM, or at <https://www.astm.org>. The ASTM standard referenced in this proposed rule is also available for public review in read-only format in the ASTM Reading Room at <https://www.astm.org/epa.htm> only for the duration of the public comment period.

ASTM International regularly publishes updated versions of its standards and test methods, with the potential that there will be a published version of the document listed above before we adopt the final rule that is more recent than the document we identify in this proposed rule. For any such updated version, we will consider

including a reference to the latest document when we finalize the revisions covered by this proposed rule.

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

EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action does not affect the level of protection provided to human health or the environment by applicable air quality standards; it addresses a shortfall in cellulosic biofuel production

in 2024. This action does not relax the control measures on sources regulated by the RFS program and renewable fuel production decisions for 2024 have largely already been made and are not expected to change as a result of this action. Therefore, this action would not cause emissions increases from these sources and is not expected to have any impact on environmental justice communities.

X. Statutory Authority

Statutory authority for this action comes from sections 114, 203–05, 208, 211, and 301 of the Clean Air Act, 42 U.S.C. 7414, 7522–24, 7542, 7545, and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel

additives, Gasoline, Imports, Incorporation by reference, Oil imports, Petroleum, Renewable fuel.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart A—General Provisions

■ 2. Amend § 80.2 by revising the definition for “Glycerin” to read as follows:

§ 80.2 Definitions.

Glycerin means a co-product from the production of biodiesel that primarily contains glycerol.

■ 3. Amend § 80.12 by revising paragraph (c)(12) to read as follows:

§ 80.12 Incorporation by reference.

(c) * * *
(12) ASTM D6751–24, Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels, approved March 1, 2024 (“ASTM D6751”); IBR approved for § 80.2.

Subpart E—Biogas-Derived Renewable Fuel

■ 4. Amend § 80.105 by revising paragraph (j)(3) to read as follows:

§ 80.105 Biogas producers.

(j) * * *
(3) The biogas producer must assign a number (the “batch number”) to each batch of biogas consisting of their EPA-issued company registration number, the EPA-issued facility registration number, the last two digits of the compliance year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced each compliance year and each subsequent batch during the compliance year being assigned the next sequential number (e.g., 4321–54321–23–000001, 4321–54321–23–000002, etc.).

■ 5. Amend § 80.110 by revising paragraphs (f)(2)(iii) introductory text and (j)(1) and (3) to read as follows:

§ 80.110 RNG producers, RNG importers, and biogas closed distribution system RIN generators.

(f) * * *
(2) * * *
(iii) An RNG producer that injects RNG from an RNG production facility into a natural gas commercial pipeline system must sample and test a representative sample of all the following at least once every three years, as applicable.

(j) * * *
(1) A batch of RNG is the total volume of RNG injected into a natural gas commercial pipeline system from an RNG production facility under a single batch pathway for the calendar month, in Btu LHV, as determined under paragraph (j)(4) of this section.

(3) The RNG producer, RNG importer, or biogas closed distribution system RIN generator must assign a number (the “batch number”) to each batch of RNG or biogas-derived renewable fuel consisting of their EPA-issued company registration number, the EPA-issued facility registration number, the last two digits of the compliance year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced each compliance year and each subsequent batch during the compliance year being assigned the next sequential number (e.g., 4321–54321–23–000001, 4321–54321–23–000002, etc.).

■ 6. Amend § 80.115 by revising paragraph (b) to read as follows:

§ 80.115 RNG RIN separators.

(b) *Registration.* The RNG RIN separator must register with EPA under §§ 80.135 and 80.1450 and 40 CFR part 1090, subpart I, as applicable.

■ 7. Amend § 80.125 by revising paragraph (c)(3) and adding paragraph (d)(5) to read as follows:

§ 80.125 RINs for RNG.

(c) * * *
(3) Each party that transfers title of an assigned RNG RIN has transferred the corresponding volume of RNG to the transferee.

(d) * * *
(5) An assigned RNG RIN must be separated by December 31 of the subsequent calendar year after the RNG RIN was generated.

■ 8. Amend § 80.135 by:

- a. Revising paragraph (b)(2)(ii);
- b. Revising and republishing paragraphs (c)(3) and (d)(3);
- c. Revising paragraph (d)(6)(v);
- d. Adding paragraph (d)(6)(vi); and
- e. Revising paragraph (f).

The revisions and addition read as follows:

§ 80.135 Registration.

(b) * * *
(2) * * *
(ii) A biogas closed distribution system RIN generator or biogas producer does not need to submit an updated engineering review for any facility before the next three-year engineering review update is due as specified in § 80.1450(d)(3).

(c) * * *
(3) The following information related to biogas measurement:

(i) A description of how biogas will be measured, including the specific standards under which the meters are operated.

(ii) A description of the biogas production process, including a process flow diagram that includes metering type(s) and location(s).

(iii) For an alternative measurement protocol under § 80.155(a)(3), all the following:

(A) A description of how measurement is conducted.

(B) Any standards or specifications that apply.

(C) A description of all routine maintenance and the frequency that such maintenance will be conducted.

(D) A description of the frequency of all measurements and how often such measurements will be recorded under the alternative measurement protocol.

(E) A comparison between the accuracy, precision, and reliability of the alternative measurement protocol and the requirements specified in § 80.155(a)(1) and (2), as applicable, including any supporting data.

(d) * * *

(3) The following information related to RNG measurement:

(i) A description of how RNG will be measured, including the specific standards under which the meters are operated.

(ii) A description of the RNG production process, including a process flow diagram that includes metering type(s) and location(s).

(iii) For an alternative measurement protocol under § 80.155(a)(3), all the following:

(A) A description of how measurement is conducted.

(B) Any standards or specifications that apply.

(C) A description of all routine maintenance and the frequency that such maintenance will be conducted.

(D) A description of the frequency of all measurements and how often such measurements will be recorded under the alternative measurement protocol.

(E) A comparison between the accuracy, precision, and reliability of the alternative measurement protocol and the requirements specified in § 80.155(a)(1) and (2), as applicable, including any supporting data.

* * * * *

(6) * * *

(v)(A) EPA may approve an RNG producer's request of an alternative analysis in lieu of the certificates of analysis and summary table required under paragraphs (d)(6)(i) through (iv) of this section if the RNG producer demonstrates that the alternative analysis provides information that is equivalent to that provided in the certificates of analysis and that the RNG will meet all natural gas specifications required under paragraph (d)(5) of this section.

(B) EPA may approve an RNG producer's request of a method other than those specified at § 80.155(b)(2) if the RNG producer demonstrates that the alternative analysis provides information that is reasonably accurate to that determined by the applicable method specified at § 80.155(b)(2).

(vi) An RNG producer does not need to test for a parameter specified in § 80.155(b)(2) if the parameter is not included in the pipeline specifications submitted at registration under paragraph (d)(5) of this section.

* * * * *

(f) *RNG RIN separator*. In addition to the information required under paragraph (b) of this section, an RNG RIN separator must submit all the following information:

(1) A list of locations of any dispensing stations where the RNG RIN separator supplies or intends to supply renewable CNG/LNG for use as transportation fuel.

(2) A list of the names and locations of each point where RNG will be withdrawn from the natural gas commercial pipeline system.

* * * * *

■ 9. Amend § 80.155 by:

- a. Revising paragraph (a);
- b. Removing paragraph (b)(2)(vii); and
- c. Redesignating paragraph (b)(2)(viii) as paragraph (b)(2)(vii).

The revision reads as follows:

§ 80.155 Sampling, testing, and measurement.

(a) *Continuous measurement*—(1) *RNG and treated biogas measurement*.

Any party required to measure the volume of RNG or treated biogas under this subpart must continuously measure using meters as specified in paragraphs (a)(1)(i) and (ii) of this section or have an accepted alternative measurement protocol as specified in paragraph (a)(3) of this section.

(i) In-line GC meters compliant with ASTM D7164 (incorporated by reference, see § 80.12), including sections 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, and 9.11 of ASTM D7164.

(ii) Flow meters compliant with one of the following:

(A) API MPMS 14.3.1, API MPMS 14.3.2, API MPMS 14.3.3, and API MPMS 14.3.4 (incorporated by reference, see § 80.12).

(B) API MPMS 14.12 (incorporated by reference, see § 80.12).

(C) EN 17526 (incorporated by reference, see § 80.12) compatible with gas type H.

(2) *Biogas measurement*. Any party required to measure the volume of biogas under this subpart must continuously measure using meters as specified in paragraphs (a)(2)(i) and (ii) of this section or have an accepted alternative measurement protocol as specified in paragraph (a)(3) of this section.

(i) Flow meters compliant with one of the methods specified in paragraph (a)(1)(ii) of this section.

(ii) Gas quality analyzers accepted under the party's registration under § 80.135.

(3) *Alternative measurement protocols*. EPA may accept an alternative measurement protocol if the party demonstrates that the alternative measurement protocol is at least as accurate and precise as the applicable methods specified in paragraphs (a)(1) and (2) of this section.

(4) *Third-party measurement*. (i) A biogas producer or RNG producer may use measurements conducted by a third party using a method specified in paragraphs (a)(1) through (3) of this section if the producer obtains an affidavit from the third party stating that

the third party will use such method and EPA accepts the affidavit as part of the producer's registration under § 80.135.

(ii) A biogas producer or RNG producer relying on the measurement of biogas, treated biogas, or RNG by a third party under paragraph (a)(4)(i) of this section is deemed compliant with the continuous measurement requirements of this paragraph (a) if the producer receives measurement documentation from the third party that contains the daily (or more frequent) total measured volume of biogas, treated biogas, or RNG, as applicable.

(5) *RNG RIN separator measurement*. An RNG RIN separator must measure natural gas or renewable CNG/LNG using one of the following:

(i) A method specified in paragraphs (a)(1) through (3) of this section.

(ii) Documentation (e.g., a pipeline or utility statement) that establishes the volume of natural gas or renewable CNG/LNG.

* * * * *

■ 10. Amend § 80.165 by revising paragraph (a)(1) to read as follows:

§ 80.165 Attest engagements.

(a) * * *

(1) The following parties must arrange for annual attestation engagement using agreed-upon procedures:

(i) Biogas producers that supplied biogas to produce RNG or a biogas-derived renewable fuel within the compliance year.

(ii) RNG producers that generated RINs within the compliance year.

(iii) RNG importers that generated RINs within the compliance year.

(iv) Biogas closed distribution system RIN generators that generated RINs within the compliance year.

(v) RNG RIN separators that separated RINs from RNG within the compliance year.

(vi) Renewable fuel producers that use RNG as a feedstock within the compliance year.

* * * * *

Subpart M—Renewable Fuel Standard

■ 11. Amend § 80.1405 by revising entry “2024” in table 1 to paragraph (a) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

TABLE 1 TO PARAGRAPH (a)—ANNUAL RENEWABLE FUEL STANDARDS

Year	Cellulosic biofuel standard (%)	Biomass-based diesel standard (%)	Advanced biofuel standard (%)	Renewable fuel standard (%)	Supplemental total renewable fuel standard (%)
2024	0.51	2.82	3.79	12.50	n/a

* * * * *

■ 12. Amend § 80.1451 by:

■ a. Revising paragraph (f)(1)(i)(A) introductory text; and

■ b. Adding paragraphs (f)(1)(i)(B)(5) and (f)(1)(i)(C).

The revision and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) Except as specified in paragraphs (f)(1)(i)(B) and (C) of this section, obligated parties must submit annual compliance reports by whichever of the following dates is latest:

* * * * *

(B) * * *

(5) For the 2024 compliance year, annual compliance reports must be submitted by the next quarterly reporting deadline under paragraph (f)(2) of this section after the date the revised 2024 cellulosic biofuel standard becomes effective in § 80.1405(a).

(C) If EPA publishes a document in the **Federal Register** that proposes to revise a renewable fuel standard in

§ 80.1405(a), annual compliance reports for that compliance year must be submitted by the following date, as applicable:

(1) If EPA publishes a document in the **Federal Register** that finalizes the proposed revision to the renewable fuel standard in § 80.1405(a), whichever of the following dates is latest:

(i) The next quarterly reporting deadline under paragraph (f)(2) of this section after the date the revised renewable fuel standard becomes effective in § 80.1405(a).

(ii) The applicable compliance reporting deadline under paragraph (f)(1)(i)(A) or (B) of this section.

(2) If EPA publishes a document in the **Federal Register** that withdraws the proposed revision to the renewable fuel standard in § 80.1405(a), whichever of the following dates is latest:

(i) The next quarterly reporting deadline under paragraph (f)(2) of this section that is 60 days after the date the withdrawal is published.

(ii) The applicable compliance reporting deadline under paragraph (f)(1)(i)(A) or (B) of this section.

(3) If EPA does not publish a document in the **Federal Register** that

either finalizes or withdraws the proposed revision to the renewable fuel standard in § 80.1405(a) within 12 months after the date the proposed rule was published, whichever of the following dates is latest:

(i) The next quarterly reporting deadline under paragraph (f)(2) of this section that is 12 months after the proposed rule was published.

(ii) The applicable compliance reporting deadline under paragraph (f)(1)(i)(A) or (B) of this section.

* * * * *

■ 13. Amend § 80.1456 by revising paragraph (d)(2) to read as follows:

§ 80.1456 What are the provisions for cellulosic biofuel waiver credits?

* * * * *

(d) * * *

(2) The wholesale price of gasoline is calculated by applying the weighting factors specified in table 1 to this paragraph (d)(2) to the Energy Information Administration average monthly gasoline spot price values specified in table 1 for the twelve-month period ending June of the year preceding the compliance period.

TABLE 1 TO PARAGRAPH (d)(2)—WHOLESALE PRICE OF GASOLINE WEIGHTING FACTORS

Gasoline spot price data source	Weighting factor (%)
Conventional Gasoline—New York Harbor, Regular	37.5
Conventional Gasoline—U.S. Gulf Coast, Regular	37.5
RBOB Regular Gasoline—Los Angeles	25.0

* * * * *

■ 14. Amend § 80.1464 by revising paragraph (d)(1) to read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(d) * * *

(1) *Obligated parties.* Obligated parties must submit annual attest engagement reports to EPA by the next June 1 annual attest engagement reporting deadline after the annual

compliance reporting deadline under § 80.1451(f)(1)(i).

* * * * *

[FR Doc. 2024–28978 Filed 12–11–24; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2550, 2551, 2552, 2553

RIN 3045–AA91

Restrictions on Operation of AmeriCorps Seniors Programs

AGENCY: Corporation for National and Community Service.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) is requesting comment on certain restrictions on the operation of AmeriCorps Seniors programs. These restrictions, which are contained in AmeriCorps' current regulations, include a prohibition on State Commissions operating AmeriCorps Seniors programs, a prohibition on AmeriCorps Seniors grantees delegating or contracting overall management responsibilities to another entity, a limitation on for-profit childcare organizations' facilities being used as volunteer sites, and the requirement for AmeriCorps Seniors grantees to carry certain types of insurance. This advance notice of proposed rulemaking (ANPRM) seeks public input on whether these prohibitions and requirements should be retained without change, modified, or removed.

DATES: Written comments must be submitted by February 10, 2025.

ADDRESSES: You may send your comments electronically through the Federal Government's one-stop rulemaking website at www.regulations.gov. You may also send your comments to Elizabeth Appel, Associate General Counsel, at eappel@americorps.gov or by mail to AmeriCorps (ATTN: Elizabeth Appel), 250 E Street SW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Robin Corindo, Deputy Director, AmeriCorps Seniors, at rcorindo@americorps.gov, (202) 489-5578.

SUPPLEMENTARY INFORMATION:

AmeriCorps Seniors operates four programs: the Senior Companion Program (SCP), Foster Grandparent Program (FGP), Retired and Senior Volunteer Program (RSVP), and a Senior Demonstration Program. This ANPRM requests public comment on four specific prohibitions and restrictions applicable to these programs, as explained below.

1. Restriction on State Commissions Operating AmeriCorps Seniors Programs

State Commissions are prohibited by regulation from directly carrying out any national service program under title II of the Domestic Volunteer Service Act of 1973, as amended (DVSA), 42 U.S.C. 4950 *et seq.* See 45 CFR 2550.80(j). Those programs include the four programs operated by AmeriCorps Seniors. A separate regulatory provision prohibits any AmeriCorps Seniors grantee from delegating or contracting overall management responsibilities to another entity. See 42 CFR 2551.22

(SCP), 2552.22 (FGP), and 2553.22 (RSVP). Together, these two restrictions effectively create a categorical ban on State Commissions being AmeriCorps Seniors grantees—as they can neither directly operate nor delegate/contract the program.

There is no statutory prohibition on State Commissions operating AmeriCorps Seniors programs. There is a statutory prohibition on State Commissions directly carrying out programs receiving AmeriCorps State and National (ASN) grants. See 42 U.S.C. 12638(h). In 1993, a regulatory provision expanding on this statutory prohibition was issued to also prohibit Commissions from operating AmeriCorps Seniors or VISTA programs. See 58 FR 60978 (November 18, 1993) (providing no explanation for expansion of the prohibition). In 2005, AmeriCorps removed VISTA programs from the regulatory prohibition, but retained the prohibition for AmeriCorps Seniors programs. See 70 FR 39562 (July 8, 2005). The reasons stated for retaining the prohibition on State Commissions were that the Agency did not believe that, without the ability to delegate or subgrant program management, most State Commissions were in a position to operate AmeriCorps Seniors programs directly, and that local organizations were in the best position to identify local needs and operate AmeriCorps Seniors programs. *Id.* at 39594. The Agency also stated that it received no indication that State commissions were eager to operate AmeriCorps Seniors programs. *Id.*

Since that time, it has become evident that at least one of the justifications for the regulatory prohibitions no longer exists. There is some State Commission interest in operating AmeriCorps Seniors programs, as demonstrated by the fact that some State Commissions have applied to operate AmeriCorps Seniors programs and some are currently operating AmeriCorps Seniors programs under a waiver of the regulatory prohibition. However, given the statutory prohibition on State Commissions directly carrying out programs that receive ASN grants, the State Commissions generally do not operate programs themselves; rather, they facilitate the provision of grant funding to other more locally based organizations. See *generally*, 42 U.S.C. 12638(e) (Duties of a State Commission). AmeriCorps therefore requests public input on whether to retain, modify, or remove the regulatory prohibition on State commissions directly operating AmeriCorps Seniors programs and the reasoning for retaining, modifying, or removing the regulatory prohibition.

2. Restrictions on AmeriCorps Seniors Grantees Delegating or Contracting

The current regulations require AmeriCorps Seniors grantees to fulfill all project management requirements necessary to accomplish the purposes of the program and prohibit them from delegating or contracting (*i.e.*, subcontracting) the overall management responsibilities to another entity. See 45 CFR 2551.22, 2552.22, and 2553.22. The regulations also provide flexibility to AmeriCorps to determine what types of management responsibilities may or may not be contracted. *Id.* Removal of the general prohibition on delegating or subcontracting would enable small grantees to obtain assistance from outside experts on financial management. Grantees sometimes lack financial management experts in house and would benefit by subcontracting for recordkeeping, accounting, and other professional financial services. Possible benefits to this approach include freeing up time to allow in-house staff to focus on programmatic goals and reducing audit and monitoring findings that might arise from a lack of expertise in financial management systems and internal controls. Removing the prohibition on grantees delegating or contracting out management responsibilities could also increase State Commissions' ability to directly carry out AmeriCorps Seniors programs. AmeriCorps therefore seeks public comment on whether and why to retain, modify, or remove the prohibition on delegating or contracting management duties.

3. Limitation on For-Profit Childcare or Educational Centers Being Volunteer Sites for Foster Grandparents

Sponsors (grantees) in the Foster Grandparent Program are responsible for developing and managing one or more volunteer stations, including ensuring that each is a public or non-profit private organization or an eligible proprietary health care agency. See 45 CFR 2552.23(c)(1) and 2552.12 (definition of "volunteer station"). The regulations allow for proprietary health care organizations to serve as volunteer stations. Proprietary health care organizations have been included as a volunteer station type since before 1983, and in 2018, the Agency added a definition of "proprietary health care organization" as a "private, for-profit health care organization that serves one or more vulnerable populations." See 83 FR 64636 (December 17, 2018). AmeriCorps Seniors is considering adding a similar allowance for proprietary childcare organizations,

which would be defined as private, for-profit childcare or child-education organizations that serve one or more vulnerable populations with a high percentage of those populations represented in the children and families serviced. Sometimes there are no nonprofit childcare organizations in or near communities where there are children in need of Foster Grandparent services, but there are for-profit childcare organizations in the communities. Allowing childcare organizations to serve as volunteer stations, when there are not enough non-profit organizations, would help AmeriCorps Seniors volunteers, and particularly Foster Grandparent volunteers, provide services to more children and provide ways for those communities to receive the services they need. AmeriCorps therefore seeks public comment on whether to add for-profit child-care organizations to the list of organization types eligible to be a volunteer station, whether for-profit child-care organizations should be eligible to be a volunteer station only when there are no non-profit child-care organizations in or near the communities, and whether there is any basis for continuing to exclude them.

4. Requirements for Insurance

Current regulations require grantees (sponsors) to provide appropriate coverage for AmeriCorps Seniors volunteers, including accident insurance, personal liability insurance, and excess automobile liability insurance. See 45 CFR 2551.25, 2552.25, and 2553.25. The regulations explain each of these types of insurance and allow for reimbursement of costs associated with the insurance if grantees maintain the insurance at minimum levels set by AmeriCorps. See 45 CFR 2551.46(b), 2552.46(b), and 2553.46(b). These insurance requirements are intended to help protect both volunteers and grantees in the event of accidents or injuries that might occur during an AmeriCorps Seniors volunteer's service. However, insurance is not required by statute and some grantees find it challenging to secure it. AmeriCorps therefore seeks public comment on whether to remove the requirement for grantees to obtain insurance but retain insurance premiums as allowable costs for cost reimbursement should grantees choose to obtain the listed insurance types.

Regulatory Analyses

This ANPRM was developed in accordance with the principles of Executive Order (E.O.) 12866, "Regulatory Planning and Review," E.O.

13563, "Improving Regulation and Regulatory Review," and E.O. 14094, "Modernizing Regulatory Review." Since this action is an ANPRM, it does not create, or propose to create, any new requirements. Therefore, this regulatory action is not significant under section 3(f) of E.O. 12866.

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action because at this stage, it is an ANPRM and not a "rule" as defined in 5 U.S.C. 601. Following review of the comments received in response to this ANPRM, if AmeriCorps proceeds with a notice of proposed rulemaking regarding this matter, AmeriCorps will conduct all relevant analyses as required by statute or Executive Order.

Andrea Grill,

Acting General Counsel.

[FR Doc. 2024–28765 Filed 12–11–24; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No.: 241206–0316; RTID 0648–XR136]

Endangered and Threatened Fish and Wildlife; Description of the Western North Pacific Gray Whale Distinct Population Segment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a revision to the Code of Federal Regulations (CFR) to update the description of the western North Pacific gray whale distinct population segment (DPS) under the Endangered Species Act (ESA) of 1973 in light of the best available science. The proposed revision is informed by our recently completed 5-year review and a DPS analysis prepared by a Status Review Team. We do not propose to change the ESA-listing status of western North Pacific gray whales, which are classified as an endangered species.

DATES: Comments and information regarding the proposed rule must be received by January 13, 2025.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0095>. You may

submit comments, information, or data on this document, identified by docket number NOAA–NMFS–2024–0095, by any of the following methods:

- **Electronic Submissions:** Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov>. In the Search box, enter the above docket number for this document. Then, click on the Search icon. On the resulting web page, click the "Comment" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written information to Megan Wallen, NMFS West Coast Region, 7600 Sand Point Way NE, Seattle, WA 98115.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The western North Pacific gray whale DPS analysis (Weller *et al.* 2023) and the 5-year review of the DPS (NMFS 2023) are both available to access on our website at <https://www.fisheries.noaa.gov/resource/document/dps-analysis-western-north-pacific-gray-whales-under-esa> and <https://www.fisheries.noaa.gov/resource/document/western-north-pacific-dps-gray-whale-5-year-review>, respectively.

FOR FURTHER INFORMATION CONTACT:

Megan Wallen, Protected Resources Division, West Coast Region, 206–473–0812, megan.wallen@noaa.gov, Adrienne Lohe, Endangered Species Division, Office of Protected Resources, 301–427–8442, adrienne.lohe@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS and the U.S. Fish and Wildlife Service (FWS) jointly administer the ESA, with NMFS having jurisdiction over most marine species, and FWS having jurisdiction over terrestrial

species. NMFS and FWS make determinations as to the endangered or threatened status of species under ESA section 4 (16 U.S.C. 1533). The ESA defines “species” as including subspecies, and, for vertebrates only, “distinct population segments” (DPSs). 16 U.S.C. 1532(16). NMFS and FWS’s joint *Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act* (61 FR 4722, February 7, 1996) (DPS Policy) clarifies the agencies’ interpretation of the phrase “distinct population segment” for purposes of listing, delisting, and classifying species under the ESA.

Regulations identifying the species under NMFS’s jurisdiction that are listed as threatened or endangered are published at 50 CFR 223.102 (threatened species) and 50 CFR 224.101 (endangered species). The FWS maintains master lists of all threatened and endangered species, *i.e.*, species under both NMFS’s jurisdiction and species under FWS’ jurisdiction, at 50 CFR 17.11 (threatened and endangered animals) and 50 CFR 17.12 (threatened and endangered plants). The ESA requires NMFS and FWS to review the status of each listed species at least once every 5 years to determine whether the listing remains accurate (16 U.S.C. 1533(c)(2)). Recently, we completed a 5-year review of the status of the western North Pacific (WNP) DPS of gray whales (NMFS 2023). Because WNP gray whales were listed as a DPS prior to NMFS and FWS’s issuance of the DPS Policy, and because new information pertinent to gray whale stock structure had become available, NMFS also convened a Status Review Team (SRT) composed of NMFS scientists with relevant expertise to evaluate WNP gray whale classification in light of the 1996 DPS Policy. The SRT’s full analysis and conclusions are provided in Weller *et al.* (2023, see **ADDRESSES**) and summarized in this proposed rule.

WNP gray whales were originally listed in 1970, when NMFS listed the entire Pacific Ocean population of gray whales as an endangered species (35 FR 18309, December 2, 1970). In 1993, NMFS determined that the eastern North Pacific (ENP) gray whale population had recovered to pre-exploitation levels and should be delisted (58 FR 3121, January 7, 1993). ENP gray whales are those that migrate between wintering areas in Baja California, Mexico, and summer feeding areas in the Bering and Chukchi Seas, except for a small subset of whales that summer and feed along the Pacific coast between Kodiak Island, Alaska and northern California (Carretta *et al.*

2023). NMFS also determined that there was a geographically separate WNP gray whale population, which had not recovered and should remain classified as “endangered.” The WNP gray whale DPS is currently listed as “endangered,” and is described in the CFR as “western North Pacific (Korean) gray whales” (50 CFR 224.101(h)). There is no designated critical habitat for WNP gray whales.

Since WNP gray whales were first listed as a DPS in 1993, new information has been developed about the species’ migratory patterns and range, including information demonstrating that some WNP gray whales transit the Pacific Ocean and overlap with part of the ENP gray whale migration. However, genetic, ecological, ranging, and behavioral differences exist supporting designation of the ENP and WNP as separate species under the ESA (Weller *et al.* 2023). The SRT was asked to assess whether the description of the WNP gray whale DPS as currently listed remains accurate in light of the best currently available science. The SRT was also tasked with evaluating whether WNP gray whales meet the criteria for designation as a DPS under our DPS Policy. The SRT found that within the WNP, three gray whale units met the DPS policy criteria of discreteness and significance: (1) a unit comprising gray whales that spend their entire lives in the WNP, (2) a unit comprising gray whales that feed in the WNP in the summer and fall and migrate to the ENP in the winter, and (3) a unit including both (1) and (2) combined as a single unit.

Under the DPS Policy, two criteria are considered when determining whether a vertebrate population segment qualifies as a DPS: (1) the discreteness of the of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs (61 FR 4722, February 7, 1996). Both criteria must be met in order for a population segment to be considered a DPS. A population segment may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or if it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. Genetic differences between the population segments being considered may be used to evaluate discreteness.

The SRT concluded that each of the three units of gray whales within the WNP being evaluated were markedly

separate from (a) one another (for the WNP-only and WNP–ENP units) and (b) ENP gray whales (for all three units) as a result of behavioral and ecological factors. These include different migratory routes, strong matrilineal site fidelity to WNP feeding grounds, and use of different biogeographical realms for all or part of their life cycle. The WNP-only unit shows seasonal movements restricted to the WNP, where they migrate through and overwinter in areas where the bottom topography is characterized by a broad continental shelf. In contrast, the WNP–ENP unit and the ENP whales are observed in ENP waters, where the continental shelf is generally narrow with deeper water found close to shore, during the winter or early spring months (*e.g.*, wintering lagoons in Mexico or along the U.S. and Canadian west coast). Both the WNP-only and the WNP–ENP units (and thus the combined WNP-only + WNP–ENP unit) show matrilineal site fidelity to the Sakhalin feeding ground in the WNP, which results in patterns of differential habitat (or biogeographical realm) use when any of these units are compared to the ENP whales that use feeding grounds in the Arctic and/or the temperate North Pacific. In total, these factors provide strong evidence for behavioral separation between the three WNP units, supporting the discreteness of the three units. In addition, there is some evidence for whales primarily breeding within their unit based on genetic differentiation and/or the known timing of reproduction and migration (Weller *et al.* 2023). Nuclear genetic differentiation supports separation of the combined WNP-only + WNP–ENP unit, as well as the WNP–ENP unit alone, from the broader ENP gray whale population, suggesting a lack of substantial interbreeding between either of these two WNP units and the ENP gray whale population. Additionally, while mating behavior has been observed on the wintering grounds, migration route, and feeding grounds, the primary mating period is estimated to occur between late November and mid-December, when gray whales would typically be at the start of their migration from feeding to wintering areas. Given that the WNP-only and WNP–ENP whales use different migratory routes and wintering grounds, and the WNP–ENP whales would likely still be west of the main ENP migratory corridor, spatial overlap between the WNP-only and WNP–ENP units or between either of those units (and thus the combined unit) and the ENP whales would likely be minimal during this

time period. Therefore, the evidence is consistent with a lack of substantial interbreeding with another unit, supporting the discreteness of the three WNP units. NMFS finds that the evidence presented by the SRT described here supports the discreteness of the three WNP units under the DPS policy.

If a population segment is considered discrete, its biological and ecological significance is then evaluated in terms of the importance of the population segment to the taxon to which it belongs. Some of the considerations that can be used to determine a discrete population segment's significance to the taxon as a whole include: (1) persistence of the population segment in an unusual or unique ecological setting; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; and (3) evidence that the population segment differs markedly from other populations of the species in its genetic characteristics. After considering the best available information, the SRT concluded that each of the three WNP units is significant to the taxon largely as a result of two factors: (1) that loss of the unit would result in a significant gap in the range of the species and (2) marked differences in biological and ecological factors, which include differences in behavioral or cultural diversity of each unit (Weller *et al.* 2023). Given the differences between the three WNP units in their geographic range and migration patterns, the SRT concluded that the loss of any of the three units would result in a significant gap in the range of the taxon. In particular, if the WNP-only unit were extirpated, the western migratory routes and wintering ground would presumably no longer be occupied by the taxon, leading to the loss of a substantial portion of the range of North Pacific gray whales. While these areas are currently used by a relatively small fraction of the gray whales in the North Pacific, evidence suggests these regions historically supported much larger numbers of gray whales. While the range of the WNP-ENP unit overlaps in part with that of ENP whales, they represent a large proportion of the whales that feed in the WNP and thus their loss would result in a substantial decline in the number of whales using western Pacific feeding areas and an increased risk of loss of gray whales in this part of the range. With the loss of the combined unit, gray whales would be limited to ENP waters and the Arctic feeding grounds with no presence in the entire WNP region. Of the three WNP

units, the combined unit had the strongest support for significance, because the full range of all WNP gray whales would be lost with the loss of the combined unit.

The SRT also found strong evidence of significance of each of the three units based on evidence of behavioral differences relating to their differential migration patterns. These differences result in variation in bioenergetic costs, predation pressure, and exposure to anthropogenic risks among units and may have led to the development of unique adaptations among the WNP-only and WNP-ENP units when compared to each other and to ENP gray whales. Energy requirements are estimated to be greater for whales in the WNP-only and WNP-ENP units than for ENP gray whales (migrating between Mexico and the Arctic feeding grounds) due to the longer migration distance of WNP-ENP whales and higher metabolic costs for overwintering in the WNP. Additionally, while all units are known targets for killer whale attacks, gray whales identified off Sakhalin Island have the highest reported prevalence of killer whale-associated scars in a baleen whale population, with gray whales in the ENP showing a lower prevalence of killer whale scars, suggesting strong differences in predation pressure. Gray whales do not occupy any other ocean basin, so gray whales in the WNP are likely important to the resiliency, redundancy, and representation of the species as a whole, particularly as this is an area predicted to change dramatically due to climate change. Significance of the ecological setting and genetic differentiation received less support due to uncertainty and a lack of applicable data. After reviewing the best available information and conclusions of the SRT, we agree that each of the three population segments meets the significance criterion of the DPS policy.

Given the outcome of their analysis, the SRT agreed that there are two mutually exclusive options for recommending a DPS listing that include: (1) a Separate Option where the WNP-only unit and the WNP-ENP unit are separate DPSs, or (2) a Combined Option where the WNP-only unit and WNP-ENP unit are combined into a single unit (*i.e.*, WNP-only + WNP-ENP unit) and considered one DPS (Weller *et al.* 2023). The SRT recommended the second option of designating a single unit, given the challenges with identifying and evaluating the status of and managing the otherwise separate units of gray whales under the ESA, such as estimating abundance and trends, survival, and evaluating recovery (Weller *et al.* 2023). The DPS

composition as recommended by the SRT includes WNP whales that spend their entire life in the WNP and those that feed in the WNP in the summer and fall and migrate to the ENP in the winter. The SRT concluded that “the most practicable means of obtaining positive management outcomes is to combine the units into a single DPS,” given the challenges mentioned above (Weller *et al.* 2023). Based on the recommendations of the SRT, and the lines of evidence leading to the combined unit meeting the DPS criteria, NMFS has determined that WNP gray whales should be defined as “gray whales that reside or feed in the western North Pacific in the waters of Vietnam, China, Japan, Korea (Republic of Korea and/or Democratic People’s Republic of Korea), or the Russian Far East, including southern and southeastern Kamchatka.” Under that definition, whales that have different wintering ground affiliations would be considered part of the same DPS, with members of the DPS spending summers in the WNP (off Sakhalin Island and southeastern Kamchatka Peninsula).

Our 5-year review of the western North Pacific gray whale assessed the status of the DPS (using the DPS definition recommended by the SRT) and concluded in a recommendation that the DPS remain classified as endangered (see NMFS 2023 for detailed assessment). Therefore, we are not proposing to reclassify the DPS.

As a result of the 5-year review and recommendations from the SRT regarding the DPS description, we conclude that the description of the listed entity should be updated in NMFS’ list and FWS’s master list. This proposed revision reflects an effort to more accurately represent the WNP gray whale DPS based on the best available science. We summarize the proposed revision below and provide the full text of the proposed updates to the listed species description at 50 CFR part 224 in the regulatory text at the end of this **Federal Register** document. All public comments on this proposed revision will be considered prior to issuing any final rule.

Endangered Species at 50 CFR 224.101

Revision to Endangered Species Description

Below we summarize the proposed revision to the description of our endangered species listed in 50 CFR 224.101. Based on our recently completed DPS analysis and 5-year review of the status of the western North Pacific DPS of gray whales, the description of the endangered species

should be revised to account for more information on the population since its listing in 1994 (59 FR 31094, June 16, 1994). These changes do not constitute a listing or delisting of the DPS, but simply a revision to reflect a more accurate description of the listed entity.

We propose to revise the description of the listed entity to read: “Gray whales that reside or feed in the western North Pacific in the waters of Vietnam, China, Japan, Korea (Republic of Korea and/or Democratic People’s Republic of Korea), or the Russian Far East, including southern and southeastern Kamchatka”. The change proposed for this DPS is to remove the word “Korean” from the description which doesn’t fully capture the geographic area occupied by the DPS.

References

Copies of previous **Federal Register** documents and related reference materials are available on the internet at <https://www.fisheries.noaa.gov/species/gray-whale/conservation-management>, or upon request (see **FOR FURTHER INFORMATION CONTACT** section).

Classification

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order (E.O.) 12866. This proposed rule does not contain a collection of information requirement

for the purposes of the Paperwork Reduction Act.

Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be shared with the relevant State agencies.

National Environmental Policy Act of 1969 (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions.

Government-to-Government Relationship With Tribes

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian Tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal Government must provide the funds necessary to pay the direct compliance costs incurred by the Tribal governments. This proposed rule does not impose substantial direct compliance costs on Indian Tribal governments or communities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rulemaking. Nonetheless, given

the recent decision to waive the MMPA moratorium on taking ENP gray whales to allow the Makah Indian Tribe to conduct a limited ceremonial and subsistence hunt (89 FR 51600, June 18, 2024), we notified the Makah Tribe about the proposed changes and provided the opportunity for comments or concerns. We will continue to inform potentially affected Tribal governments, solicit their input, and coordinate on future management actions pertaining to western North Pacific gray whales.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 9, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101, amend the table in paragraph (h) by revising the entry for “Whale, gray (Western North Pacific DPS)” to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
Marine Mammals					
Whale, gray (Western North Pacific DPS).	<i>Eschrichtius robustus</i>	Gray whales that reside or feed in the western North Pacific in the waters of Vietnam, China, Japan, Korea (Republic of Korea and/or Democratic People's Republic of Korea), or the Russian Far East, including southern and southeastern Kamchatka.	35 FR 8491, June 2, 1970; 59 FR 31094, June 16, 1994; <i>[Insert Federal Register page where the document begins], [date of publication when published as a final rule].</i>	NA	NA
*	*	*	*	*	*

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

Notices

Federal Register

Vol. 89, No. 239

Thursday, December 12, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–24–0017]

Notice of Request for an Extension of Existing Information Collection Package

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that NRCS will request an extension for a currently approved information collection for Long-Term Contracting forms.

DATES: Written comments on this notice will be accepted until close of business February 10, 2025.

ADDRESSES: NRCS prefers comments be submitted electronically through the Federal eRulemaking Portal. You may

submit comments, identified by Docket ID No. NRCS–24–0017, by any of the following methods:

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

- *Mail to:* Carrie Lindig, Easement Programs Division, Room 4526–S, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250. Include docket number NRCS–24–0017 in your comment.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Carrie Lindig; telephone, (202) 720–1882; email, carrie.lindig@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Long-Term Contracting.

OMB Number: 0578–0013.

Expiration Date of Approval: February 28, 2025.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of NRCS is to work in partnership with the American people and the farming and ranching community to protect, conserve and sustain our nation’s natural resources on privately owned land. The purpose of the Long-Term Contracting information collection is to allow for programs to provide Federal technical and financial cost-sharing assistance through long term contracts to eligible producers, landowners, and

entities. These long-term contracts provide for making land use changes and installing conservation measures and practices to protect, conserve, develop, and use the soil, water, and related natural resources on private lands. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, Federal financial assistance payments are made to the land user, or third party, upon successful application of the conservation treatment. Additionally, NRCS purchases easements for the long-term protection of the property and provides for the protection and management of the property for the life of the easement.

The information collected through this package is used by NRCS to ensure the proper use of program funds. The conservation programs in this information collection that are subject to the requirements of the Paperwork Reduction Act are listed in Table A. No changes or adjustments are proposed at this time, this notice is limited to the request for an extension of the currently approved information collection package used by NRCS for Long-Term Contracting for the programs listed in Table A. Table B shows the burden for those programs subject to the requirements of the Paperwork Reduction Act.

TABLE A—CONSERVATION PROGRAMS SUBJECT TO THE REQUIREMENTS OF THE PAPERWORK REDUCTION ACT

	Description
Emergency Conservation Program (ECP) (7 CFR part 701).	USDA Farm Service Agency’s ECP provides emergency funding and technical assistance for farmers and ranchers to rehabilitate farmland damaged by natural disasters and for carrying out emergency water conservation measures in periods of severe drought. Funding for ECP is appropriated by Congress.
Emergency Watershed Program (EWP) (7 CFR part 624).	The EWP was initiated in 1950 and is administered by NRCS. It provides technical and financial assistance to local institutions for the removal of storm and flood debris from stream channels and for the restoration of stream channels and levees to reduce the threat to life and property. The program also provides for establishing permanent easements in floodplains with private landowners.
Healthy Forests Reserve Program (HFRP) (7 CFR part 625).	HFRP is a voluntary program established for the purpose of restoring and enhancing forest ecosystems to: (1) Promote the recovery of threatened and endangered species; (2) improve biodiversity; and (3) enhance carbon sequestration. The HFRP was signed into law as part of the Healthy Forests Restoration Act of 2003 and amended in 2008. The Agricultural Act of 2014 made minor changes to HFRP land eligibility and funding.
Resource Conservation and Development Program (RC&D).	The RC&D was initiated in 1962 and was administered by NRCS. Through this program, NRCS assisted multi-county areas in enhancing conservation, water quality, wildlife habitat, recreation, and rural development. The R&D Program provided technical and limited financial assistance for the planning and installation of approved projects.

TABLE A—CONSERVATION PROGRAMS SUBJECT TO THE REQUIREMENTS OF THE PAPERWORK REDUCTION ACT—Continued

	Description
Watershed Protection and Flood Prevention Program (WRFPP) (7 CFR part 622).	WPFPP was initiated in 1954 and is administered by NRCS. It assists State and local units of government in flood prevention, watershed protection, and water management. Part of this effort involves the establishment of conservation practices on private lands to reduce erosion, sedimentation, and runoff.

TABLE B—BURDEN FOR REQUIRED PROGRAMS UNDER THE PAPERWORK REDUCTION ACT

Form	Purpose	Program(s)	Number submitted annually
AD-1153	Application	EWP, WPFPP, HFRP	750; Estimated time per participant is 0.30 per response.
AD-1154	Contract or Agreement	EWP, HFRP	150; Estimated time per participant is 0.37 per response.
AD-1155, AD-1155A	Schedule of Practices/Costs and signature sheet.	EWP, WPFPP, HFRP	300; Estimated time per participant is 0.373 per response.
AD-1156	Schedule Modification	EWP, WPFPP, HFRP	25; Estimated time per participant is 0.375 per response.
AD-1157	Option Agreement to Purchase	EWP, HFRP	170; Estimated time per participant is 0.40 per response.
AD-1157A	Option Agreement to Purchase Amendment.	EWP, HFRP	170; Estimated time per participant is 0.40 per response.
AD-1158	Subordination Agreement and Limited Lien Waiver.	EWP, HFRP	100; Estimated time per participant is 0.495 per response.
AD-1159	Notice of Intent to Continue	Not used by any non-exempt pro-grams.	
AD-1160	Compatible Use Authorization	EWP, HFRP	200; Estimated time per participant is 0.40 per response.
AD-1161	Application for Payment	CTA, EWP, HFRP	200; Estimated time per participant is 0.30 per response.
NRCS-CPA-68	Conservation Plan	EWP, WPFPP, HFRP	2,700; Estimated time per participant is 0.75 per response.
NRCS-LTP-13	Status/Contract Review	EWP, HFRP	250; Estimated time per participant is 0.375 per response.
NRCS-LTP-20, NRCS-CPA-260.	Warranty Easement Deed, Conservation Easement Deed.	EWP, HFRP	170; Estimated time per participant is 0.40 per response.
NRCS-LTP-70	Agreement for the Purchase of Conservation Easement.	HFRP	50; Estimated time per participant is 0.69 per response.
NRCS-LTP-80	Agreement for the Purchase of Conservation Easement.	EWP	120; Estimated time per participant is 0.69 per response.
NRCS-LTP-151	Contract Violation Notification	EWP, HFRP	20; Estimated time per participant is 0.495 per response.
NRCS-LTP-152	Transfer Agreement	EWP, HFRP	5; Estimated time per participant is 0.495 per response.
NRCS-LTP-153	Agreement Covering Non-Compliance With Provisions of the Contract.	EWP, HFRP	10; Estimated time per participant is 1.5 per response.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.30 to 1.5 hours per response.

Type of Respondents: Program participants.

Estimated Number of Respondents: 5,390.

Estimated Number of Responses: 5,390.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,058 hours.

Comments are invited on:

(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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Carrie Lindig, Natural Resources Conservation Service, Easement Programs Division, 1400 Independence Ave. SW, Room 4526-S, Washington, DC 20250. All

comments received will be available for public inspection during regular business hours at the same address.

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

Louis Aspey,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 2024-29224 Filed 12-11-24; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-570-175]

Certain Brake Drums From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*Correction*

In notice document 2024-28238, appearing on pages 95744 through 95747 in the issue of Tuesday, December 3, 2024, make the following correction:

On page 95744, in the third column, in the **DATES** section, "February 3, 2024" should read "December 3, 2024".

[FR Doc. C1-2024-28238 Filed 12-11-24; 8:45 am]

BILLING CODE 0099-10-D

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-190, C-570-191]

Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: Sol Gel Alumina-Based Ceramic Abrasive Grains From the People's Republic of China

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable December 6, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas Cloyd or Suresh Maniam, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1246 or (202) 482-1603, respectively.

SUPPLEMENTARY INFORMATION:**Extension of Initiation of Investigation***The Petitions*

On November 25, 2024, the U.S. Department of Commerce (Commerce) received antidumping and countervailing duty petitions on imports of sol gel alumina-based ceramic abrasive grains (ceramic abrasive grains) from the People's Republic of China (China), filed in proper form on behalf of Saint-Gobain Ceramics & Plastics, Inc.

(the petitioner), a domestic producer of ceramic abrasive grains.¹

Determination of Industry Support for the Petitions

Sections 702(b)(1) and 732(b)(1) of the Tariff Act of 1930, as amended (the Act), require that a petition be filed by or on behalf of the domestic industry. To determine that the petition has been filed by or on behalf of the industry, sections 702(c)(4)(A) and 732(c)(4)(A) of the Act require that the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, sections 702(c)(4)(D) and 732(c)(4)(D) of the Act provide that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) if there is a large number of producers, determine industry support using a statistically valid sampling method to poll the industry.

Extension of Time

Sections 702(c)(1)(A) and 732(c)(1)(A) of the Act provide that within 20 days of the filing of an antidumping or countervailing duty petition, Commerce will determine, *inter alia*, whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Sections 702(c)(1)(B) and 732(c)(1)(B) of the Act provide that the deadline for the initiation determination, in exceptional circumstances, may be extended by 20 days in any case in which Commerce must "poll or otherwise determine support for the petition by the industry." Because the Petitions have not established that the domestic producers or workers accounting for more than 50 percent of total production support the Petitions, in accordance with sections 702(c)(4)(D) and 732(c)(4)(D) of the Act, Commerce has determined it would be appropriate in these cases to poll the industry and extend the time period for determining whether to initiate the investigations in

order to further examine the issue of industry support.

Commerce will need additional time to gather and analyze additional information regarding industry support. Therefore, it is necessary to extend the deadline for determining the adequacy of the Petitions for a period not to exceed 40 days from the filing of the Petitions. As a result, in accordance with sections 702(c)(1)(B) and 732(c)(1)(B) of the Act, Commerce's initiation determination will now be due no later than January 6, 2025.²

International Trade Commission Notification

Commerce will contact the U.S. International Trade Commission (ITC) and will make this extension notice available to the ITC.

Dated: December 6, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024-29221 Filed 12-11-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[Application No. 10-7A001]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review for Alaska Longline Cod Commission (ALCC), Application No. 10-7A001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA), issued an amended Export Trade Certificate of Review to ALCC on December 3, 2024.

FOR FURTHER INFORMATION CONTACT: Amanda Reynolds, Acting Director, OTEA, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) (the Act) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated November 25, 2024 (Petitions).

² The extended deadline for Commerce's initiation determination falls on January 4, 2025, which is a Saturday. Accordingly, Commerce's initiation determination will be due no later than January 6, 2025, which is the next business day after 40 days from the filing of the Petitions.

from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

ALCC's Certificate is amended as follows:

1. Added the following six products as Export Products within the meaning of section 325.2(j) of the Regulations (15 CFR 325.2(j)):

- a. Headed and gutted pollock
- b. Headed and gutted sablefish
- c. Sablefish heads
- d. Sablefish collars
- e. Headed, gutted, and tailed Greenland turbot
- f. Turbot heads

Under Export Trade in the Certificate, the Export Products are as follows:

ALCC plans to export frozen at-sea, headed and gutted, Alaska cod (*Gadus macrocephalus*), also known as Pacific cod. Headed and gutted means the head and viscera are removed prior to freezing. Frozen-at-sea means that the Alaska cod is frozen on the longline catcher-processor vessel while at-sea immediately after being headed and gutted. The catch accrues against cod allocations to the Members.

ALCC also plans to export byproducts of ALCC frozen-at-sea, headed and gutted Alaska cod, caught via hook-and-line gear: cod heads; cod collars; cod roe; cod chu; cod milt; ray wings; headed and gutted pollock; headed and gutted sablefish; sablefish heads; and sablefish collars. The cod heads, cod collars, cod roe, cod chu, and cod milt are derived from parts of the Alaska cod remaining after the heading-and-gutting of the cod to produce frozen-at-sea headed and gutted Alaska cod. The ray wings are derived from various species of skate, which are caught incidentally while targeting Alaska cod. The remaining products are also caught incidentally while targeting Alaska cod, except as specified below.

ALCC also plans to export the following products and byproducts

caught on longline catcher- processor vessels using longline hook-and-line and longline pot gear: headed and gutted sablefish; sablefish heads; sablefish collars. The catch accrues against sablefish allocations to the Members.

ALCC also plans to export the following products and byproducts caught on longline catcher- processor vessels using longline hook-and-line gear and, when permitted by regulation, longline pot gear: headed, gutted, and tailed Greenland turbot; and turbot heads. The catch accrues against Greenland turbot allocations to the members.

ALCC's Membership remains the same following the amendment:

1. Akulurak LLC, Seattle, WA;
2. Alaskan Leader Fisheries LLC, Lynden, WA;
3. Alaskan Leader Seafoods LLC, Lynden, WA;
4. Alaskan Leader Vessel LLC, Lynden, WA;
5. Aleutian Longline, LLC, Seattle, WA;
6. Aleutian Spray Fisheries, Inc., Seattle, WA;
7. Beauty Bay Washington, LLC, Bothell, WA;
8. Bering Leader Fisheries LLC, Lynden, WA;
9. Bristol Leader Fisheries LLC, Lynden, WA;
10. Bristol Wave Seafoods, LLC, Seattle, WA;
11. Coastal Alaska Premier Seafoods, LLC, Anchorage, AK;
12. Coastal Villages Longline LLC, Anchorage, AK;
13. Deep Sea Fisheries, Inc., Everett, WA;
14. Gulf Mist, Inc., Everett, WA;
15. Gulf Prowler, LLC, Juneau, AK;
16. Kodiak Leader Fisheries LLC, Lynden, WA;
17. Northern Leader Fisheries LLC, Lynden, WA;
18. Romanzof Fishing Company, L.L.C., Seattle, WA;
19. Shelford's Boat, Ltd., Mill Creek, WA;
20. Siu Alaska Corporation, Anchorage, AK;
21. Starfish Reverse, LLC, Seattle, WA;
22. Tatoosh Seafoods, LLC, Kingston, WA.

The effective date of the amended certificate is September 5, 2024, the date on which ALCC's application to amend was deemed submitted.

Dated: December 9, 2024.

Natalie Soroka,

Acting Deputy Assistant Secretary, Trade Policy and Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2024–29232 Filed 12–11–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979, C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Final Results of Changed Circumstances Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 26, 2024, the U.S. Department of Commerce (Commerce) published the preliminary results of the changed circumstances reviews (CCR) of the antidumping duty (AD) and countervailing duty (CVD) orders on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China), with respect to Hanwha Q CELLS Malaysia Sdn. Bhd. For these final results, Commerce continues to find it appropriate to amend the Appendix V certification to include the additional wafer suppliers identified by Hanwha in its CCR requests.

DATES: Applicable December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Peter Shaw, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0697.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 2024, Commerce published the preliminary results of these CCRs, determining that it would be appropriate to amend the Appendix V certification, provided in *Solar Cells Circumvention*,¹ by adding new wafer suppliers identified by Hanwha Q

¹ See *Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Scope Determination and Final Affirmative Determinations of Circumvention with Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 88 FR 57419 (August 23, 2023) (*Solar Cells Circumvention*), and accompanying Malaysia Issues and Decision Memorandum (Malaysia IDM).

CELLS Sdn. Bhd. and Hanwha Q Cells USA, Inc. (collectively, Hanwha).² We provided all interested parties with an opportunity to comment. On July 26, 2024, Hanwha submitted a case brief.³ No other interested party filed a case or rebuttal brief.

Scope of the Orders

The merchandise covered by these *Orders* 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.⁴

These *Orders* cover 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 *Orders*.

Excluded from the scope of the *Orders* are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review*, 89 FR 53388 (June 26, 2024) (*Preliminary Results*).

³ See Hanwha's Letter, "QCells' Case Brief," dated July 26, 2024 (Hanwha Case Brief).

⁴ See *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); see also *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) (collectively, *Orders*). On March 20, 2024, based on a CCR, Commerce amended the *Orders*. See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders, in Part*, 89 FR 19809 (March 20, 2024).

Also excluded from the scope of the *Orders* are crystalline silicon photovoltaic cells, not exceeding 10,000mm² 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 *Orders* are panels with surface area from 3,450 mm² to 33,782 mm² 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 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 *Orders* 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 8mm 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 *Orders*: 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 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 two-port rectangular connector.

Modules, laminates, and panels produced in a third country from cells produced in China are covered by the *Orders*; however, modules, laminates, and panels produced in China from cells produced in a third country are not covered by the *Orders*.

Additionally excluded from the scope of the *Orders* 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 *Orders* 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 two-port connector; and

(I) Include exposed positive and negative terminals at opposite ends of the panel, not enclosed in a junction box.

Merchandise covered by the *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under 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, 8507.20.8091, 8541.42.0010, and 8541.43.0010. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Order* is dispositive.⁵

Amendment of the Appendix V Certification

Hanwha requested that the Appendix V Certification provided for Hanwha in the *Solar Cells Circumvention* be amended to include additional unaffiliated wafer suppliers.⁶ See Appendix II for the Appendix V Certification.⁷ Commerce is affording business proprietary information treatment to the names of the wafer supplier/exporters. For a table of the names of the additional wafer suppliers/exporters please refer to the proprietary version of this certification on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).

Analysis of Comments Received

All issues raised in the case brief are addressed in the Issues and Decision

Memorandum,⁸ and are listed in Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via 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>.

Final Results of CCR

Upon review of the comments received, Commerce continues to determine it is appropriate to amend the Appendix V certification for Hanwha, provided in *Solar Cells Circumvention*, by adding the additional unaffiliated wafer suppliers identified in Hanwha's CCR requests. We continue to find it appropriate not to amend the Appendix V certifications to require that Hanwha only certify that the wafers used to produce solar cells for export to the United States are Chinese in origin.

Application of the Final Results of CCR

Hanwha requested that Commerce apply the final results of these reviews retroactively to the date of publication of the final determination in *Solar Cells Circumvention*, or alternatively, to the date it filed its changed circumstance requests (*i.e.*, May 6, 2024). Commerce has determined it is appropriate to retroactively apply the amended Appendix V certification to May 6, 2024. For further details, please see the Issues and Decision Memorandum.

For all solar cells or solar modules from Malaysia that were entered, or withdrawn from warehouse, for consumption during the period May 6, 2024 (the date Hanwha filed these CCR requests) through the date of publication of the final results of these CCRs in the **Federal Register**, where the entry has not been liquidated (and entries for which liquidation has not become final), certifications pursuant to this CCR, should be completed and signed as soon as practicable, but not later than 45 days after the date of publication of these final determinations in the **Federal Register**.

On December 8, 2022, Commerce implemented certification requirements for certain entries of subject merchandise.⁹ The importer, or the

importer's agent, must submit any required certifications to U.S. Customs and Border Protection (CBP) as part of the entry process by uploading them into the document imaging system in CBP's Automated Commercial Environment at the time of entry summary filing. Consistent with CBP's procedures, importers shall identify entries required to have certifications by using importers' additional declaration (record 54) AD/CVD Certification Designation (type code 06) when filing entry summary.¹⁰

Instructions to U.S. Customs and Border Protection (CBP)

Because we determine that there are changed circumstances that warrant a retroactive change to Hanwha's Appendix V certification, we will instruct CBP to liquidate without regard to antidumping and countervailing duties, and to refund any estimated antidumping and countervailing duties on, all unliquidated entries of the merchandise covered by the amended certification, effective May 6, 2024. Commerce intends to issue instructions to CBP no earlier than 35 days after the date of publication of the final result of these CCRs in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the 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).

Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(1), and 19 CFR 351.221(c)(3).

Cambodia, Malaysia, Thailand, and Vietnam, 87 FR 75221 (December 8, 2022).

¹⁰ See Cargo System Messaging Service #59384253, dated February 12, 2024; see also *Announcing an Importer's Additional Declaration in the Automated Commercial Environment Specific to Antidumping/Countervailing Duty Certifications*, 89 FR 7372 (February 2, 2024).

⁵ See *Orders*.

⁶ See Hanwha's Letter, "Resubmission of Hanwha Q CELLS USA, Inc. and Hanwha Q CELLS Malaysia Sdn. Bhd.'s Request for Changed Circumstances Review," dated May 6, 2024 (Hanwha's CCR Requests).

⁷ We have afforded business proprietary information (BPI) treatment to the names of the wafer exporters. We note that Commerce uses the term wafer exporter in our Appendix V certification, and here we use the term wafer supplier interchangeably with wafer exporter in this context. See Memorandum, "Final Results of Changed Circumstances Reviews—BPI Addendum," dated concurrently with this notice.

⁸ See Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Changed Circumstances Reviews," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁹ See *Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to*

Dated: November 26, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Discussion of the Issues
- IV. Recommendation

Appendix II

Amended Appendix V Certification

Certification for Entries of Inquiry Merchandise From Companies Found Not To Be Circumventing

Company Name: Hanwha Q CELLS Malaysia Sdn. Bhd.

Importer Certification

I hereby certify that:

(A) My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

(B) I have direct personal knowledge of the facts regarding importation of the solar cells and solar modules produced in Malaysia that were entered into the Customs territory of the United States under the entry summary number(s) identified below which are covered by this certification. "Direct personal knowledge" refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter and/or seller's identity and location.

(C) If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The solar cells and/or solar modules covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

(D) The solar cells and/or solar modules covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(E) I have personal knowledge of the facts regarding the production and exportation of the solar cells and modules identified below. "Personal knowledge" includes facts obtained from another party, (e.g., correspondence received by the importer (or exporter) from the producer of the imported products regarding production).

(F) The solar cells and/or solar modules covered by this certification were:

1. Sold to the United States by Hanwha Q CELLS Malaysia Sdn. Bhd.
2. Exported to the United States by Hanwha Q CELLS Malaysia Sdn. Bhd.

3. Produced in Malaysia by Hanwha Q CELLS Malaysia Sdn. Bhd., using wafers manufactured in the People's Republic of China that were exported to Malaysia by: {CHECK THE RELEVANT WAFER EXPORTERS BELOW} (we have afforded business proprietary information (BPI) treatment to the names of the wafer exporters; for a table of the names of the wafer exporters, which must be included as part of this paragraph in the certificate submitted to CBP—please refer to the proprietary version of this certification on ACCESS).

(G) The U.S. Department of Commerce (Commerce) found that solar cells and/or solar modules produced by Hanwha Q CELLS Malaysia Sdn. Bhd., using wafers manufactured in China that were exported by the wafer supplier(s) listed in item F above, and exported by Hanwha Q CELLS Malaysia Sdn. Bhd. are not circumventing the antidumping duty and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China.

(H) This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:

Applicable Line Item # of the Entry

Summary:

Foreign Seller's Invoice #:

Applicable Line Item # on the Foreign Seller's Invoice:

(I) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (i.e., documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, etc.) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(J) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(K) I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or Commerce with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

(L) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

(M) I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on solar cells and solar modules from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

(N) I understand that agents of the importer, such as brokers, are not permitted to make this certification.

(O) This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

(P) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}

Date

Exporter Certification

Certification for Entries of Inquiry Merchandise From Companies Found Not To Be Circumventing

Company Name: Hanwha Q CELLS Malaysia Sdn. Bhd.

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

(A) My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF COMPANY}, located at {ADDRESS OF COMPANY}.

(B) I have direct personal knowledge of the facts regarding the production and exportation of the solar cells and solar modules for which sales are identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

(C) The solar cells and/or solar modules covered by this certification were shipped to

{NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(D) The solar cells and/or solar modules covered by this certification were:

1. Sold to the United States by Hanwha Q CELLS Malaysia Sdn. Bhd.
2. Exported to the United States by Hanwha Q CELLS Malaysia Sdn. Bhd.
3. Produced in Malaysia by Hanwha Q CELLS Malaysia Sdn. Bhd. using wafers manufactured in the People's Republic of China (China) that were exported to Malaysia by: {CHECK THE RELEVANT WAFER EXPORTERS BELOW}

(We have afforded business proprietary information (BPI) treatment to the names of the wafer exporters; for a table of the names of the wafer exporters, which must be included as part of this paragraph in the certificate submitted to CBP—please refer to the proprietary version of this certification on ACCESS).

(E) The U.S. Department of Commerce (Commerce) found that solar cells and/or solar modules produced by Hanwha Q CELLS Malaysia Sdn. Bhd., using wafers manufactured in China that were exported by the wafer supplier(s) listed in item D above, and exported by Hanwha Q CELLS Malaysia Sdn. Bhd. are not circumventing the antidumping duty and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China.

(F) This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

of the Foreign Seller's Invoice to the U.S.

Customer:

Applicable Line Item # of the Foreign Seller's Invoice to the U.S. Customer:

(G) I understand that Hanwha Q CELLS Malaysia Sdn. Bhd. is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(H) I understand that Hanwha Q CELLS Malaysia Sdn. Bhd. is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or Commerce with a copy of this certification, and any supporting documents, upon the request of either agency.

(I) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

(J) I understand that failure to maintain the required certification and supporting

documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on solar cells and solar modules from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

(K) I understand that agents of the exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

(L) This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the shipment date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

(M) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

Date

[FR Doc. 2024–29328 Filed 12–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Economic Surveys of the Commercial and Charter Harvesting Sectors of Federally Managed Fisheries: Mariana Archipelago Small Boat Fishery Economic Data Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 6, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Generic Clearance for Economic Surveys of the Commercial and Charter Harvesting Sectors of Federally Managed Fisheries: Mariana Archipelago Small Boat Fishery Economic Data Collection.

OMB Control Number: 0648–0823.

Form Number(s): None.

Type of Request: Regular submission [review of a specific survey under an approved generic information collection].

Number of Respondents: 72.

Average Hours per Response: 45 minutes.

Total Annual Burden Hours: 54 hours.

Needs and Uses: The National Oceanic & Atmospheric Administration's National Marine Fisheries Service (NMFS or NOAA Fisheries) has conservation and management responsibilities for many living marine resources and their habitat. NMFS collects and uses economic data to make more than a cursory determination of whether a variety of provisions in the applicable laws, Executive Orders (E.O.s), and NOAA or NMFS strategies and policies have been met by past fishery

conservation and management actions or will be met by proposed actions. OMB approved the Generic Clearance for Economic Surveys of the Commercial & Charter Harvesting Sectors of Federally Managed Fisheries. It did that in recognition that by providing relevant economic data, the fishery specific information collections, which NMFS will conduct under that generic clearance, will increase the ability of NMFS and the Regional Fishery Management Councils to monitor, explain and predict changes in the economic performance and impacts of federally managed fisheries. Therefore, those information collections will allow better-informed fishery conservation and management decisions, which will benefit the Nation. With OMB's approval of the Mariana Archipelago Small Boat Fishery Economic Data Collection, NMFS will collect such economic data for that specific fishery.

Affected Public: Individuals or households and Business or other for-profit organizations.

Frequency: Once.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (MSA).

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0823.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–29219 Filed 12–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine and Coastal Area-based Management Advisory Committee; Charter Renewal

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of renewed charter.

SUMMARY: Notice is hereby given of the two-year renewed charter for the Marine and Coastal Area-based Management Advisory Committee (MCAM), effective on December 6, 2024.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Director, NOAA's National Marine Protected Areas Center, Lauren.Wenzel@noaa.gov, (240) 533–0652; or Heather Sagar, Senior Policy Advisor, NOAA Fisheries, Heather.Sagar@noaa.gov, (301) 427–8019.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Commerce established MCAM in November 2022, to advise the Under Secretary of Commerce for Oceans and Atmosphere (Under Secretary) on science-based approaches to area-based protection, conservation, restoration, and management in coastal and marine areas, including the Great Lakes. The scope of MCAM's advice includes, but is not limited to, efforts consistent with the *America the Beautiful* initiative, called for by section 216(a) of Executive Order 14008 on *Tackling the Climate Crisis at Home and Abroad*, as well as other relevant issues that may be requested by the Under Secretary. The MCAM's charter must be renewed every two years from the date of the last renewal.

II. Charter Renewal

In accordance with the Federal Advisory Committee Act, as amended (FACA; 5 U.S.C. 1001 *et seq.*), the Secretary of Commerce has determined that the renewal of the charter for MCAM is in the public interest. The MCAM will function solely as an advisory body and in compliance with provisions of FACA. Copies of the MCAM's revised charter have been filed with the appropriate committees of the Congress and with the Library of Congress. The charter can be accessed

online at <https://oceanservice.noaa.gov/ocean/marine-coastal-fac/>.

John Armor,

Designated Federal Official, Marine and Coastal Area-based Management Advisory Committee; Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–29294 Filed 12–11–24; 8:45 am]

BILLING CODE 3510–NK–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Schools of National Service Commitment Form

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to revise an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 10, 2025.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through www.regulations.gov (preferred method).

(2) *By mail sent to:* AmeriCorps, Attention Emily Smith, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through regulations.gov. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that

may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Emily Smith, (202) 391–1393, or by email at emsmith@americorps.gov.

SUPPLEMENTARY INFORMATION:

Title of Collection: Schools of National Service Commitment Form.

OMB Control Number: 3045–0143.

Type of Review: Revision.

Respondents/Affected Public:

Businesses and Organizations.

Total Estimated Number of Annual Responses: 200.

Total Estimated Number of Annual Burden Hours: 100.

Abstract: The Schools of National Service initiative, formerly the Segal Education Award Matching Program, helps higher education and post-secondary institutions connect with AmeriCorps alumni. To qualify as a School of National Service, the institution must complete a commitment form, committing to provide one or more incentives to AmeriCorps members and alumni seeking to attend their institution. This collection allows AmeriCorps and the institution to enhance the educational opportunities available to AmeriCorps alumni because of their service. AmeriCorps is seeking to revise the commitment form to add checkbox options for career and technical education (CTE) and other program types the institution may offer; add checkbox options for whether programs are offered online, in person, or both; and add a field for the institution to indicate whether it offers benefits to senior citizens and at what age eligibility begins. The revision would also delete the entry for the percentage of education award that the institution will match for AmeriCorps alumni it accepts for admission to the institution. AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on March 31, 2025.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency'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 of information 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on [regulations.gov](https://www.regulations.gov).

Rhonda Taylor,

Director, Partnerships & Program Engagement.

[FR Doc. 2024–29209 Filed 12–11–24; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Tests Determined To Be Suitable for Use in the National Reporting System for Adult Education

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces that a test with National Reporting System for Adult Education (NRS) approval expiring on February 5, 2025, may continue to be used by States and local eligible providers during a sunset period ending on June 30, 2025.

FOR FURTHER INFORMATION CONTACT: John LeMaster, Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 987–0903. Email: John.Lemaster@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On June 20, 2024, the Secretary published in the **Federal Register** (89 FR 51877) an annual notice announcing tests determined to be suitable for use in the

NRS, in accordance with 34 CFR 462.13 (June 2024 annual notice). The June 2024 annual notice announced two new tests and test forms that have been determined to be suitable for use in the NRS, in accordance with § 462.13. The notice also updated the delivery formats available for two tests with a three-year approval expiring on July 13, 2026. Under the transition rules in § 462.4, the Secretary also announced in the June 2024 annual notice a test with NRS approval expiring on September 7, 2024, which States and local eligible providers may continue to use during a sunset period ending on June 30, 2025.

In this notice, under the transition rules in § 462.4, the Secretary announces a test with NRS approval expiring on February 5, 2025, which States and local eligible providers may continue to use during a sunset period ending on June 30, 2025.

Adult education programs must use only the forms and computer-based delivery formats for the tests approved in this notice. If a particular test form or computer delivery format is not explicitly specified for a test in this notice, it is not approved to measure educational gain in the NRS.

Test With NRS Approval Expiring on February 5, 2025, That May Be Used in the NRS During a Sunset Period Ending on June 30, 2025

The Secretary has determined that the following test is suitable for use in Literacy/English Language Arts at all ABE levels of the NRS during a sunset period ending on June 30, 2025:

Comprehensive Adult Student Assessment System (CASAS) Reading GOALS Series. Forms 901, 902, 903, 904, 905, 906, 907, and 908 are approved for use on paper and through a computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: www.casas.org/.

Revocation of Tests

Under certain circumstances—such as, for example, a determination by the Secretary either that the information the publisher submitted as a basis for the Secretary's review of the test was inaccurate or that a test has been substantially revised—the Secretary may revoke the determination that a test is suitable after following the procedures in § 462.12(e). If the Secretary revokes the determination of suitability, the Secretary announces the revocation, as well as the date by which States and local eligible providers must stop using the revoked test, through a

notice published in the **Federal Register**.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 29 U.S.C. 3292.

OMB Control Numbers: 1830-0027, 1830-0567.

Luke Rhine,

Acting Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2024-29300 Filed 12-11-24; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25-25-000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on November 25, 2024, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 1300, Houston, Texas 77002-2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), and ANR's blanket certificate issued in Docket No. CP82-480-000, for authorization to modify and restate the certificated horsepower of its Bridgman Compressor Station in Berrien County,

Michigan. In February 2021, pursuant to section 2.55(b)(1)(iii) of the Commission's regulations, ANR notified the Commission of its intent to replace all existing compressor units at its Bridgman Compressor Station with two turbine compressor units with a combined nameplate rating of 26,983 horsepower (HP) based on the latest standards by the International Organization for Standardization (ISO) (2021 Turbine Units). ANR determined that controls limiting the 2021 Turbine Units were unnecessary because, at maximum output, the 2021 Turbine Units provided substantially equivalent design delivery capacity as the previous units. ANR states that the Bridgman Compressor Station was originally certificated at 23,050 HP based on varying nameplate rating standards for the historical units; this is equivalent to 27,058 HP when converted to the latest ISO horsepower rating. As this is substantially equivalent to the 2021 Turbine Units' ISO rating of 26,983 HP, ANR proposes to modify and restate the total certificated horsepower at the Bridgman Compressor Station from 23,050 HP to 26,983 HP to accurately reflect the maximum ISO horsepower provided by the 2021 Turbine Units, 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 David A. Alonzo, Manager of Project Authorizations, ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002-2700, by phone at (832) 320-

5477, or by email at david_alonzo@tcenergy.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 February 4, 2025. 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 person² 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 February 4, 2025. 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

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).

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 Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is February 4, 2025. 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 February 4, 2025. 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 CP25–25–000 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"; or⁶

(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 CP25–25–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, 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: David A. Alonzo, Manager of Project Authorizations, ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700 or by email at david_alonzo@tcenergy.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 register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: December 6, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29281 Filed 12–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ25–1–000]

City of Anaheim, California; Notice of Filing

Take notice that on November 25, 2024, City of Anaheim, California submits tariff filing per 35.28(e): City of Anaheim 2025 TRBAA and Gross Load Update to be effective 1/1/2025.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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.

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.

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.reference.room@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.

Comment Date: 5:00 p.m. Eastern Time on December 27, 2024.

Dated: December 6, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024-29282 Filed 12-11-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11132-030]

KEI (Maine) Power Management (I), LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 11132-030.

c. *Date Filed:* November 27, 2024.

d. *Applicant:* KEI (Maine) Power Management (I), LLC (KEI Power).

e. *Name of Project:* Eustis Hydroelectric Project.

f. *Location:* On the North Branch of the Dead River, in the town of Eustis, in Franklin County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Lewis C. Loon, 423 Brunswick Ave., Gardiner, ME 04345; (207) 203-3027; lewis.loon@kruger.com.

i. *FERC Contact:* Erin Kimsey at (202) 502-8621; or email at erin.kimsey@ferc.gov.

j. *Cooperating Agencies:* Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 26, 2025.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>.

For assistance, please contact FERC Online Support at FEROnlineSupport@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, 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, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. All filings must clearly identify the project name and docket number on the first page: Eustis Hydroelectric Project (P-11132-030).

m. The application is not ready for environmental analysis at this time.

n. *The existing Eustis Hydroelectric Project consists of the following:* (1) a 472-foot-long dam that includes: (i) a 22-foot-long concrete wall, east abutment section; (ii) two 10-foot-wide Taintor gates; (iii) a 20-foot-wide concrete sluiceway; (iv) four 3-foot-wide concrete piers; (ii) a 183-foot-long

concrete ogee spillway section with 2- to 4-foot-high flashboards with a crest elevation of 1,161 National Geodetic Vertical Datum of 1929 (NGVD 29) at top of the flashboards; (vi) a 14-foot-long intake section with an intake structure equipped with a trashrack with 1-inch clear bar spacing; and (vii) a 200-foot-long earthen dike, west abutment section; (2) a 130-foot-long earthen saddle dike located about 150 feet upstream of the west abutment section of the dam; (3) an impoundment with a surface area of 73.5 acres at an elevation of 1,161 feet NGVD 29; (4) an 18-foot-long, 18-foot-wide concrete and masonry powerhouse with a single turbine-generator unit with an authorized installed capacity of 250 kilowatts; (5) a 100-kilovolt-amperes step-up transformer; (6) a 100-foot-long, 12.5-kilovolt transmission line; and (7) appurtenant facilities.

The current license requires KEI Power to operate the project in a run-of-river mode, wherein discharge flow is equal to inflow, for the protection of water quality and aquatic resources in the North Branch of the Dead River. The project has an average annual general of 728 megawatt-hours. The current license also requires KEI Power to maintain year-round stable impoundment levels within 1-foot of full pond elevation of 1,161 NGVD.

The current license requires the implementation of a May 13, 1999 recreation plan that includes: (1) four parking spaces at the powerhouse; (2) three parking spaces near the abandoned mill foundation south of the powerhouse; (3) a canoe portage around the west side of Eustis dam; and (4) signs at the powerhouse and at locations visible to boaters upstream of the dam.

KEI Power is not proposing any changes to project facilities or operation.

o. Copies of the application may be viewed on the Commission's website at <https://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 (P-11132). For assistance, contact FERC Online Support at FEROnlineSupport@ferc.gov or call tollfree, (866) 208-3676 or (202) 502-8659 (TTY).

You may also register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. 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.

q. Procedural schedule and final amendments: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	January 2025.
Request Additional Information ...	January 2025.
Issue Scoping Document 1 for comments.	April 2025.
Issue Acceptance Letter	May 2025.
Request Additional Information (if necessary).	May 2025.
Issue Scoping Document 2 (if necessary).	June 2025.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 6, 2024.

Carlos D. Clay,
Acting Deputy Secretary.
[FR Doc. 2024–29285 Filed 12–11–24; 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: CP25–27–000.
Applicants: Greylock Pipeline, LLC, Oak Midstream, LLC.
Description: Greylock Pipeline, LLC et al. submit Abbreviated Application for Abandonment of the Limited Jurisdiction Certificate granted on 11/29/2012 et al.
Filed Date: 12/4/24.
Accession Number: 20241204–5238.
Comment Date: 5 p.m. ET 12/26/24.
Docket Numbers: PR25–22–000.
Applicants: Public Service Company of Colorado.
Description: 284.123(g) Rate Filing: Statement of Rates 11–05–2024 to be effective 12/31/9998.
Filed Date: 12/5/24.

Accession Number: 20241205–5095.
Comment Date: 5 p.m. ET 12/26/24.
284.123(g) Protest: 5 p.m. ET 2/3/25.
Docket Numbers: RP25–270–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Compliance filing: Penalty Revenue Crediting Report 2024 to be effective N/A.
Filed Date: 12/5/24.
Accession Number: 20241205–5141.
Comment Date: 5 p.m. ET 12/17/24.
Docket Numbers: RP25–271–000.
Applicants: Gulf Shore Energy Partners, LP.
Description: 4(d) Rate Filing: Gulf Shore Negotiated Rate Filing to be effective 12/5/2024.
Filed Date: 12/5/24.
Accession Number: 20241205–5184.
Comment Date: 5 p.m. ET 12/17/24.
Docket Numbers: RP25–272–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: 4(d) Rate Filing: Quarterly Fuel Adjustment Filing to be effective 1/1/2025.
Filed Date: 12/6/24.
Accession Number: 20241206–5033.
Comment Date: 5 p.m. ET 12/18/24.
Docket Numbers: RP25–273–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: 4(d) Rate Filing: Rate Schedule GSS LSS Tracker Filing Effective 12/1/24 to be effective 12/1/2024.
Filed Date: 12/6/24.
Accession Number: 20241206–5036.
Comment Date: 5 p.m. ET 12/18/24.
Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission’s Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings
Docket Numbers: RP25–239–001.
Applicants: Mojave Pipeline Company, L.L.C.
Description: Tariff Amendment: Amendment to Annual FL&U Filing to be effective 1/1/2025.
Filed Date: 12/6/24.
Accession Number: 20241206–5002.
Comment Date: 5 p.m. ET 12/13/24.
Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission’s Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.
The filings are accessible in the Commission’s eLibrary system ([https://](https://elibrary.ferc.gov/idmws/search/fercgensearch.asp)

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: <https://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: December 6, 2024.

Carlos D. Clay,
Acting Deputy Secretary.
[FR Doc. 2024–29280 Filed 12–11–24; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ25–2–000]

City of Colton, California; Notice of Filing

Take notice that on November 25, 2024, City of Colton, California submits tariff filing per 35.28(e): City of Colton 2025 TRBAA and ETC Update to be effective 1/1/2025.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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 (<https://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.

Comment Date: 5:00 p.m. Eastern Time on December 27, 2024.

Dated: December 6, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024-29283 Filed 12-11-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ25-3-000]

City of Banning, California; Notice of Filing

Take notice that on December 4, 2024, City of Banning, California submits tariff filing per 35.28(e): City of Banning 2025 TRBAA/ETC Update to be effective 1/1/2025.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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.

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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.

Comment Date: 5:00 p.m. Eastern Time on December 26, 2024.

Dated: December 6, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024-29284 Filed 12-11-24; 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 rate filings:

Docket Numbers: ER15-2013-015; ER12-2510-012; ER15-2014-009; ER10-2435-022; ER10-2440-014; ER12-2512-012; ER19-481-005; ER18-2252-004; ER15-2022-008; ER15-2026-008.

Applicants: Susquehanna Nuclear, LLC, Montour, LLC, MC Project Company LLC, LMBE Project Company LLC, H.A. Wagner LLC, Dartmouth Power Associates Limited Partnership, Camden Plant Holdings, L.L.C., Brunner Island, LLC, Brandon Shores LLC, Talen Energy Marketing, LLC.

Description: Response to 11/05/2024, Updated Market Power Analysis of Talen Energy Marketing, LLC et al.

Filed Date: 12/5/24.

Accession Number: 20241205-5203.

Comment Date: 5 p.m. ET 12/26/24.

Docket Numbers: ER24-442-000.

Applicants: Innovative Solar 42, LLC.

Description: Supplement to 11/20/2023, Notice of Non-Material Change in Status and Revised Market-Based Rate of Innovative Solar 42, LLC.

Filed Date: 12/4/24.

Accession Number: 20241204-5282.

Comment Date: 5 p.m. ET 12/26/24.

Docket Numbers: ER25-18-001.

Applicants: AEP Indiana Michigan Transmission Company, Inc.

Description: Tariff Amendment: IMTCo-Pioneer (Greentown) O&M Agreement Amend Pending to be effective 11/22/2024.

Filed Date: 12/6/24.

Accession Number: 20241206-5061.

Comment Date: 5 p.m. ET 12/27/24.

Docket Numbers: ER25-72-001.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: Tariff Amendment: American Transmission Systems, Incorporated submits tariff filing per 35.17(b): ATSI submits Revised IA—SA No. 7218 to be effective 12/10/2024.

Filed Date: 12/6/24.

Accession Number: 20241206-5029.

Comment Date: 5 p.m. ET 12/27/24.

Docket Numbers: ER25-665-000.

Applicants: Southern California Edison Company.

Description: 205(d) Rate Filing: 1st Amendment IFA & DSA, City of Moreno Valley to be effective 12/7/2024.

Filed Date: 12/6/24.

Accession Number: 20241206–5082.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–666–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 16 to be effective 2/5/2025.
Filed Date: 12/6/24.
Accession Number: 20241206–5092.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–667–000.
Applicants: Pacific Gas and Electric Company.
Description: 205(d) Rate Filing: TO: Transmission Access Charge Balancing Account Adjustment (TACBAA) 2025 to be effective 3/1/2025.
Filed Date: 12/6/24.
Accession Number: 20241206–5111.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–668–000.
Applicants: Wheatridge East Wind, LLC.
Description: 205(d) Rate Filing: Wheatridge East Wind, LLC Application for Market-Based Rate Authorization to be effective 2/5/2025.
Filed Date: 12/6/24.
Accession Number: 20241206–5127.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–669–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company, Southern Power Company.
Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Ministerial Amendment of Southern's Tariff Vol. No. 4 to be effective 12/31/9998.
Filed Date: 12/6/24.
Accession Number: 20241206–5136.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–670–000.
Applicants: Rutherford Farm, LLC.
Description: 205(d) Rate Filing: Amendment of Rutherford Farm MBR Tariff to be effective 12/31/9998.
Filed Date: 12/6/24.
Accession Number: 20241206–5138.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–671–000.
Applicants: SP Butler Solar, LLC.
Description: 205(d) Rate Filing: Amendment of SP Butler Solar MBR Tariff to be effective 12/31/9998.
Filed Date: 12/6/24.
Accession Number: 20241206–5145.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–672–000.
Applicants: PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: Original GIA, Service Agreement No. 7425 to be effective 11/6/2024.
Filed Date: 12/6/24.

Accession Number: 20241206–5147.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–673–000.
Applicants: SP Decatur Parkway Solar, LLC.
Description: 205(d) Rate Filing: Amendment of SP Decatur Parkway Solar MBR Tariff to be effective 12/31/9998.
Filed Date: 12/6/24.
Accession Number: 20241206–5148.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–674–000.
Applicants: SP Pawpaw Solar, LLC.
Description: 205(d) Rate Filing: Amendment of SP Pawpaw MBR Tariff to be effective 12/31/9998.
Filed Date: 12/6/24.
Accession Number: 20241206–5149.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–675–000.
Applicants: SP Sandhills Solar, LLC.
Description: 205(d) Rate Filing: Amendment of SP Sandhills MBR Tariff to be effective 12/31/9998.
Filed Date: 12/6/24.
Accession Number: 20241206–5150.
Comment Date: 5 p.m. ET 12/27/24.
Docket Numbers: ER25–676–000.
Applicants: New York Independent System Operator, Inc., Power Authority of the State of New York.
Description: 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYPA 205: Proposed Revisions re: Propel NY Project Cost Recovery to be effective 2/4/2025.
Filed Date: 12/6/24.
Accession Number: 20241206–5155.
Comment Date: 5 p.m. ET 12/27/24.
 The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.
 Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.
 eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <https://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: December 6, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29279 Filed 12–11–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0223; FRL–12433–01–OCSPP]

Chlorpyrifos; Final Cancellation Order for Certain Pesticide Registrations and Amendment of Certain Pesticide Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) hereby announces its final cancellation order for the cancellations and amendments to terminate uses voluntarily requested by the registrants and accepted by the Agency, of the chlorpyrifos products listed in Tables 1 and 2 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This final cancellation order follows a notice in the **Federal Register** of July 15, 2024, that announced EPA's receipt of and sought comments on requests from the registrants in Table 3 of Unit II to voluntarily cancel or amend these product registrations. In the July 15, 2024, notice, EPA indicated that it would issue a final cancellation order implementing the requests, unless the Agency received substantive comments within the comment period that would merit further review of these requests, or unless the registrants withdrew their requests. The Agency received one comment on the notice, which is summarized in Unit III.B. The registrants did not withdraw their requests for these voluntary cancellations and amendments. Accordingly, EPA hereby grants the requested cancellations and amendments to terminate uses as shown in this cancellation order. Any

distribution, sale, or use of existing stocks of the products listed in Table 1 and Table 2 of Unit II are subject to the existing stocks provisions in this cancellation order and permitted only in accordance with the terms of this order.

DATES: The cancellations and amendments are effective December 12, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0223, is available at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about

dockets generally, are available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0700; email address: OPPChlorpyrifosInquiries@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical

industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

II. What action is the Agency taking?

This document announces the cancellations and amendments through termination of certain uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 and Table 2 of this Unit.

TABLE 1—CHLORPYRIFOS REGISTRATIONS AMENDED TO TERMINATE USES

Registration No.	Product name	Company	Terminated uses
19713–505	Drexel Chlorpyrifos 15G	Drexel	Food uses: Asparagus (except MI), citrus orchard floors (except in AL, FL, GA, NC, SC, TX), Cole crop (Brassica) leafy vegetables, radish, rutabaga, turnip, Bok choy, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, Chinese broccoli, Chinese cabbage, collards, kale, and kohlrabi; corn (field, sweet, corn grown for seed), onions (dry bulb), peanuts, sorghum (grain sorghum—milo), soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflower, sweet potato.
19713–520	Drexel Chlorpyrifos 4E–AG	Drexel	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (except MI), citrus fruits and citrus orchard floors (except in AL, FL, GA, NC, SC, TX), cranberries, corn (field, sweet, corn grown for seed), cotton (except for AL, FL, GA, NC, SC, VA), figs, grapes, mint (peppermint, spearmint), onions (dry bulb), peanuts, sorghum, soybeans (except for AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberries (except OR), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflowers, sweet potatoes, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), plums, prunes, pears, tree nuts and orchard floor (almonds, filberts, pecans, walnuts), vegetables (Brassica (Cole) leafy vegetables), radish, rutabaga, turnip, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, cavolo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens, legume vegetables (succulent or dried; except soybeans), adzuki beans, asparagus bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, Chinese long bean, cowpea, Crowder pea, dwarf pea, edible pod pea, English pea, fava bean, field bean, field pea, garbanzo bean, garden pea, grain lupin, green pea, guar, hyacinth pea, jack bean, lima bean (dry and green), kidney bean, lablab bean, lentil, moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, runner bean, southern pea, sugar snap pea, sweet lupin, sword bean, tepary bean, urd bean, wax bean, white lupin, white sweet lupin, yard long bean, and wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).

TABLE 1—CHLORPYRIFOS REGISTRATIONS AMENDED TO TERMINATE USES—Continued

Registration No.	Product name	Company	Terminated uses
19713–521	Drexel Chlorpyrifos 15GR	Drexel	Food uses: Asparagus (MI only), citrus orchard floor (except in AL, FL, GA, NC, SC, TX), Cole crop (Brassica) leafy vegetables, radish, rutabaga, turnip, Bok choy, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, Chinese broccoli, Chinese cabbage, collards, kale and kohlrabi; corn (field, sweet, corn grown for seed), onions (dry bulb), peanuts, sorghum (grain sorghum—milo), soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflowers, sweet potato.
19713–573	Drexel Chlorpyrifos Technical	Drexel	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (MI only), banana, blueberry, caneberry, cherimoya, citrus fruits (except in AL, FL, GA, NC, SC, TX), corn, cotton (except in AL, FL, GA, NC, SC, VA), cranberries, cucumber, date, feijoa, figs, grapes, kiwifruit, leek, legume vegetables (except soybean), mint, onions (dry bulb), pea, peanuts, pepper, pumpkin, sorghum, soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sunflowers, sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sugarcane, strawberries (except OR), sweet potato, tree fruit (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), pears, cherries (except tart cherries in MI), plums/prunes, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), and nectarines), tree nuts (almonds, filberts, pecans, and walnuts), vegetables (cauliflower, broccoli, Brussels sprouts, cabbage, collards, kale, kohlrabi, turnips, radishes, and rutabagas), and wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).
19713–599	Drexel Chlorpyrifos 4E–AG2	Drexel	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (except in MI), citrus fruits and orchard floors (except in AL, FL, GA, NC, SC, TX), cranberries, corn (field, sweet, and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), figs, grapes, mint (peppermint, spearmint), onions (dry bulb), peanuts, sorghum, soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberries (except in OR), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflowers, sweet potatoes, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except for tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), pears, plums, prunes); tree nuts and orchard floors (almonds, filberts, walnuts, pecans); vegetables (Brassica (Cole) leafy vegetables), radish, rutabaga, turnip, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, cavolo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens; legume vegetables (succulent and dried, except soybean): adzuki beans, asparagus bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, Chinese long bean, cowpea, Crowder pea, dwarf pea, edible pod pea, English pea, fava bean, field bean, field pea, garbanzo bean, garden pea, grain lupin, green pea, guar, hyacinth pea, jack bean, lima bean (dry and green), kidney bean, lablab bean, lentil, moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, runner bean, southern pea, sugar snap pea, sweet lupin, sword bean, tepary bean, urd bean, wax bean, white lupin, white sweet lupin, yard long bean; wheat except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).

TABLE 1—CHLORPYRIFOS REGISTRATIONS AMENDED TO TERMINATE USES—Continued

Registration No.	Product name	Company	Terminated uses
19713–671	Drexel Lambda Fos Insecticide	Drexel	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), Brussels sprout, corn (field, sweet, and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), sorghum (grain sorghum—milo), soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sunflowers, tree fruits (apples [except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV], cherries (except for tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), pears, plums, prunes); tree nuts (almonds, filberts, walnuts, pecans); wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).
34704–857	Warhawk	Loveland	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (except in MI), citrus fruits and orchard floors (except in except in AL, FL, GA, NC, SC, TX), Brassica (Cole) crop leafy vegetables, radish, rutabaga, turnip, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, cavolo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens; corn (field, sweet, and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), cranberry, fig, grape; legume vegetables (succulent or dried, except soybeans), Adzuki bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, cowpea, crowder pea, English pea, field bean, field pea, garden pea, grain lupin, green pea, guar, kidney bean, lablab bean, lentil, lima bean (dry and green), moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, southern pea, sweet lupin, tepary bean, urd bean, white lupin, white sweet lupin; mint (peppermint, spearmint), onion (dry bulb), peanut, sorghum (grain sorghum—milo), soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberry (except in OR), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflower, sweet potato, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except for tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), pears, plums, prunes); tree nuts and orchard floor (almonds, filberts, walnuts, pecans); wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).

TABLE 1—CHLORPYRIFOS REGISTRATIONS AMENDED TO TERMINATE USES—Continued

Registration No.	Product name	Company	Terminated uses
34704–1077	Warhawk Clearform	Loveland	Food uses: Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), asparagus (except in MI), citrus fruits and orchard floors (except in AL, FL, GA, NC, SC, TX), Brassica (Cole) leafy vegetables, radish, rutabaga, turnip, broccoli, broccoli Raab, Brussels sprout, cabbage, cauliflower, cavolo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens; corn (field, sweet, and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), cranberry, fig, grape, legume vegetables (succulent or dried, except soybeans), Adzuki bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, cowpea, crowder pea, English pea, field bean, field pea, garden pea, grain lupin, green pea, guar, lima bean (dry and green), kidney bean, lablab bean, lentil, moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, southern pea, sweet lupin, tepary bean, urd bean, white lupin, white sweet lupin; mint (peppermint, spearmint), onion (dry bulb), peanut, sorghum (grain sorghum—milo), soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberry (except in OR), sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflower, sweet potato, tree fruits (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except for tart cherries in MI), nectarines, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV), pears, plums, prunes); tree nuts and orchard floor (almonds, filberts, walnuts, pecans), wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).
34704–1086	Match-Up Insecticide	Loveland	Food uses: Citrus orchard floors (except in AL, FL, GA, NC, SC, TX), field corn and sweet corn (grain, silage and corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA); legume vegetables (succulent or dried, except soybeans), Adzuki bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, cowpea, crowder pea, English pea, field bean, field pea, garden pea, grain lupin, green pea, guar, lima bean (dry and green), kidney bean, lablab bean, lentil, moth bean, navy bean, mung bean, pea, pigeon pea, pinto bean, rice bean, southern pea, sweet lupin, tepary bean, urd bean, white lupin, white sweet lupin; peanut, soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY).

As noted in Table 1, several food uses are being terminated, except in certain specified states; however, some of the uses identified in the table are not registered in the states excluded from termination. The inclusion of a state specified in Table 1 does not mean that the product is registered for use in the listed states; registration of those uses in additional states must be accomplished through the FIFRA section 3 registration process. Specifically, use on apples is

being terminated, except in Idaho, Oregon, and Washington, among other states, on EPA Reg. Nos. 19713–520, 19713–599, 19713–671, 34704–857, and 34704–1077; however, some of the apple uses on those registrations are only permitted in states east of the Rockies. For those apple uses that are currently not permitted in Idaho, Oregon, and Washington, terminating use on apples in those states has no effect. Similarly, use on wheat is being

terminated, except in Missouri (spring and winter wheat) or Iowa (winter wheat), on EPA Reg. Nos. 19713–520, 19713–599, 19713–671, 34704–857, and 34704–1077. But because these products are not registered for use on wheat in those states, that termination has no effect. EPA is terminating uses that are registered, except for the uses that are retained where those uses are currently registered.

TABLE 2—CHLORPYRIFOS PRODUCT CANCELLATIONS

EPA registration No.	Product name	Company	Active ingredients
19713–518	Drexel Chlorpyrifos Concentrate	Drexel	Chlorpyrifos.
19713–527	Drexel CHLOR-PY-REX Chlorpyrifos Insecticide	Drexel	Chlorpyrifos.
19713–575	Drexel Chlorpyrifos 99% Technical	Drexel	Chlorpyrifos.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION OR TERMINATION OF CHLORPYRIFOS USES

EPA company No.	Company name and address
19713	Drexel Chemical Company Agent name: Lewis and Harrison, 2461 South Clark Street Suite 710, Arlington, VA 22202.
34704	Loveland Products, Inc. (LPI) 3005 Rocky Mountain Ave, Loveland, CO 80538.

III. Public Comments

A. Brief History

EPA issued a rule in the **Federal Register** on August 30, 2021 (86 FR 48315) (FRL–5993–04–OCSPP) revoking chlorpyrifos tolerances on the grounds that they were not safe (the “Final Rule”). Once those tolerances expired on February 28, 2022, use of pesticide products containing chlorpyrifos on food or feed crops would result in adulterated food, which could not be sold in interstate commerce. After EPA alerted registrants of chlorpyrifos products of the lack of tolerances and the options for their products, several registrants submitted requests to voluntarily cancel their registered chlorpyrifos products or amend their chlorpyrifos pesticide products to remove food uses.

The registrants identified in Table 3 of Unit II, among others, submitted such requests. Notice of EPA’s receipt of these requests was published for comment in the **Federal Register** on July 15, 2024 (89 FR 57401) (FRL–12081–01–OCSPP). The registrants waived the 180-day comment period for these voluntary requests, EPA provided a 30-day comment period on the proposed requests, and the comment period closed on August 14, 2024.

B. Summary of Comments Received

During the public comment period, EPA received one comment in response to the notice that published in the **Federal Register** of July 15, 2024. The comment can be found in the docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0223, available at <https://www.regulations.gov> and is briefly summarized here.

The comment did not specify the products listed in Table 1 or Table 2 of Unit II but was supportive of the cancellation of the pesticide. The comment stated that the proposed provisions for using existing stocks for food uses until June 30, 2025, would subject workers, bystanders, and consumers to health risks, and were not consistent with FIFRA.

C. EPA Response to Comments

This cancellation action is responsive to registrants’ requests to cancel specific products and specific uses. In response to the commenter, under FIFRA section 6(f), registrants may, at any time, seek to cancel their products or seek to amend their registrations to terminate specific uses. Under that provision of the statute, EPA provides an opportunity for public comment and then acts on the request. Cancellation of other products or uses that are not requested by the registrants occurs under other provisions of FIFRA, which is beyond the scope of this action and EPA’s authority in FIFRA section 6(f).

EPA determined that the existing stocks provisions are not inconsistent with the purposes of FIFRA, given the limited amount of existing stocks and the limited time allowed for use of the existing stocks outlined in Unit VI. EPA determined that the comment did not merit denial of the registrants’ requests for cancellation and amendment.

IV. The Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested amendments to terminate uses and cancellations of the registrations identified in Table 1 and Table 2 of Unit II, respectively. Accordingly, the Agency hereby orders that the uses identified for the products listed in Table 1 of Unit II are terminated and the product registrations identified in Table 2 of Unit II are cancelled.

The cancellations and amendments addressed in this Order are effective December 12, 2024. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the Agency’s authority for taking these actions?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more registered uses.

FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide a public comment period. EPA has provided the requisite notice and public comment period. One comment was submitted to which EPA has responded above.

VI. Provisions for Disposition of Existing Stocks

Existing stocks for the products identified in this document are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA has determined that the following existing stocks provisions are not inconsistent with the purposes of FIFRA given the limited amount of existing stocks and the limited time allowed for use of the existing stocks outlined below.

A. Products Listed in Table 1 of Unit II

- Sale and distribution of existing stocks of Drexel Chlorpyrifos Technical will not be permitted after the final cancellation order is issued.
- Sale and distribution of existing stocks is permitted until April 30, 2025, for the following products:
 - Drexel Chlorpyrifos 15G (EPA Reg. No. 19713–505).
 - Drexel Chlorpyrifos 4E–AG (EPA Reg. No. 19713–520).
 - Drexel Chlorpyrifos 15GR (EPA Reg. No. 19713–521).
 - Drexel Chlorpyrifos 4E–AG2 (EPA Reg. No. 19713–599).
 - Drexel Lambdafos Insecticide (EPA Reg. No. 19713–671).
 - Warhawk (EPA Reg. No. 34704–857).
 - Warhawk Clearform (EPA Reg. No. 34704–1077).
 - Match-Up Insecticide (EPA Reg. No. 34704–1086).
 - Use of existing stocks of the following products on food, food processing sites, and food manufacturing sites must be consistent with the product labeling on those products:
 - Drexel Chlorpyrifos 15G (EPA Reg. No. 19713–505).

- Drexel Chlorpyrifos 4E-AG (EPA Reg. No. 19713-520).
- Drexel Chlorpyrifos 15GR (EPA Reg. No. 19713-521).
- Drexel Chlorpyrifos 4E-AG2 (EPA Reg. No. 19713-599).
- Drexel Lambdaphos Insecticide (EPA Reg. No. 19713-671).
- Warhawk (EPA Reg. No. 34704-857).
- Warhawk Clearform (EPA Reg. No. 34704-1077).
- Match-Up Insecticide (EPA Reg. No. 34704-1086).

Such use is permitted until June 30, 2025. Use of existing stocks of the products identified in this paragraph for non-food purposes is permitted until existing stocks are exhausted, as long as such use is in accordance with the labeling.

After these dates, sale and distribution of existing stocks will be prohibited, except for export consistent with FIFRA section 17 (7 U.S.C. 136o), or for proper disposal in accordance with state regulations.

B. Products Listed in Table 2 of Unit II

Sale and distribution of existing stocks of Drexel CHLOR-PY-REX Chlorpyrifos Insecticide (EPA Reg. No. 19713-527) and Drexel Chlorpyrifos 99% Technical (EPA Reg. No. 19713-575) will not be permitted after the final cancellation order is issued.

Drexel Chlorpyrifos Concentrate (EPA Reg. No. 19713-518) bears labeling only for non-food use. Therefore, EPA is allowing sale and distribution of existing stocks of those products for one year after publication of the cancellation order. Thereafter, sale and distribution of existing stocks of the product will be prohibited, except for export consistent with FIFRA section 17 (7 U.S.C. 136o), or for proper disposal in accordance with state regulations.

Use of existing stocks is permitted until such stocks are exhausted, provided that use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 9, 2024.

Jean Anne Overstreet,

*Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.*

[FR Doc. 2024-29272 Filed 12-11-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12437-01-OW]

Notice of Public Meeting of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) announces a public meeting of the Environmental Financial Advisory Board (EFAB). The meeting will be shared in real-time via webcast and public comments may be provided in writing in advance or virtually via webcast. Please see **SUPPLEMENTARY INFORMATION** for further details. The purpose of the meeting will be for the EFAB to discuss and vote on the draft deliverable on the Water Affordability charge. The meeting will be conducted virtually via webcast.

DATES: The meeting will be held on Wednesday, January 8, 2025, at 3 p.m. to 4:30 p.m. eastern standard time.

ADDRESSES: Information to access the webcast will be provided upon registration in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants information about the meeting may contact Tara Johnson via telephone/voicemail at (202) 809-7368 or email to efab@epa.gov. General information concerning the EFAB is available at www.epa.gov/waterfinancecenter/efab.

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, to provide advice and recommendations to EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within EPA's Office of Water. In October 2023, the EFAB accepted a charge from EPA to provide recommendations on how the agency could support communities in their affordability efforts. Information about the workgroup charge and members can be found at <https://www.epa.gov/waterfinancecenter/efab#workgroup>.

Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a public meeting for the following purposes: Discuss and vote on the draft deliverable on the Water Affordability charge.

Registration for the Meeting: To register for the meeting, please visit

www.epa.gov/waterfinancecenter/efab#meeting. Interested persons who wish to attend the meeting must register by January 7, 2025, to attend via webcast. Pre-registration is strongly encouraged. In the event the meeting cannot be held, an announcement will be made on the EFAB website at www.epa.gov/waterfinancecenter/efab and all registered attendees will be notified.

Availability of Meeting Materials: Meeting materials, including the meeting agenda and briefing materials, will be available on EPA's website at www.epa.gov/waterfinancecenter/efab.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to EPA.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to three minutes each. Persons interested in providing oral statements at the January 2025 meeting should register in advance and provide notification, as noted in the registration confirmation, by January 3, 2025, to be placed on the list of registered speakers.

Written Statements: Written statements should be received by January 3, 2025, so that the information can be made available to the EFAB for its consideration prior to the meeting. Written statements should be sent via email to efab@epa.gov. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the meeting and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the meeting to allow as

much time as possible to process your request.

Andrew D. Sawyers,
Director, Office of Wastewater Management,
Office of Water.

[FR Doc. 2024–29240 Filed 12–11–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6464.1–04–R10]

Modification of the NPDES General Permit for Concentrated Animal Feeding Operations (CAFOs) Located in Idaho Excluding Tribal Lands (IDG010000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Modification of NPDES general permit.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, is modifying the National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) in Idaho excluding Tribal lands (IDG010000).

DATES: The issuance date of this modification is December 12, 2024. The modified general permit will be effective February 1, 2025. The general permit will expire on June 14, 2025.

ADDRESSES: Copies of the modified general permit, fact sheet addendums and response to comments document are available online: <https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho>.

FOR FURTHER INFORMATION CONTACT: Requests may be made to Audrey Washington at (206) 553–0523 or to Nicholas Peak at (208) 378–5765. Requests may also be electronically mailed to: washington.audrey@epa.gov or peak.nicholas@epa.gov.

SUPPLEMENTARY INFORMATION: The modification is a major modification pursuant to 40 CFR 122.62(a)(15). The EPA Region 10 reissued the NPDES General Permit for CAFOs in Idaho (IDG010000) on May 13, 2020; the general permit became effective on June 15, 2020 (85 FR 28624).

Subsequently, a Petition for Review was filed on September 22, 2020, in the Ninth Circuit Court of Appeals, challenging the general permit on the basis that it did not contain representative effluent monitoring to ensure compliance with all applicable effluent limitations in violation of the Clean Water Act and implementing

regulations (*Food & Water Watch et al. v. U.S. Environmental Protection Agency* (No. 20–71554)). The Court granted the petition holding that the general permit failed to include monitoring to ensure compliance with the discharge prohibitions in the general permit. The general permit remained in effect while the EPA worked to address the issues. The modified general permit includes new and revised conditions to address the Ninth Circuit Court of Appeal’s Order and Opinion filed on December 16, 2021 (*Food & Water Watch et al. v. U.S. Environmental Protection Agency* (No. 20–71554)). The modified general permit will transfer to the State of Idaho as part of the phased implementation of Idaho’s administration of the NPDES program. The EPA will remain the permitting authority for CAFO facilities located in Indian Country in Idaho.

The EPA opened two public comment periods on proposed modifications to the existing general permit, one on July 18, 2023 (88 FR 45900) and one on June 6, 2024 (89 FR 48428). The EPA received comments from four organizations/entities on the 2023 permit modification, and from five organizations/entities on the 2024 permit modification. A Response to Comments document was prepared to respond to public comments received and explain any changes made to the draft modified general permit to produce a final modified general permit.

Other Legal Requirements

This permit modification action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. Compliance with Endangered Species Act, Essential Fish Habitat, Paperwork Reduction Act, and other requirements are discussed in the original 2019 Fact Sheet to the general permit.

Appeal of Permit

Any interested person may appeal the final permit action on or before April 11, 2025 (*i.e.*, 120 days from the issuance date of this general permit) in the Federal Court of Appeals in accordance with section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1).

Mathew Martinson,

Director, Water Division, Region 10.

[FR Doc. 2024–29241 Filed 12–11–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 24–1131; FR ID 264852]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Federal Lifeline Program

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the “Bureau”) gives notice of the suspension of Issa Asad from the federal Lifeline program (Lifeline Program) and all federal universal service support mechanisms. Additionally, the Bureau gives notice that debarment proceedings are commencing against Mr. Asad. Mr. Asad, or any person who has an existing contract with or intends to contract with Mr. Asad to provide or receive services in matters arising out of activities associated with or related to the Lifeline Program, may respond by filing an opposition request, supported by documentation.

DATES: Opposition requests must be submitted within 30 days of receiving the suspension letter or by January 13, 2025, whichever comes first. The Bureau will decide on any opposition request within 90 days.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, 45 L Street, NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christina Thomas, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, 45 L Street, NE, Washington, DC 20554. Christina Thomas may be contacted by phone at (202) 418–1879 or email at Christina.Thomas@fcc.gov. If Ms. Thomas is unavailable, you may contact Mr. Christopher J. Sova, Acting Chief, Investigations and Hearings Division, by telephone at (202) 418–1868 or by email at Christopher.Sova@fcc.gov.

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspensions ensure that suspended parties cannot continue to benefit from the Lifeline Program pending resolution of the debarment process. Attached is the public redacted version of the suspension letter, DA 24–1131, which was mailed to Mr. Asad and released on December 12, 2024. The complete text of the notice of suspension and initiation of debarment proceedings is available on the FCC’s website at

<https://docs.fcc.gov/public/attachments/DA-24-1131A1.pdf>.

Federal Communications Commission.

Christopher Sovo,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

November 8, 2024

DA 24-1131

VIA E-MAIL

Mr. Issa Asad, Chief Executive Officer, Q Link Wireless LLC, 499 E Sheridan St., Ste 400, Dania, FL 33004, issa@quadrantholdings.com

VIA E-MAIL and VIA HAND DELIVERY

John T. Nakahata, Esq., HWG LLP, 1919 M Street NW, Eighth Floor, Washington, DC 20036, JNakahata@hwglaw.com

Samuel L. Feder, Esq., Jenner & Block LLP, 1099 New York Avenue NW, Suite 900, Washington, DC 20001, SFeder@jenner.com

Re: Notice of suspension and initiation of debarment proceeding File No. EB-IHD-24-00037459

Dear Messrs. Asad, Nakahata, and Feder:

The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) has received notice of your conviction for conspiring to commit offenses against the United States, specifically, (a) wire fraud, (b) theft of government funds, and (c) defrauding the United States, in violation of 18 U.S.C. 1343, 641, and 371, respectively, all in connection with fraudulent claims against the federal Lifeline program (Lifeline program).¹ The conspiracy involved submitting and causing to be submitted “false and fraudulent claims to the FCC Lifeline program for [Q Link] customers who were not using their cellphones according to the FCC usage rules.”² Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the Lifeline program and all federal universal service support mechanisms.³

Effective immediately upon receipt of this letter, you are prohibited from participating in or receiving any benefit associated with the Lifeline program as well as any other program funded by federal universal service support mechanisms.

The Bureau hereby is also commencing a proceeding to debar you from future participation in all federal universal support mechanisms.⁴ The Commission is required

by its rules to debar Q Link “absent extraordinary circumstances, notwithstanding any criminal process to which you are subject.”⁵

I. Notice of Suspension

Any person that has “defrauded the government or engaged in similar acts through activities associated with or related to the [Lifeline program]” may be prohibited from receiving the benefits associated with that program.⁶ The Lifeline program is a federal government program that provides support to eligible telecommunications carriers (ETCs) that in turn offer discounts on telephone and broadband service for eligible low-income consumers.⁷ An ETC may receive reimbursement in connection with the Lifeline program only if it certifies as part of its reimbursement request that it is in compliance with the Lifeline rules.⁸

Since 2012, you served as the Chief Executive Officer of Q Link Wireless LLC (Q Link). On October 15, 2024, and your company, Q Link pleaded guilty to “purposely defraud[ing] two critical federal programs helping individuals and businesses suffering financial hardship, unlawfully taking hundreds of millions of dollars for [your] own use and profit, while obstructing the United States’ ability to help people who . . . needed it.”⁹ Your misleading practices, deceptive call activity, falsified documents and threatening customer service scripts, directed at Q Link customers, coerced them into accepting Lifeline services and agreeing to remain Q Link customers.¹⁰ Although the Lifeline usage rules required Q Link to disenroll and stop seeking reimbursement for customers who had not used their cellphones in a 45-day window (90-day window for 2016), you continued to bill the Lifeline program for Q Link customers that you knew were no longer eligible because they were not using, and in some instances, no longer even had their cellphones.¹¹ From 2013 to 2021,

Commission extended the debarment rules to apply to all federal universal service support mechanisms, including Lifeline. *See Comprehensive Review of the Universal Service Fund Management, Administration, & Oversight*, Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering Section 54.521 of the universal service debarment rules as Section 54.8 and amending subsections (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

⁵ 47 CFR 54.8(b); *Plea Agreement* at 3.

⁶ *Program Management Order*, 22 FCC Rcd at 16387, para. 32. The Commission’s debarment rules define a “person” as “[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.” 47 CFR 54.8(a)(6).

⁷ *See Lifeline Reform Order*, *supra* note 1, 27 FCC Rcd at 6662–67, paras. 11–18; *see also* 47 CFR 54.400–54.422.

⁸ *See* 47 CFR 54.407(d).

⁹ United States Attorney’s Office, Southern District of Florida, Press Release, *Nationwide Telecommunications Provider and its CEO Plead Guilty to Massively Defrauding Federal Government Programs Meant to Aid the Needy*, October 15, 2024, <https://www.justice.gov/usao-sdfl/pr/nationwide-telecommunications-provider-and-its-ceo-plead-guilty-massively-defrauding> (last visited October 22, 2024).

¹⁰ *Proffer*, *supra* note 2, at 2–4.

¹¹ *See generally Proffer*, *supra* note 2.

you personally amassed over \$15,000,000 through your fraudulent Lifeline schemes.¹² Between 2013 and 2019, Q Link received \$618,736,494 from the Lifeline program, 21 percent of which resulted from fraudulent Lifeline claims.¹³

Pursuant to Section 54.8(b) of the Commission’s rules,¹⁴ your conviction requires the Bureau to suspend you from: (a) participating in any activities associated with or related to the Lifeline program, including receiving funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program; and (b) participating in any activities associated with or related to all federal universal service support mechanisms.¹⁵ Your suspension becomes effective upon either your receipt of this letter or publication of the suspension in the **Federal Register**, whichever occurs first.¹⁶

In accordance with the Commission’s suspension and debarment rules, you may contest this suspension or its scope by filing arguments, with any relevant documents, within thirty (30) calendar days of its receipt of this letter or publication of the suspension in the **Federal Register**, whichever occurs first.¹⁷ Such requests, however, will not ordinarily be granted.¹⁸ The Bureau may reverse or limit the scope of a suspension only upon a finding of extraordinary circumstances.¹⁹ The Bureau will decide any request to reverse or modify a suspension within ninety (90) calendar days of its receipt of such request.²⁰

II. Initiation of Debarment Proceedings

In addition to your immediate suspension from all universal service support mechanisms, including the Lifeline program, your conviction is cause for debarment as defined in Section 54.8(c) of the Commission’s rules.²¹ Therefore, pursuant to Section 54.8(b) of the Commission’s rules, your conviction requires the Bureau to commence debarment proceedings against you.²²

¹² *Id.* at 5.

¹³ *Id.* at 6.

¹⁴ 47 CFR 54.8(a)(4); *see Program Management Order*, *supra* note 4, 22 FCC Rcd at 16387, para. 32.

¹⁵ 47 CFR 54.8(a)(1), (d).

¹⁶ *Id.* § 54.8(e)(1).

¹⁷ *Id.* § 54.8(e)(4).

¹⁸ *Id.*

¹⁹ *Id.* § 54.8(f).

²⁰ *Id.* §§ 54.8(e)(5), (f).

²¹ “Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.” *Id.* § 54.8(c). Associated activities “include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms.” *Id.* § 54.8(a)(1).

²² *Id.* § 54.8(b).

¹ Any further reference in this letter to “your conviction” refers to your guilty plea agreement and factual proffer in *United States v. Issa Asad*, Criminal Docket No. 1:24-cr-20363-RAR, *Plea Agreement* (S.D. Fla., filed Oct. 15, 2024) (*Plea Agreement*). *See also Lifeline and Link Up Reform and Modernization*, WC Docket No. 11–42, CC Docket No. 96–45, WC Docket No. 03–109, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order*).

² *United States v. Issa Asad*, Criminal Docket No. 1:24-cr-20363-RAR, Factual Proffer, at 3 (S.D. Fla., filed Oct. 15, 2024) (*Proffer*).

³ 47 CFR 54.8.

⁴ *Id.*; 47 CFR 0.111 (delegating to the Bureau authority to resolve universal service suspension and debarment proceedings). In 2007, the

As with the suspension process, you may contest the proposed debarment or its scope by filing arguments and any relevant documentation within thirty (30) calendar days of receipt of this letter or its publication in the **Federal Register**, whichever occurs first.²³ The Bureau, in the absence of extraordinary circumstances, will notify you of its decision to debar within ninety (90) calendar days of receiving any information it may have filed.²⁴ If the Bureau decides to debar the you, its decision will become effective upon either your receipt of a debarment notice or publication of the decision in the **Federal Register**, whichever occurs first.²⁵

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to all federal universal service support mechanisms, including the Lifeline program for at least three years from the date of debarment.²⁶ The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.²⁷ Pursuant to the Commission's rules, should you choose to contest the scope or length of any such debarment, you must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the **Federal Register** of such debarment, whichever is earlier.²⁸

III. Non-Compliance

In the *2012 Lifeline Order*, the Commission implemented a compliance plan requirement for any carrier that is seeking to become an ETC without offering service, at least in part, over its own facilities.²⁹ In its Lifeline compliance plan, a carrier must describe and adhere to certain protections designed to protect consumers and the Universal Service Fund.³⁰ The Lifeline compliance plan must: (1) outline the measures the carrier will take to comply with program rules, including requirements related to enrollment,

submitting claims for reimbursement, materials related to certifications, and program integrity safeguards, and (2) provide a detailed description of how the carrier offers service, the geographic areas in which it offers service, and a description of the carrier's corporate structure and Lifeline service plan offerings.³¹ Q Link submitted a Lifeline compliance plan to receive forbearance from the statute's facilities requirement, and that Lifeline compliance plan was approved on August 8, 2012.³²

Following an investigation led by the Department of Justice, on October 14, 2024, Q Link pleaded guilty to conspiring to defraud and commit related offenses in connection with a scheme involving the Lifeline program which indicates Q Link has violated and is not in compliance with the terms of its compliance plan. The Commission is also aware [REDACTED]

Corporate operations related to the control of an ETC are material aspects of a Lifeline compliance plan.³³ As such, any change to the control of a non-facilities-based ETC without prior approval from the Wireline Competition Bureau is a violation of the Lifeline compliance plan requirement.³⁴

Please direct any response as follows:

If sent by messenger or hand delivery, or by commercial overnight mail (other than U.S. Postal Service Priority Mail, Priority Mail Express, and Priority Mail), the response must be sent to Marlene H. Dortch, Secretary, Federal Communications Commission, to the attention of *Christopher J. Sova*, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 9050 Junction Drive, Annapolis Junction, MD 20701. Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

If sent by First-Class Mail, Priority Mail Express, or Priority Mail, the response must be sent to *Christopher J. Sova*, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

You must also transmit an electronic copy of the response and all Documents produced with the response via email to *IHDTelecom@fcc.gov*. The electronic copy shall be produced in a format that allows the Commission to access and use it, together

with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data's source. If you have any questions, please contact Christina Thomas at *Christina.Thomas@fcc.gov* or (202) 418-1879.

Sincerely,

Christopher J. Sova
Acting Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Fred Theobald, Universal Service
Administrative Company (via email)
Matthew Menchel, Esq., Kobre & Kim LLP
(via email)
Michael Sherwin, Esq., Kobre & Kim LLP (via email)
Evelyn Sheehan, Esq., Kobre & Kim LLP (via email)

[FR Doc. 2024-29140 Filed 12-11-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 24-1130; FR ID 264820]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Federal Lifeline Program

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of the suspension of Q Link Wireless LLC (Q Link) from the federal Lifeline program (Lifeline Program) and all federal universal service support mechanisms. Additionally, the Bureau gives notice that debarment proceedings are commencing against Q Link. Q Link, or any person who has an existing contract with or intends to contract with Q Link to provide or receive services in matters arising out of activities associated with or related to the Lifeline Program, may respond by filing an opposition request, supported by documentation.

DATES: Opposition requests must be submitted within 30 days of receiving the suspension letter or by January 13, 2025, whichever comes first. The Bureau will decide on any opposition request within 90 days.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christina Thomas, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, 45 L Street NE, Washington, DC 20554. Christina

²³ *Id.* § 54.8(e)(3).

²⁴ *Id.* § 54.8(e)(5).

²⁵ *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. *Id.* § 54.8(f).

²⁶ *Id.* § 54.8(d), (g). We note that under the Plea Agreement Q Link shall not participate, directly or indirectly, in any program administered by the FCC as of the time of sentencing currently scheduled for January 15, 2025. Plea Agreement, *supra* note 1, at para. 8.

²⁷ 47 CFR 54.8(g).

²⁸ *Id.* § 54.8(e)(4).

²⁹ See 47 U.S.C. § 214(e)(1)(a); see also *Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service; Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 03-109, 96-45, and 12-23, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6813, para. 368 (2012) (*2012 Lifeline Order*) (establishing the Lifeline compliance plan requirement as a condition to receiving forbearance from the statute's requirement that ETCs offer service at least in part over their own facilities).

³⁰ *2012 Lifeline Order*, 27 FCC Rcd at 6816, para. 379.

³¹ *Id.*

³² See *Wireline Competition Bureau Approves the Compliance Plans for Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, WC Docket Nos. 09-197 and 11-42, Public Notice, 27 FCC Rcd 9184 (WCB 2012).

³³ See *Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Lifeline Universal Service Support*, WC Docket Nos. 09-197 and 11-42, Public Notice, 29 FCC Rcd 9144, 9145 (WCB 2014).

³⁴ See *id.*

Thomas may be contacted by phone at (202) 418-1879 or email at Christina.Thomas@fcc.gov. If Ms. Thomas is unavailable, you may contact Mr. Christopher J. Sova, Acting Chief, Investigations and Hearings Division, by telephone at (202) 418-1868 or by email at Christopher.Sova@fcc.gov.

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspensions ensure that suspended parties cannot continue to benefit from the Lifeline Program pending resolution of the debarment process. Attached is the public redacted version of the suspension letter, DA 24-1130, which was mailed to Q Link and released on December 12, 2024. The complete text of the notice of suspension and initiation of debarment proceedings is available on the FCC's website at <https://docs.fcc.gov/public/attachments/DA-24-1130A1.pdf>.

Federal Communications Commission.

Christopher Sova,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

November 8, 2024

DA 24-1130

Via Email

Mr. Issa Asad, Chief Executive Officer, Q Link Wireless LLC, 499 E Sheridan St., Ste. 400, Dania, FL 33004, issa@quadrantholdings.com

Via Email and Hand Delivery

John T. Nakahata, Esq., HWG LLP, 1919 M Street NW, Eighth Floor, Washington, DC 20036, JNakahata@hwglaw.com

Samuel L. Feder, Esq., Jenner & Block LLP, 1099 New York Avenue NW, Suite 900, Washington, DC 20001, SFeder@jenner.com

Re: Notice of suspension and initiation of debarment proceeding File No. EB-IHD-24-00037461

Dear Messrs. Asad, Nakahata, and Feder:

The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) has received notice of the conviction of Q Link Wireless, LLC (Q Link or Company) for conspiring to commit offenses against the United States, specifically, (a) wire fraud, (b) theft of government funds, and (c) defrauding the United States, in violation of 18 U.S.C. 1343, 641, and 371, respectively, all in connection with fraudulent claims against the federal Lifeline program (Lifeline program).¹ The

conspiracy involved submitting and causing to be submitted "false and fraudulent claims to the FCC Lifeline program for [Q Link] customers who were not using their cellphones according to the FCC usage rules."² Consequently, pursuant to 47 CFR 54.8(e)(1), this letter constitutes official notice of Q Link's suspension from the Lifeline program and all federal universal service support mechanisms as set forth below.³

Effective immediately upon receipt of this letter, Q Link is prohibited from participating in or receiving any benefit associated with the Lifeline program as well as any other program funded by federal universal service support mechanisms.

The Bureau hereby is also commencing a proceeding to debar Q Link from future participation in all federal universal support mechanisms.⁴ The Commission is required by its rules to debar Q Link "absent extraordinary circumstances," notwithstanding any criminal process to which Q Link is subject.⁵

I. Notice of Suspension

Any corporation that has "defrauded the government or engaged in similar acts through activities associated with or related to the [Lifeline program]" may be prohibited from receiving the benefits associated with that program.⁶ The Lifeline program is a government program that provides support to eligible telecommunications carriers (ETCs) that in turn offer discounts on telephone and broadband service for eligible low-income consumers.⁷ An ETC may receive reimbursement in connection with the Lifeline program only if it certifies as part of its reimbursement request that it is in compliance with the Lifeline rules.⁸

Q Link has participated in the Lifeline program since 2012. On October 15, 2024, Q Link pleaded guilty to "conspiring to defraud and commit offenses against the United States in connection with a years-long

scheme to steal over \$100 million from a celebrated federal program providing discounted phone service to people in need."⁹ Q Link's misleading practices, deceptive call activity, falsified documents and threatening customer service scripts coerced customers into accepting Lifeline services and agreeing to remain its customers.¹⁰ Q Link knew that the Lifeline usage requirements required it to disenroll and stop seeking reimbursement for customers who had not used their cellphones in a 45-day window (90-day window for 2016), yet it continued to bill the Lifeline program for Q Link customers that were no longer eligible because they were not using, and in some instances, no longer even had their cellphones.¹¹ Between 2013 and 2019, Q Link received \$618,736,494 from the Lifeline program.¹² Approximately 21 percent of Q Link's payments during this period were due to its fraudulent scheme.¹³

Pursuant to Section 54.8(b) of the Commission's rules,¹⁴ Q Link's conviction requires the Bureau to suspend it, absent extraordinary circumstances, from: (a) participating in any activities associated with or related to the Lifeline program, including receiving funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program; and (b) participating in any activities associated with or related to all federal universal service support mechanisms.¹⁵ Q Link's suspension becomes effective upon either (i) its receipt of this letter, or (ii) publication of the suspension in the **Federal Register**, whichever occurs first.¹⁶

In accordance with the Commission's suspension and debarment rules, Q Link may contest this suspension or its scope by filing arguments, with any relevant documents, within thirty (30) calendar days of its receipt of this letter or publication of the suspension in the **Federal Register**, whichever occurs first.¹⁷ Such requests, however, will not ordinarily be granted.¹⁸ The Bureau may reverse or further limit the scope of a suspension only upon a finding of extraordinary circumstances.¹⁹ The Bureau will decide any request to reverse or modify a suspension within ninety (90) calendar days of its receipt of such request.²⁰

¹⁰⁹ Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order*).

² *United States v. Q Link Wireless LLC*, Criminal Docket No. 1:24-cr-20363-RAR, Factual Proffer, at 3 (S.D. Fla., filed Oct. 15, 2024) (*Proffer*).

³ 47 CFR 54.8.

⁴ *Id.*; 47 CFR 0.111 (delegating to the Bureau authority to resolve universal service suspension and debarment proceedings). In 2007, the Commission extended the debarment rules to apply to all federal universal service support mechanisms, including Lifeline. See *Comprehensive Review of the Universal Service Fund Management, Administration, & Oversight*, Report and Order, 22 FCC Rcd 16372, 16410-12 (2007) (*Program Management Order*) (renumbering Section 54.521 of the universal service debarment rules as Section 54.8 and amending subsections (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

⁵ 47 C.F.R. § 54.8(b); *Plea Agreement* at 3-4.

⁶ *Program Management Order*, 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized." 47 CFR 54.8(a)(6).

⁷ See *Lifeline Reform Order*, *supra* note 1, 27 FCC Rcd at 6662-67, paras. 11-18; see also 47 CFR 54.400-54.424.

⁸ See 47 CFR 54.407(d).

⁹ United States Attorney's Office, Southern District of Florida, Press Release, *Nationwide Telecommunications Provider and its CEO Plead Guilty to Massively Defrauding Federal Government Programs Meant to Aid the Needy*, October 15, 2024, <https://www.justice.gov/usao-sdfl/pr/nationwide-telecommunications-provider-and-its-ceo-plead-guilty-massively-defrauding> (last visited Oct. 22, 2024).

¹⁰ *Proffer*, *supra* note 2, at 2-5.

¹¹ See generally *Proffer*, *supra* note 2.

¹² *Id.*, at 6.

¹³ *Id.*

¹⁴ 47 CFR 54.8(a)(4); see *Program Management Order*, *supra* note 4, 22 FCC Rcd at 16387, para. 32.

¹⁵ 47 CFR 54.8(a)(1), (d).

¹⁶ *Id.* § 54.8(e)(1).

¹⁷ *Id.* § 54.8(e)(4).

¹⁸ *Id.*

¹⁹ *Id.* § 54.8(f).

²⁰ *Id.* §§ 54.8(e)(5), (f).

¹ Any further reference in this letter to "conviction" refers to Q Link's guilty plea agreement and factual proffer in *United States v. Q Link Wireless LLC*, Criminal Docket No. 1:24-cr-20363-RAR, *Plea Agreement* (S.D. Fla., filed Oct. 15, 2024) (*Plea Agreement*). See also *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-

II. Initiation of Debarment Proceedings

In addition to Q Link's immediate suspension from all universal service support mechanisms as described above, including the Lifeline program, its conviction is cause for debarment as defined in Section 54.8(c) of the Commission's rules.²¹ Therefore, pursuant to Section 54.8(b) of the Commission's rules, Q Link's conviction requires the Bureau to commence debarment proceedings against it.²²

As with the suspension process, Q Link may contest the proposed debarment or its scope by filing arguments and any relevant documentation within thirty (30) calendar days of receipt of this letter or its publication in the **Federal Register**, whichever occurs first.²³ The Bureau, in the absence of extraordinary circumstances, will notify Q Link of its decision to debar within ninety (90) calendar days of receiving any information it may have filed.²⁴ If the Bureau decides to debar the Company, its decision will become effective upon either Q Link's receipt of a debarment notice or publication of the decision in the **Federal Register**, whichever occurs first.²⁵

If and when Q Link's debarment becomes effective, it will be prohibited from participating in activities associated with or related to all federal universal service support mechanisms, including the Lifeline program, for at least three years from the date of debarment.²⁶ The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.²⁷ Pursuant to the Commission's rules, should Q Link choose to contest the scope or length of any such debarment, it must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the **Federal Register** of such debarment, whichever is earlier.²⁸

²¹ "Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism." *Id.* § 54.8(c). Associated activities "include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms." *Id.* § 54.8(a)(1).

²² *Id.* § 54.8(b), (e)(1).

²³ *Id.* § 54.8(e)(3).

²⁴ *Id.* § 54.8(e)(5).

²⁵ *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. *Id.* § 54.8(f).

²⁶ *Id.* § 54.8(d), (g). We note that under the Plea Agreement Q Link shall not participate, directly or indirectly, in any program administered by the FCC as of the time of sentencing currently scheduled for January 15, 2025. Plea Agreement, *supra* note 1, at para. 8.

²⁷ 47 CFR 54.8(g).

²⁸ *Id.* § 54.8(e)(4).

III. Non-Compliance

In the 2012 *Lifeline Order*, the Commission implemented a compliance plan requirement for any carrier that is seeking to become an ETC without offering service, at least in part, over its own facilities.²⁹ In its Lifeline compliance plan, a carrier must describe and adhere to certain protections designed to protect consumers and the Universal Service Fund.³⁰ The Lifeline compliance plan must: (1) outline the measures the carrier will take to comply with program rules, including requirements related to enrollment, submitting claims for reimbursement, materials related to certifications, and program integrity safeguards, and (2) provide a detailed description of how the carrier offers service, the geographic areas in which it offers service, and a description of the carrier's corporate structure and Lifeline service plan offerings.³¹ Q Link submitted a Lifeline compliance plan to receive forbearance from the statute's facilities requirement, and that Lifeline compliance plan was approved on August 8, 2012.³²

Following an investigation led by the Department of Justice, on October 14, 2024, Q Link pleaded guilty to conspiring to defraud and commit related offenses in connection with a scheme involving the Lifeline program. The Commission is also aware that [REDACTED]

Corporate operations related to the control of an ETC are material aspects of a Lifeline compliance plan.³³ As such, any change to the control of a non-facilities-based ETC without prior approval from the Wireline Competition Bureau is a violation of the Lifeline compliance plan requirement.³⁴ Given these concerns and Q Link's recent criminal plea, Q Link is not in compliance with the terms of its approved Lifeline compliance plan.

Please direct any response as follows:

If sent by messenger or hand delivery, or by commercial overnight mail (other than U.S. Postal Service Priority Mail, Priority Mail Express, and Priority Mail), the

²⁹ See 47 U.S.C. § 214(e)(1)(a); see also *Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service; Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11–42, 03–109, 96–45, and 12–23, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6813, para. 368 (2012) (2012 *Lifeline Order*) (establishing the Lifeline compliance plan requirement as a condition to receiving forbearance from the statute's requirement that ETCs offer service at least in part over their own facilities).

³⁰ 2012 *Lifeline Order*, 27 FCC Rcd at 6816, para. 379.

³¹ *Id.*

³² See *Wireline Competition Bureau Approves the Compliance Plans for Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, WC Docket Nos. 09–197 and 11–42, Public Notice, 27 FCC Rcd 9184 (WCB 2012).

³³ See *Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Lifeline Universal Service Support*, WC Docket Nos. 09–197 and 11–42, Public Notice, 29 FCC Rcd 9144, 9145 (WCB 2014).

³⁴ See *id.*

response must be sent to Marlene H. Dortch, Secretary, Federal Communications Commission, to the attention of Christopher J. Sova, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 9050 Junction Drive, Annapolis Junction, MD, 20701. Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD, 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

If sent by First-Class Mail, Priority Mail Express, or Priority Mail, the response must be sent to Christopher J. Sova, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

You must also transmit an electronic copy of the response and all Documents produced with the response via email to IHDTelecom@fcc.gov. The electronic copy shall be produced in a format that allows the Commission to access and use it, together with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data's source. If you have any questions, please contact Christina Thomas at Christina.Thomas@fcc.gov or (202) 418–1879.

Sincerely,
Christopher J. Sova,
Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Fred Theobald, Universal Service Administrative Company (via email)

Matthew Menchel, Esq., Kobre & Kim LLP (via email)

Michael Sherwin, Esq., Kobre & Kim LLP (via email)

Evelyn Sheehan, Esq., Kobre & Kim LLP (via email)

[FR Doc. 2024–29155 Filed 12–11–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1219; FR ID 267681]

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 (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. 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.

DATES: Written PRA comments should be submitted on or before February 10, 2025. 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:

OMB Control Number: 3060-1219.

Title: Connect America Fund-Alternative Connect America Cost Model Support.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,100 unique respondents; 1,100 responses.

Estimated Time per Response: 0.5 hours-2 hours.

Frequency of Response: On occasion and one-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151-154, 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 700 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission is requesting approval for the extension of this collection. In March 2016, the Commission adopted significant reforms to place the universal service support program on solid footing for the next decade to preserve and advance voice and broadband service in areas served by rate-of-return carriers. Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (2016 Rate-of-Return Reform Order).

As part of the Rate-of-Return Reform Order, the Commission adopted a voluntary path for rate-of-return carriers to receive model-based support in exchange for making a commitment to deploy broadband-capable networks meeting certain service obligations to a pre-determined number of eligible locations in a state. By creating a voluntary pathway to model-based support, the Commission will spur new broadband deployment in rural areas. In several subsequent orders and public notices, the Commission has further refined this voluntary pathway, and in the December 2018 Rate-of-Return Reform Order, the Commission adopted a second pathway for carriers that did not elect the first pathway. Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (December 2018 Rate-of-Return Reform Order).

This information collection addresses the requirement that carriers electing model-based support must notify the Commission of that election and their commitment to satisfy the specific service obligations associated with the amount of model support.

In the 2016 Rate-of-Return Reform Order, the Commission also adopted reforms to the universal service mechanisms used to determine support for rate-of-return carriers not electing model-based support. Among other such reforms, the Commission adopted an operating expense limitation to improve carriers' incentives to be prudent and

efficient in their expenditures, a capital investment allowance to better target support to those areas with less broadband deployment, and broadband deployment obligations to promote "accountability from companies receiving support to ensure that public investment are used wisely to deliver intended results." In the December 2018 Rate-of-Return Order, the Commission further modified or, in the case of the capital investment allowance, eliminated these requirements. Other requirements adopted in the Rate-of-Return Reform Order have been addressed under other Office of Management and Budget control numbers. We therefore propose to extend this information collection.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-29297 Filed 12-11-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0995; FR ID 267778]

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 (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 comments should be submitted on or before February 10, 2025. If you anticipate that you will be submitting comments but find it difficult to do so within the time period allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email 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: 3060–0995.

Title: Section 1.2105(c), Bidding Application and Certification Procedures; Sections 1.2105(c) and 1.2205, Prohibition of Certain Communications.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 10 respondents and 10 responses.

Estimated Time per Response: 1.5 hours to 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 154(i), 309(j), and 1452(a)(3) of the Communications Act, as amended, 47 U.S.C. 4(i), 309(j)(5), 1452(a)(3), and sections 1.2105(c) and 1.2205 of the Commission's rules, 47 CFR 1.2105(c), 1.2205.

Estimated Total Annual Burden: 50 hours.

Total Annual Costs: \$9,000.

Needs and Uses: A request for extension of this information collection (no change in requirements) will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three year clearance from OMB.

The Commission's rules prohibiting certain communications in Commission auctions are designed to reinforce existing antitrust laws, facilitate

detection of collusive conduct, and deter anticompetitive behavior, without being so strict as to discourage pro-competitive arrangements between auction participants. They also help assure participants that the auction process will be fair and objective, and not subject to collusion. The information collected under this information collection allows the Commission to enforce the prohibition on auction applicants and other covered parties by making clear the responsibility of parties who receive information that potentially violates the rules to promptly report to the Commission. It also enables the Commission to ensure that no bidder gains an unfair advantage over other bidders in its auctions, thereby enhancing the competitiveness and fairness of Commission spectrum auctions. The information collected will be reviewed and, if warranted, referred to the Commission's Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice for investigation.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–29298 Filed 12–11–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0174; FR ID 267432]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

DATES: Written comments and recommendations for the proposed

information collection should be submitted on or before January 13, 2025.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–0174.

Title: Sections 73.1212, 76.1615, and 76.1715, Sponsorship Identification.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and Individuals or households.

Number of Respondents and

Responses: 52,760 respondents, 1,939,422 responses.

Estimated Time per Response: 0.0011 hour–2.166 hours.

Frequency of Response:

Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 303(r), 307, 317, and 325(c) of the Communications Act, as amended.

Total Annual Burden: 347,851 hours.

Total Annual Cost: \$2,010,723.

Needs and Uses: The Commission, in the Second Report and Order, FCC 24–61, takes steps to ensure clear and reasonable foreign sponsorship identification rules. Section 73.1212(j) of the Commission’s rules, 47 CFR 73.1212(j), requires radio and television broadcast stations to disclose to their audiences, at the time of broadcast, when material aired pursuant to the lease of time on the station has been sponsored, paid for, or furnished by a foreign governmental entity. Section 73.1212(k) of the Commission’s rules, 47 CFR 73.1212(k), imposes corresponding obligations on stations with section 325(c) permits. The Commission’s authority to impose these regulations stems from section 317 of the Communications Act, which requires broadcast licensees to inform their audiences when the station has been paid to air a particular program, in furtherance of the longstanding broadcasting tenet that the public has a right to know the identity of those that solicit its support.

The foreign sponsorship identification rules require broadcast licensees, at the time of entering or renewing a lease agreement (unless a once-a-year exception applies), to exercise reasonable diligence to ascertain whether a programming disclosure is required. To ensure that licensees are complying with their reasonable diligence and disclosure obligations, the foreign sponsorship identification rules require licensees to memorialize their required inquiries of lessees and to maintain records of their programming disclosures and their reasonable diligence efforts.

In the Second Report and Order, the Commission modified the rule’s information collection requirements by adopting an approach that provides licensees with two options for demonstrating that they have met their duty of inquiry in seeking to obtain the information needed to determine whether the programming provided by a lessee is sponsored by a foreign governmental entity. The Commission designed this approach to provide licensees with as much flexibility as possible and to minimize their paperwork costs and burdens while still ensuring compliance with the reasonable diligence requirements.

One option available to licensees is the use of certifications, where both the licensee and the lessee complete a certification reflecting the communications and inquiries required under the existing rules. Licensees and lessees have the option either to use sample certification language set forth in simple, one-page, “check-box” templates appended to the Second Report and Order or to use language of the parties’ own choosing. Most licensee and lessee employees should be able to complete the forms quickly and readily, based upon their existing knowledge and understanding. It is highly unlikely that either the licensee or the lessee would need to engage in any type of research to respond to the queries contained in the certifications. Notably, these are the same inquiries the Commission adopted in the First Report and Order, only formatted now as a certification. If licensees and lessees prefer not to use the Commission’s templates, they may use their own certification language, provided that language addresses the points listed in § 73.1212(j)(3)(i) through (iii) of the rules, which were adopted in the First Report and Order. The Commission granted this flexibility to alleviate or minimize costs for licensees that already had developed their own certifications based on the existing foreign sponsorship identification rules. A

lessee’s certification should convey the information needed to determine whether a disclosure is required and the information needed for a broadcast disclosure if one is required.

As an alternative to the certification option, licensees may choose to ask their lessees for screenshots of lessees’ search results of two federal government websites (the Department of Justice’s FARA database and the Commission’s U.S.-based foreign media outlet report). Licensees choosing this option must still comply with all other aspects of the current rules, as they have been required to do since the compliance date of the First Report and Order. Licensees are encouraged to include in their lease agreements a requirement for lessees to provide notice of any change in status so as to trigger the need for a foreign sponsorship disclosure.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–29222 Filed 12–11–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0165; –0183]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0165 and –0183). The notices of proposed renewal for these information collections were previously published in the **Federal Register** on October 10, 2024, and October 21, 2024, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before January 13, 2025.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website:* <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- *Email:* comments@fdic.gov. Include the name and number of the collection in the subject line of the message.

• *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

Written comments and recommendations for the proposed information collection also 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 Comment” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, mcabeza@fdic.gov, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

1. *Title:* Pillar 2 Guidance—Advanced Capital Framework.

OMB Number: 3064–0165.

Form Number: None.

Affected Public: Insured state nonmember banks and certain subsidiaries of these entities.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0165]

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)
Supervisory Guidance: Supervisory Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework (Voluntary).	Recordkeeping (Quarterly)	1	4	105:00	420
Total Annual Burden (Hours): ....	.....	.....	.....	.....	420

Source: FDIC.

General Description of Collection. In 2008, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the FDIC issued a supervisory guidance document related to the supervisory review process of capital adequacy (Pillar 2) in connection with the implementation of the Basel II Advanced Capital Framework. Sections 37, 41, 43 and 46 of the guidance include possible information collections. Section 37 provides that banks should state clearly the definition of capital used in any aspect of its

internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Section 41 provides that banks should maintain thorough documentation of its ICAAP. Section 43 specifies that the board of directors should approve the bank’s ICAAP, review it on a regular basis, and approve any changes. Section 46 recommends that boards of directors periodically review the assessment of overall capital adequacy and analyze how measures of internal capital adequacy compare with other capital measures such as

regulatory or accounting. There has been no change in the method or substance of this information collection, the burden is unchanged from the 2021 burden estimate.

2. *Title:* Credit Risk Retention.

OMB Number: 3064–0183.

Form Number: None.

Affected Public: Insured State nonmember banks, State savings institutions, insured State branches of foreign banks, and any subsidiary of the aforementioned entities.

Burden Estimate:

IC description	Type of burden (obligation to respond)	Frequency of response	Estimated number of respondents	Number of responses/ respondent	Hours per response	Total annual estimated burden
Disclosure Burdens						
§ 373.4(a)(2) Standard Risk Retention—Horizontal Interest.	Disclosure (Mandatory) ...	On Occasion	2	2	5.5	22
§ 373.4(a)(1) Standard Risk Retention—Vertical Interest.	Disclosure (Mandatory) ...	On Occasion	2	2	2.0	8
§ 373.4(a)(3) Standard Risk Retention—Combined Interest*.	Disclosure (Mandatory) ...	On Occasion	1	1	7.5	8
§ 373.5 Revolving Master Trusts	Disclosure (Mandatory) ...	On Occasion	3	2	7.0	42
§ 373.6 Eligible ABCP Conduits*	Disclosure (Mandatory) ...	On Occasion	1	1	3.0	3
§ 373.7 Commercial MBS*	Disclosure (Mandatory) ...	On Occasion	1	1	20.75	21
§ 373.10 Qualified Tender Option Bonds*	Disclosure (Mandatory) ...	On Occasion	1	1	6.0	6
§ 373.11 Allocation of Risk Retention to an Originator*.	Disclosure (Mandatory) ...	On Occasion	1	1	2.5	3
§ 373.13 Exemption for Qualified Residential Mortgages*.	Disclosure (Mandatory) ...	On Occasion	1	1	1.25	1
§ 373.15 Exemption for Qualifying Commercial Loans, Commercial Real Estate and Automobile Loans*.	Disclosure (Mandatory) ...	On Occasion	1	1	20.0	20
§ 373.16 Underwriting Standards for Qualifying Commercial Loans*.	Disclosure (Mandatory) ...	On Occasion	1	1	1.25	1
§ 373.17 Underwriting Standards for Qualifying Commercial Real Estate Loans*.	Disclosure (Mandatory) ...	On Occasion	1	1	1.25	1

IC description	Type of burden (obligation to respond)	Frequency of response	Estimated number of respondents	Number of responses/ respondent	Hours per response	Total annual estimated burden
§ 373.18 Underwriting Standards for Qualifying Automobile Loans *.	Disclosure (Mandatory) ...	On Occasion	1	1	1.25	1
Disclosure Subtotal .....	.....	.....	.....	.....	.....	137
Recordkeeping Burdens						
§ 373.4(a)(2) Standard Risk Retention—Horizontal Interest.	Recordkeeping (Mandatory).	On Occasion	2	2	0.5	2
§ 373.4(a)(1) Standard Risk Retention—Vertical Interest.	Recordkeeping (Mandatory).	On Occasion	2	2	0.5	2
§ 373.4(a)(3) Standard Risk Retention—Combined Interest *.	Recordkeeping (Mandatory).	On Occasion	1	1	0.5	1
§ 373.5 Revolving Master Trusts	Recordkeeping (Mandatory).	On Occasion	3	2	0.5	3
§ 373.6 Eligible ABCP Conduits *	Recordkeeping (Mandatory).	On Occasion	1	1	20.0	20
§ 373.7 Commercial MBS *	Recordkeeping (Mandatory).	On Occasion	1	1	30.0	30
§ 373.11 Allocation of Risk Retention to an Originator *.	Recordkeeping (Mandatory).	On Occasion	1	1	20.0	20
§ 373.13 Exemption for Qualified Residential Mortgages *.	Recordkeeping (Mandatory).	On Occasion	1	1	40.0	40
§ 373.15 Exemption for Qualifying Commercial Loans, Commercial Real Estate and Automobile Loans *.	Recordkeeping (Mandatory).	On Occasion	1	1	0.5	1
§ 373.16 Underwriting Standards for Qualifying Commercial Loans *.	Recordkeeping (Mandatory).	On Occasion	1	1	40.0	40
§ 373.17 Underwriting Standards for Qualifying Commercial Real Estate Loans *.	Recordkeeping (Mandatory).	On Occasion	1	1	40.0	40
§ 373.18 Underwriting Standards for Qualifying Automobile Loans *.	Recordkeeping (Mandatory).	On Occasion	1	1	40.0	40
Recordkeeping Subtotal .....	.....	.....	.....	.....	.....	239
Total Annual Burden Hours .....	.....	.....	.....	.....	.....	376 hours

General Description of Collection:
This information collection request comprises disclosure and recordkeeping requirements under the credit risk retention rule issued pursuant to section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 78o–11), as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).¹ The Credit Risk Retention rule (the Rule) was jointly issued in 2015 by the FDIC, the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Board), the Securities and Exchange Commission (the Commission) and, with respect to the portions of the Rule addressing the securitization of residential mortgages, the Federal Housing Finance Agency (FHFA) and the Department of Housing and Urban Development (HUD).² The FDIC regulations corresponding to the Rule are found at 12 CFR part 373.³

Section 941 of Dodd-Frank requires the Board, the FDIC, the OCC

(collectively, the Federal banking agencies), the Commission and, in the case of the securitization of any “residential mortgage asset,” together with HUD and FHFA, to jointly prescribe regulations that (i) require an issuer of an asset-backed security or a person who organizes and initiates an asset backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer (issuer or organizer) to retain not less than five percent of the credit risk of any asset that the issuer or organizer, through the issuance of an asset-backed security (ABS), transfers, sells or conveys to a third party and (ii) prohibit an issuer or organizer from directly or indirectly hedging or otherwise transferring the credit risk that the issuer or organizer is required to retain under section 941 and the agencies’ implementing rules. Exempted from the credit risk retention requirements of section 941 are certain types of securitization transactions, including ABS collateralized solely by qualified residential mortgages (QRMs), as that term is defined in the Rule. In addition, section 941 provides that the agencies must permit an issuer or organizer to retain less than five percent of the credit risk of residential mortgage loans, commercial real estate (CRE)

loans, commercial loans and automobile loans that are transferred, sold or conveyed through the issuance of ABS by the issuer or organizer, if the loans meet underwriting standards established by the Federal banking agencies.

The FDIC implemented section 941 of Dodd-Frank through 12 CFR part 373 (the Rule). The Rule defines a securitizer as (1) the depositor of the asset-backed securities (if the depositor is not the sponsor); or (2) the sponsor of the asset-backed securities.⁴ The Rule provides a menu of credit risk retention options from which securitizers can choose and sets out the standards, including disclosure, recordkeeping, and reporting requirements, for each option; identifies the eligibility criteria, including certification and disclosure requirements, that must be met for ABS offerings to qualify for the QRM and other exemptions; specifies the underwriting standards for CRE loans, commercial loans and automobile loans, as well as disclosure, certification and recordkeeping requirements, that must be met for ABS issuances collateralized by such loans to qualify for reduced credit risk retention; and sets forth the circumstances under which retention

¹ Public Law 111–2–3, 124 Stat. 1376 (2010).

² 79 FR 77740.

³ Each agency adopted the same rule text but each agency’s version of its rule is codified in different parts of the *Code of Federal Regulations* with substantially identical section numbers (e.g., __.01; __.02, etc.). Rule citations herein are to FDIC’s version of the Rule which is codified at 12 CFR part 373.

⁴ 12 CFR 373.2.

obligations may be allocated by sponsors to originators, including disclosure and monitoring requirements.

Part 373 contains several requirements that qualify as information collections under the Paperwork Reduction Act of 1995 (PRA). The information collection requirements are found in 12 CFR 373.4, 373.5, 373.6, 373.7, 373.8, 373.9, 373.10, 373.11, 373.13, 373.15, 373.16, 373.17, 373.18, and 373.19(g). The recordkeeping requirements relate primarily to (i) the adoption and maintenance of various policies and procedures to ensure and monitor compliance with regulatory requirements and (ii) certifications, including as to the effectiveness of internal supervisory controls. The required disclosures for each risk retention option are intended to provide investors with material information concerning the sponsor's retained interest in a securitization transaction (e.g., the amount, form and nature of the retained interest, material assumptions and methodology, representations and warranties). Compliance with the information collection requirements is mandatory, responses to the information collections will not be kept confidential and, with the exception of the recordkeeping requirements in 12 CFR 373.4(d), 373.5(k)(3), and 373.15(d), the Rule does not specify a mandatory retention period for the information.

Request for Comment

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions 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 respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 9, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-29295 Filed 12-11-24; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

[Docket No. OP-1747]

Guidelines for Evaluating Account and Services Requests

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final guidance.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has clarified that its Guidelines Covering Access to Accounts and Services at Federal Reserve Banks (Guidelines) apply to Excess Balance Accounts at the Federal Reserve Banks (Reserve Banks).

DATES: Implementation Date is December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Jason Hinkle, Deputy Associate Director (202-258-9873), Division of Reserve Bank Operations and Payment Systems, Kristen Payne, Lead Financial Institution and Policy Analyst (202-306-9573), Division of Monetary Affairs, or Corinne Milliken Van Ness, Senior Counsel (202-641-1605), Legal Division, Board of Governors of the Federal Reserve System. For users of text telephone systems (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background on Guidelines

On August 19, 2022, the Board implemented the Guidelines, which consist of six risk-based principles for Reserve Banks to consider when evaluating requests for access to Reserve Bank accounts and services (accounts and services). The risks considered under the Guidelines include various risks to the Reserve Bank, risks to the overall payments systems, risks to the stability of the U.S. financial system, risks to the overall economy by facilitating activities such as money laundering or other illicit activity, and risk of any adverse impact on the Federal Reserve's ability to implement monetary policy.

The Guidelines apply to requests for accounts and services from member banks or other entities that meet the definition of depository institution under section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), as well as Edge and Agreement Corporations (12 U.S.C. 601-604a, 611-631), and U.S. branches and agencies of foreign banks (12 U.S.C. 347d). The Guidelines do not apply to accounts that the Reserve Banks provide (i) as depository and fiscal agent for the

Treasury and certain government-sponsored entities (12 U.S.C. 391, 393-95, 1823, 1435), (ii) to certain international organizations (22 U.S.C. 285d, 286d, 290o-3, 290i-5, 290l-3), (iii) to designated financial market utilities (12 U.S.C. 5465), (iv) pursuant to the Board's Regulation N (12 CFR 214), or (v) pursuant to the Board's Guidelines for Evaluating Joint Account Requests.

II. Excess Balance Accounts

Reserve Banks began to pay interest on balances maintained at the Reserve Banks by or on behalf of eligible institutions in October 2008.¹ Until July 2021, balances maintained by depository institutions at a Reserve Bank were divided into required reserves (balances held to satisfy a reserve requirement) and excess reserves (balances maintained in excess of required reserves).² Eligible institutions that were respondents could maintain excess balances as deposits with their correspondent or, alternatively, could instruct their correspondent to sweep their deposits into overnight investments in the federal funds market.³ Correspondents typically preferred the latter because it helped to limit the size of their balance sheet and boosted their regulatory capital ratios. However, when the market rate of interest on federal funds was below the rate paid by Reserve Banks on excess balances, respondents had an incentive to shift the investment of their surplus funds away from the sales of federal funds (through their correspondents) and toward holding those funds directly as excess balances with the Reserve Banks, potentially disrupting established correspondent-respondent relationships.⁴

The Board authorized the creation of excess balance accounts (EBAs) on May 20, 2009, to alleviate these pressures on correspondent-respondent business relationships associated with an environment in which federal funds

¹ The authority to pay interest was originally enacted through the Financial Services Regulatory Relief Act of 2006, with an effective date of October 1, 2011. The date was moved forward to 2008 by the Emergency Economic Stabilization Act of 2008.

² Final Rule, Regulation D, 86 FR 29937 (June 4, 2021); Press Release, "Federal Reserve Board issues final rule amending Regulation D with regard to interest on reserve balances" (June 2, 2021), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20210602a.htm>.

³ In a correspondent-respondent relationship, the correspondent bank provides banking services on behalf of the respondent bank. This often includes the correspondent bank executing payments on behalf of the respondent bank and its customers. A respondent bank typically maintains an account with its correspondent bank.

⁴ 74 FR 5628, 5629 (Jan. 30, 2009).

traded at rates persistently below the interest rate on excess reserves.⁵ EBAs permit eligible institutions to earn interest on their excess balances without disrupting established correspondent relationships. An EBA is a limited-purpose account at a Federal Reserve Bank managed by an agent and established for maintaining the excess balances of one or more institutions (participants) that are eligible to earn interest on balances held at a Reserve Bank.⁶ The agent does not own the EBA or the balances therein and thus the balances held in the EBA are not included in the calculation of the agent's regulatory leverage ratio.

III. Current Scope of the Guidelines

Currently, the Guidelines do not expressly state that EBA arrangements are in the scope of the Guidelines. The Board believes it is appropriate to amend the Guidelines to clarify that they apply to requests to be an agent for, or a participant in, an EBA. Expressly including EBAs in the Guidelines will clarify that the same standard of review will be applied to any institution requesting access to accounts and services. While EBAs are not used to access Reserve Bank financial services, they are, in fact, limited-purpose Reserve Bank accounts. This clarification, therefore, would prevent depository institutions that do not qualify for access to Federal Reserve accounts and services under the Guidelines from accessing the Federal Reserve's balance sheet through EBAs.

IV. Clarification to Scope of Guidelines

For the reasons set forth in this document, the Board is amending and restating the text in footnote seven to the Guidelines to read as follows:

Unless otherwise expressly excluded under the previous footnote, these principles apply to account requests from all institutions, including member banks, entities that meet the definition of a depository institution under section 19(b) (12 U.S.C. 461(b)(1)(A)), Edge and Agreement Corporations (12 U.S.C. 601–604a, 611–631), and U.S. branches and agencies of foreign banks (12 U.S.C.

347d), and to requests to be an agent or participant in an excess balance account (12 CFR 204.10(d)).

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–29250 Filed 12–11–24; 8:45 am]

BILLING CODE 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 January 13, 2025.

A. Federal Reserve Bank of Boston
(Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston,

Massachusetts 02210–2204. Comments can also be sent electronically to BOS.SRC.Applications.Comments@bos.frb.org.

1. *Liberty Financial Corporation, Middletown, Connecticut*; to become a bank holding company by acquiring Liberty Bank, also of Middletown, Connecticut.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–29278 Filed 12–11–24; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0324; Docket No. 2024–0001; Sequence No.14]

Submission for OMB Review; General Services Administration Acquisition Regulation; Foreign Ownership and Financing Representation for High-Security Leased Space

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, GSA invites the public to comment on an extension concerning disclosure of foreign ownership information under high-security lease space acquisitions.

DATES: Submit comments on or before January 13, 2025.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Lara, 816–589–3783, General Services Acquisition Policy Division, by email at gsarpolicy@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection supports the implementation of the Secure Federal LEASEs Act (Pub. L. 116–276) to reduce security risks in high-security leased space. Section 3 of the bill requires agencies, before entering into a lease agreement for high-security leased space, to require the contractor to identify the immediate or

⁵ Final Rule, Regulation D, 74 FR 25620 (May 29, 2009); Press Release, “Board announces approval of final amendments to Regulation D pertaining to transfers from savings deposits and the establishment of excess balance accounts at Reserve Banks” (May 20, 2009), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20090520b.htm>.

⁶ See 12 CFR 204.2(aa) (defining “excess balance account”); 12 CFR 204.10(d)(4) (establishing interest payable on excess balance accounts). An EBA agent and participant may also be in a separate correspondent-respondent relationship, but not necessarily.

highest-level owner of the space, including any financing entity, and disclose whether that owner is a foreign person or entity, including the country associated with the ownership entity.

This information collection covers GSA's implementation of the Act through GSAR clause 552.270–33. As this information is still required, GSA seeks to have this information collection extended for three years.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

1. Initial Disclosure

Baseline Representation

Estimated annual responses: 542.

Estimated hours per response: 2.

Additional Representation

Estimated annual responses: 54.

Estimated hours per response: 10.

Total Initial Response Burden Hours: 1,624.

2. Annual Updates

Estimated annual responses: 542.

Estimated hours per response: 0.50.

Total Update Response Burden Hours: 271.

C. Public Comments

A 60-day notice published in the **Federal Register** at 89 FR 78305 on September 25, 2024. No public comments were received.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–29130 Filed 12–11–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Information Regarding Diagnostic Excellence Measurement

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice of Request for Information (RFI) regarding diagnostic excellence measurement.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites public comment in response to this Request for Information (RFI) on the development of measures of diagnostic excellence that may be calculated using administrative data or electronic health

record (EHR) data. The purpose of diagnostic excellence measurement is to identify potential opportunities to improve the diagnostic process at a health system or geographic level. AHRQ welcomes comments on the importance and usability of existing measures and those that may be under development.

DATES: Comments on this notice must be received by February 13, 2025.

ADDRESSES: Interested parties may submit comments electronically to qisupport@ahrq.hhs.gov with the subject line “Diagnostic Excellence Measurement.”

FOR FURTHER INFORMATION CONTACT:

Questions may be addressed to Judy George, judy.george@ahrq.hhs.gov, (301) 427–1717.

SUPPLEMENTARY INFORMATION: The COVID–19 pandemic led to disruptions in healthcare service delivery and reversed some of the gains made in patient safety over the previous two decades. In 2024, AHRQ on behalf of HHS, officially launched the National Action Alliance for Patient and Workforce Safety (<https://www.ahrq.gov/action-alliance/index.html>), a collaboration between public and private partners to recommit to patient and workforce safety and to eliminate preventable harm in healthcare. Diagnostic safety events are an important contributor to patient safety, with diagnostic errors potentially impacting millions of U.S. residents each year (<https://pmc.ncbi.nlm.nih.gov/articles/PMC5502242/>). Diagnostic error is “the failure to (a) establish an accurate and timely explanation of the patient’s health problem(s) or (b) communicate that explanation to the patient” (<https://doi.org/10.17226/21794>). However, in order to improve patient safety, a focus on diagnostic error reduction alone is not sufficient. Efforts are needed to improve the diagnostic process as a whole, with an emphasis on diagnostic excellence.

Diagnostic excellence may be defined as “an optimal process to attain an accurate and precise explanation about a patient’s condition” (<https://jamanetwork.com/journals/jama/article-abstract/2785845>). This process should be “timely, cost-effective, convenient, and understandable to the patient.” Diagnostic excellence “embraces the six dimensions of quality enumerated by the Institute of Medicine in 2001: care that is safe, effective, patient-centered, timely, efficient, and equitable” (<https://jamanetwork.com/journals/jama/article-abstract/2785845>).

Several efforts have been underway to develop measures that provide information on the state of diagnostic excellence, including research funded by AHRQ and the Gordon and Betty Moore Foundation. The AHRQ Quality Indicators (QI) Program develops indicators of healthcare quality and patient safety in a variety of healthcare settings. The QI Program is actively engaged in collecting information on measures that can contribute to diagnostic excellence measurement. AHRQ is considering measures that rely on administrative claims data (for state and regional health departments with limited access to clinical data), as well as electronic health record data (for healthcare systems with full access to clinical data). AHRQ aims to address gaps in diagnostic excellence measurement with a population health lens and with the following goals:

1. Develop a starter set of standardized measures to support population-level diagnostic excellence surveillance.
2. Generate measures that are accessible and applicable across different types of users, especially those with limited access to clinical data sources.
3. Produce national benchmarks for population-level surveillance of diagnostic excellence.
4. Foster healthcare quality improvement in the area of diagnostic excellence.

AHRQ requests information from the public on existing measures that may be used in diagnostic excellence measurement and others that may be under development.

Criteria. Diagnostic excellence measures should be important, scientifically acceptable, feasible, and useful. These concepts are defined as follows:

Important. (1) There is evidence linking the measure to important outcomes (including either process outcomes or clinical outcomes); (2) there is evidence of inequalities across groups or opportunity for improvement on that measure; or (3) the target population of the measure (e.g., patients) or users of the measure (e.g., researchers, providers) value the measurement and find it meaningful.

Scientifically acceptable. A scientifically acceptable measure is both (1) valid (the measure accurately represents the concept it is trying to measure) and (2) reliable (the measure consistently produces the same result over time and in different contexts).

Feasible. A measure is feasible if it is possible to implement with existing data systems and clinical processes.

Useful. A measure is useful if it provides information useful for quality improvement programs, with the ability to capture variation in performance across reporting entities.

Additional Considerations. In addition to the criteria listed above, AHRQ aims to consider the extent to which measures:

- Identify an important gap in diagnostic performance;
- Contribute to the solution of a diagnostic safety problem;
- Are broadly applicable to a population-level diagnostic safety opportunity;
- Could be used to lessen health disparities.

AHRQ requests responses to the following questions:

1. Are you currently working on any initiatives related to diagnostic excellence, diagnostic safety, or diagnostic quality? If so, please describe. If you are working on diagnostic excellence initiatives, which ones would benefit from publicly available measurement tools or resources? Are there specific resources that you would like to see from AHRQ? If so, please describe.

2. If you are currently measuring diagnostic excellence in your organization, what measure(s) are you using? How do you use these measures (e.g., for quality improvement efforts, to track population health) and what motivated the use of such measures? What data sources are you using? What data model are you using to map data to standardized concepts (e.g., Observational Medical Outcomes Partnership (OMOP) Common Data Model, others)? Please specify your organization type (e.g., state/local health department, professional society, healthcare system, research organization, etc.) in your answer.

3. If you or your organization are not currently measuring diagnostic excellence, what diagnostic excellence measures might be helpful to your organization? Please specify your organization type in your answer.

4. If standardized measures with national benchmarks were made available through software by AHRQ, how likely would you be to use them? What characteristics (e.g., risk adjustment, frequency counts) or features (e.g., statistical programming languages, data model platforms, technology [web or cloud-based applications]) of such measures would facilitate their use and usefulness within your organization?

5. AHRQ is considering the diagnostic excellence-related measures listed here:

<https://bit.ly/41mg3i6>. We invite comments on:

- a. The extent to which these measures meet the “Criteria” listed above; and
- b. The extent to which these measures address the “Additional Considerations” listed above.

6. AHRQ invites any additional comments related to potential AHRQ measures of diagnostic excellence.

AHRQ is interested in all of the questions listed above, but respondents are welcome to address as many or as few as they choose and to address additional areas of interest not listed. It is helpful to identify the question to which a particular answer corresponds.

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas in response to it. AHRQ will use the information submitted in response to this RFI at its discretion and will not provide comments to any respondent’s submission. However, responses to this RFI may be reflected in future solicitation(s) or policies. The information provided will be analyzed and may appear in reports.

Dated: December 6, 2024.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–29134 Filed 12–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3461–FN]

Medicare and Medicaid Programs; Approval of Application by the Accreditation Association for Ambulatory Healthcare for Continued CMS-Approval of Its Ambulatory Surgical Center Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice acknowledges the approval of an application by the Accreditation Association for Ambulatory Healthcare for continued recognition as a national accrediting organization for Ambulatory Surgical Centers that wish to participate in the Medicare or Medicaid programs.

DATES: The decision announced in this notice is applicable November 20, 2024 through November 20, 2029.

FOR FURTHER INFORMATION CONTACT:

Joy Webb, (410) 786–1667.

Joann Fitzell, (410) 786–4280.

SUPPLEMENTARY INFORMATION:

I. Background

Ambulatory Surgical Centers (ASCs) are distinct entities that operate exclusively for the purpose of furnishing outpatient surgical services to patients. Under the Medicare program, eligible beneficiaries may receive covered services from an ASC provided certain requirements are met. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for a facility seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR part 489, and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for ASCs.

Generally, to enter into an agreement, an ASC must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 416 of our Medicare regulations. Thereafter, the ASC is subject to regular surveys by an SA to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we may deem that provider entity as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body’s approved program may be deemed to meet the Medicare conditions. The AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at § 488.5.

The Accreditation Association for Ambulatory Healthcare’s (AAAHC’s) current term of approval for its ASC program expires December 20, 2024.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On June 27, 2024, we published a proposed notice in the **Federal Register** (89 FR 53626 through 53627), announcing AAAHC's request for continued approval of its Medicare ASC accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of AAAHC's Medicare ASC accreditation renewal application in accordance with the criteria specified by our regulations, which include, but are not limited to, the following:

- An administrative review of AAAHC: (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its ASC surveyors; (4) ability to investigate and respond appropriately to complaints against accredited ASCs; and (5) survey review and decision-making process for accreditation.

- The equivalency of AAAHC's standards for ASCs as compared with Medicare's Conditions for Coverage (CfCs) for ASCs.

- AAAHC's survey process to determine the following:

- ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

- ++ The comparability of AAAHC's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

- ++ AAAHC's processes and procedures for monitoring an ASC found out of compliance with AAAHC's

program requirements. These monitoring procedures are used only when AAAHC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at § 488.9(c)(1).

- ++ AAAHC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

- ++ AAAHC's capacity to provide CMS with electronic data and reports necessary for the effective validation and assessment of the organization's survey process.

- ++ The adequacy of AAAHC staff and other resources, and its financial viability.

- ++ AAAHC's capacity to adequately fund required surveys.

- ++ AAAHC's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced.

- ++ AAAHC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

- ++ AAAHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

IV. Analysis of and Response to Public Comments on the Proposed Notice

In accordance with section 1865(a)(3)(A) of the Act, the June 27, 2024 proposed notice also solicited public comments regarding whether AAAHC's requirements met or exceeded the Medicare CfCs for ASCs. We did not receive any public comments.

V. Provisions of the Final Notice

A. Differences Between AAAHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared AAAHC's ASC accreditation program requirements and survey process with the Medicare CfCs at 42 CFR part 416, and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of AAAHC's ASC application, which were conducted as described in Section III. of this final notice, yielded the following areas where, as of the date of this notice, AAAHC has completed revising its standards and survey processes in order to do all of the following:

- Section 488.5(a)(7), to ensure the ASC Life Safety Code (LSC) surveyors meet the minimum qualifications, competencies, and experience. Additionally, provide mentor training to future LSC site visitor trainees and retain evaluation records in the LSC site visitor training records.

- Section 488.5(a)(4)(vii), to add the Health Care Facilities Code timeframes on waivers allowance.

- Section 488.26(b), to clarify surveyor training, specific to manner and degree, including consideration of the risk of occupants associated with system deficiencies.

- Principle of Documentation, Exhibit 7A, to ensure that all Plans of Correction contain identifiers and survey reports are comparable to CMS' standards.

- Infection Control Surveyor Worksheet, Exhibit 351, to ensure that the Infection Control Worksheets are completed thoroughly to assess compliance with infection control breaches by gathering complete information.

- State Operations Manual Appendix L, to address the sample selection of files reviewed to include open and closed record review.

B. Term of Approval

Based on our review and observations described in Sections III. and V. of this final notice, we approve AAAHC as a national accreditation organization for ASCs that request participation in the Medicare program, effective December 20, 2024 through December 20, 2029. In accordance with § 488.5(e)(2)(i), the term of the approval will not exceed 6 years.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for

purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–29152 Filed 12–11–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying an existing system of records maintained by the Office of Refugee Resettlement (ORR) within HHS' Administration for Children and Families (ACF), System No. 09–80–0321, ORR Division of Children's Services Records (being renamed ORR Unaccompanied Children Bureau (UCB) Administrative Program Records).

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records is effective January 13, 2025, subject to a 30-day period in which to comment on the new and revised routine uses, described below. Please submit any comments by January 13, 2025.

ADDRESSES: The public should address written comments on this notice to Hanan Abu Lebdeh, Senior Agency Officer for Privacy, by mail at Administration for Children and Families, Mary E. Switzer Building, 330 C Street SW, Washington, DC 20201, or by email at hanan.abulebdeh@acf.hhs.gov.

FOR FURTHER INFORMATION CONTACT: General questions about the modified system of records may be submitted to Edward Nazarko, Technical Lead for UC Technology, Administration for Children and Families, by mail or email at 330 C Street SW, Washington, DC 20201, or edward.nazarko@acf.hhs.gov, or by phone at (202) 839–0615.

SUPPLEMENTARY INFORMATION:

I. Background on ORR Responsibilities, Affecting SORN 09–80–0321

Within ORR, the Unaccompanied Children Bureau (UCB) administers ORR's responsibilities for the placement, care, and services provided to unaccompanied children who are in Federal custody by reason of their immigration status. Such responsibilities are carried out pursuant to ORR's statutory and delegated authorities under section 462 of the Homeland Security Act of 2002 (HSA), 6 U.S.C. 279, section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), 8 U.S.C. 1232, and regulations at 45 CFR parts 410 and 411. Systems of records maintained by ORR are "mixed," in that they contain, or could contain, records pertaining to both (1) individuals who are covered by the Privacy Act and (2) individuals who are not covered by the Privacy Act. SORN 09–80–0321 includes a statement to this effect in the "Categories of Individuals" section.

The Privacy Act applies only to individuals who are U.S. citizens or non-U.S. citizens lawfully admitted for permanent residence in the United States. As a matter of discretion, ORR treats information maintained in its mixed systems of records as being subject to the protections of the Privacy Act, regardless of whether the information relates to individuals covered by the Privacy Act. This policy implements a 1975 Office of Management and Budget (OMB) recommendation to apply, as a matter of discretion, the administrative provisions of the Privacy Act to records about individuals in mixed systems of records (referred to as the non-U.S. persons policy). *See OMB Privacy Act Implementation: Guidelines and Responsibilities*, 40 FR 28948, 28951 (July 9, 1975).

The Privacy Act defines a "routine use" with respect to the disclosure of a record to mean "the use of such record for a purpose which is compatible with the purpose for which it was collected." 5 U.S.C. 552a(a)(7). Because ORR is not an immigration enforcement agency—but rather is responsible for placing unaccompanied children with vetted and approved sponsors, providing care and services to unaccompanied children who are in Federal custody by reason of their immigration status, and identifying and assessing the suitability of a potential sponsor for each child—it is incompatible with ORR's program purposes to share information in a system of records, particularly confidential mental health or behavioral

information in children's case files, for immigration enforcement purposes. *See* H.R. Rep No. 116–450, at 185 (2020) (directing ORR to "refrain from sharing any information with immigration courts for master calendar hearings, where the court is not making any decisions about the child's custody," and to "develop policies and protocols to ensure the confidentiality of counseling and mental health services provided to unaccompanied children, and of all related documentation, including case notes and records of therapists and other clinicians, and to incorporate these policies into the ORR policy guide . . ."); *see also id.* at 230 (noting the inclusion in that year's appropriations a provision "prohibiting the use of funds to share information provided by unaccompanied children during mental health or therapeutic services with the Department of Homeland Security or the Department of Justice for the purposes of immigration enforcement."). In addition, consistent with TVPRA 8 U.S.C. 1232(c) and HSA, 6 U.S.C. 279(b), information shared by HHS, with certain limited exceptions, cannot be used to enforce immigration laws against an unaccompanied child's sponsor, potential sponsor or a member of their household.¹ Accordingly, SORN 09–80–0321 mentions at the start of the "Routine Uses" section that disclosures for immigration enforcement purposes will not be made under routine uses, but would be made only with the subject individual's prior written consent.

ORR may share relevant information in the system of records for other law enforcement and child welfare purposes, such as anti-trafficking investigations, child welfare investigations, or other investigations that seek to ensure that children are "protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." 8 U.S.C. 1232(c)(1). Accordingly, SORN 09–80–0321

¹ *See* Further Consolidated Appropriations Act, 2024, Public Law 118–47, div. C, title II sec. 216 (incorporating by reference Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, title II, sec. 216, prohibiting the Department of Homeland Security from using funds provided by the Act or any other Act, except in certain circumstances, "to place in detention, remove, refer for a decision whether to initiate removal proceedings, or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)) based on information shared by the Secretary of Health and Human Services," with certain limited exceptions in sec. 216(b) regarding sponsors convicted of serious crimes affecting the welfare of the child); *see also* 45 CFR 410.1303(h).

includes routine uses authorizing disclosures for such law enforcement purposes.

II. Explanation of Modifications to System of Records 09–80–0321

This system of records covers records about unaccompanied children in Federal custody by reason of their immigration status, their sponsors, potential sponsors, household members of potential sponsors, alternate caregivers identified by sponsors, and information necessary to determine the placement of children within the ORR care provider network, provide services to children and determine their release to a potential sponsor. The System of Records Notice (SORN) has been modified as follows:

- The name of the system of records has been changed from “ORR Division of Unaccompanied Children Services Records” to “ORR Unaccompanied Children Bureau (UCB) Administrative Program Records.”

- The Purpose(s) section now includes two additional purpose descriptions: to assess the suitability of sponsors of unaccompanied children, and to provide post-release services to children released from ORR custody.

- The Categories of Individuals section now includes bullet points to separate the unaccompanied children category from the sponsors and household members categories, and it mentions that household members may include adult caregivers and foster parents.

- The Categories of Records section now describes the record categories as biographical information about unaccompanied children, sponsor background check records, identity documents, and post-release services (PRS) records for greater consistency with the UC Bureau regulations at 45 CFR parts 410 and 411, instead of as a computerized indexing system and case files.

- The list of sources in the Record Source Categories section has been revised to add “ORR-funded grantees and contractors” and “ORR staff” and remove “third parties.”

- In the Routine Uses section, ten existing routine uses have been revised and five have been removed, and seven new routine uses have been added, explained as follows:

- Routine use 1, *Disclosure to an Attorney or Representative*, has been revised to describe an additional purpose for attorney representation of an unaccompanied child in a state juvenile court matter (*i.e.*, “obtaining a predicate order needed to obtain Special Immigrant Juvenile (SIJ) classification”)

and to describe purposes for attorney representation of unaccompanied children and sponsors in matters related to ORR appellate procedures.

- Routine use 2, *Disclosure for Health and Safety*, has been revised and reorganized. It now consistently describes the disclosure recipients as “health care providers” (instead of describing them in the opening sentence as “any state or local health care authorities” and elsewhere as “a health provider”); it describes additional types of evaluations that the disclosures could aid in coordinating (*i.e.*, “emergency,” “routine,” “necessary,” and “disability”); and it now states that private health information not related to illnesses that affect public health and safety “is not authorized to be disclosed under this routine use” (instead of stating that it “will remain confidential”).

- Routine use 3, *Disclosure to Protection and Advocacy Organization*, has been revised to omit disclosures to Child Advocates, which are still authorized, without change, in a separate routine use instead (see Routine Use 4, *Disclosure to Child Advocates*); and to include these additional statutory authorities under which disclosures may be made to Protection and Advocacy Organizations: The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“DD Act”), 42 U.S.C. 15043 and 15044; Protection and Advocacy for Traumatic Brain Injury (PATBI) Act, 42 U.S.C. 300d–53; and the Protection and Advocacy for Individual Rights (PAIR) Act 29 U.S.C. 794(e).

- The routine use previously numbered as routine use 4, *Disclosure to Plaintiffs Counsel*, has been removed as such disclosures are governed by applicable federal court orders, and disclosures made pursuant to a federal court order are authorized directly in the Privacy Act statute at 5 U.S.C. 552a(b)(12) without the need for a routine use.

- Routine use 5, *Disclosure to Department of Homeland Security*, has been updated to clarify in more detail the instances in which information sharing with the Department of Homeland Security may occur (*i.e.*, a more specific list of nine instances, a through j., is now included instead of this description of four instances: “for the purpose of adjudicating or deciding immigration relief, notification of admission/discharge information and forms, and reported escapes of an unaccompanied child from ORR custody; and for background check purposes to ensure safe releases”), and to require that disclosures under the

routine use be made with an express written advisory that no other uses by DHS and no subsequent disclosures by DHS to other entities can be made. In addition, a description of certain non-permitted disclosures has been added at the end of the routine use.

- Routine use 6, *Disclosure for Law Enforcement or Child Welfare Purpose*, is now titled “*Disclosure for Law Enforcement, Child Welfare Investigation, and State Licensing Purposes*.” It now describes additional disclosure purposes (*i.e.*, “to assist with investigations into missing children” and “case management”), and now requires that disclosures under the routine use be made with an express written advisory that no other uses by the receiving entity and no subsequent disclosures by the receiving entity to other entities can be made. In addition, a description of certain non-permitted disclosures has been added at the end of the routine use.

- A new routine use, numbered as routine use 7, *Disclosure to the National Center for Missing and Exploited Children (NCMEC)*, has been added to authorize disclosures to NCMEC for purposes of assisting with investigations into missing children.

- The routine use previously numbered as routine use 7, *Disclosure for Private Relief Legislation*, has been removed, as such disclosures are not made from this system of records, but would be made from system of records 09–90–0068, Federal Private Relief Legislation.

- Routine use 9, *Disclosure to Department of Justice, or in Proceedings*, has been reorganized but not otherwise changed, except to no longer state that the disclosures must be compatible with the original purpose for which the information was collected. The statement is unnecessary to include in the wording of a routine use, because compatibility with original collection purpose is part of the definition of a routine use.

- Routine use 10, *Disclosure to Department of Justice for LOPC Facilitation*, is now titled “*Disclosure to Department of Justice for Legal Orientation Programs for Custodians (LOPC) Facilitation*.” It has been revised to add that information such as the child’s name, Alien Number, and sponsor category may be shared with DOJ’s Executive Office of Immigration Review as part of a case status summary in advance of the child’s immigration hearing that ORR determines is in the best interest of the child.

- A new routine use, *Disclosure to the Government Publishing Office*, has been added as routine use 12 to

authorize information sharing with GPO for purposes of creating portable versions of ORR release or discharge records.

- The routine use previously numbered as routine use 13, *Disclosure to Office Personnel Management*, has been removed, as such disclosures are not in fact made from this system of records but would be made from a system of records that covers personnel management records, such as 90–90–0020, Suitability for Employment Records.

- The routine use previously numbered as routine use 12, *Disclosure to Contractors, Grantees, and Others*, is now numbered as routine use 13 and titled “*Disclosure to Contractors, Grantees, and Stakeholders*.” It has been revised to list examples of stakeholders and to require that the work the disclosure recipients are performing for which the disclosures are needed “relat[e] to the administration of services provided by the Unaccompanied Children Bureau (including ancillary purposes, such as information technology (IT) system support).”

- Routine use 14, *Disclosure in Connection with Litigation*, is now titled “*Disclosure in Connection with Litigation or Settlement Discussions*” and, at the end of the routine use, “litigation or discussions” has been changed to “litigation or settlement discussions.”

- The routine use previously numbered as routine use 16, *Disclosure for Administrative Claims, Complaints, and Appeals*, has been removed, as such disclosures are not made from this system of records, but would be made from a system of records that covers records about personnel claims.

- The routine use previously numbered as routine use 17, *Disclosure to State Refugee Coordinators*, is now numbered as routine use 16, and the disclosure purposes it describes are now stated to be “in accordance with 8 U.S.C. 1232(c)(2).”

- The routine use previously numbered as routine use 18, *Disclosure to other Federal Departments and Nongovernmental Organizations and Foreign Governments for Safe Repatriation of UC*, is now numbered as routine use 17 and is now titled “*Disclosure to other Federal Departments and Nongovernmental Organizations and Foreign Governments for Safe Repatriation of Unaccompanied Children and for Reuniting Children with a Parent or Sponsor Abroad*.” It has been revised to include this additional disclosure purpose: “reuniting unaccompanied children

with a parent or sponsor abroad in appropriate cases under the Homeland Security Act, 6 U.S.C. 279(b)(1)(H).”

- The two breach response-related routine uses that were added in February 2018 (one of which was a revised version of an existing routine use, and one of which was new) are now numbered as routine uses 18 and 19.

- The routine use previously numbered as routine use 20 (which authorized disclosures to the Department of Homeland Security (DHS) in the event that information from this system of records were captured in an intrusion detection system used by DHS for cybersecurity monitoring purposes) has been deleted. The reason for the deletion is to enable ORR to evaluate any such disclosure in advance, by requiring DHS to make a formal law enforcement request under 5 U.S.C. 552a(b)(7) any time that DHS needs to examine information captured in an intrusion detection system to address a cybersecurity incident.

- A new routine use, *Disclosure to Department of State*, has been added as routine use 20 to authorize information sharing with the Department of State for purposes such as humanitarian operations, sponsor background checks, best interest determinations, and family unification efforts. It includes a description of certain non-permitted disclosures at the end of the routine use, and it requires that disclosures under the routine use be made with an express written advisory that no other uses by the Department of State and no subsequent disclosures by the Department of State to other entities can be made.

- A new routine use, *Disclosure to State and Local Child Welfare Agencies and State and Local Governments*, has been added as routine use 21 to authorize information sharing with state child welfare agencies and state and local governments to assist community agencies in providing services to unaccompanied children placed in their localities and for school enrollment. It includes a description of certain non-permitted disclosures at the end of the routine use, and it requires that disclosures under the routine use be made with an express written advisory that no other uses by the receiving entity and no subsequent disclosures by the receiving entity to other entities can be made.

- A new routine use, *Disclosure to a Foreign Government’s Embassy or Consulate*, has been added as routine use 22 to authorize information sharing with foreign embassies and consulates for the purposes of authenticating identity documents and information

about children in ORR custody with respective consulates, and fulfilling the consular notification obligations binding on federal agencies pursuant to international law and treaties in accordance with Department of State guidance on applicable law

- A new routine use, *Disclosure for Approved Research Purposes*, has been added as routine use 23 to authorize information sharing related to research purposes that ORR determines to be likely to contribute to the policymaking, operations, and mission of the UC Bureau.

- A new routine use, *Disclosure to ACF Unaccompanied Children Office of the Ombuds*, has been added as routine use 24 to authorize information sharing with the ACF Unaccompanied Children Office of the Ombuds for investigation and reporting purposes.

- The Storage section now states: “Records are stored on cloud web servers and/or in file folders,” instead of: “Computer records are stored on a computer network. Paper records are stored in file folders.”

- The Retrieval section now includes date of birth, and no longer includes SSN, in the description of personal identifiers used for retrieval.

- The Retention section now states that records are retained for 50 years after a child is released from ORR custody, citing disposition schedules DAA–0292–2019–0009–0001 and DAA–0292–2019–0009–0002. (Previously, it stated that computerized indexing system records were retained permanently and that case files were retained for five years following receipt of the final progress report, citing disposition schedules N1–292–90–04, item 15 and N1–292–90–4, item 34.)

- The Safeguards section now describes specific administrative, technical, and physical safeguards that are used to protect the records from unauthorized access, instead of merely stating that Safeguards conform to the HHS Information Security Program.

- The Request Procedures sections have been updated to require that access, amendment, and notification requests include date and place of birth; to no longer require that requests include SSN; to explain that an accounting of disclosures may also be requested; and to explain how to verify identity instead of referring to the HHS Privacy Act regulations for an explanation.

III. The Privacy Act

The Privacy Act of 1974, as amended (5 U.S.C. 552a), governs the means by which the U.S. Government collects, maintains, and uses information about

individuals in a system of records for purposes compatible with the purpose for which the record is collected. A “system of records” is a group of any records under the control of a federal agency from which information about an individual is retrieved by the individual’s name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses information about individuals in the system, the routine uses for which the agency discloses such information outside the agency, and how individual record subjects can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them).

As required by the Privacy Act at 5 U.S.C. 552a(r), HHS has sent a report of this amended system of records and new system of records to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Accountability of the House of Representatives, and the OMB Office of Information and Regulatory Affairs.

Robin Dunn Marcos,

Deputy Assistant Secretary for Humanitarian Services Director, Office of Refugee Resettlement.

SYSTEM NAME AND NUMBER:

ORR Unaccompanied Children Bureau (UCB) Administrative Program Records, 09–80–0321.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the component responsible for the system of records is the Bureau of Operations, Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), Mary E. Switzer Building, 330 C Street SW, Washington, DC 20201.

SYSTEM MANAGER(S):

Principal Deputy Director, Office of Refugee Resettlement, Administration for Children and Families, Mary E. Switzer Building, 330 C Street SW, Washington, DC 20201, UCPolicy-RegulatoryAffairs@acf.hhs.gov, (202) 401–9246.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 279 and 8 U.S.C. 1232.

PURPOSE(S) OF THE SYSTEM:

The records are used within HHS/ACF/ORR to administer the Unaccompanied Children Bureau (UCB) program, the purposes of which are:

- to provide care and custody of unaccompanied children transferred to ORR custody until (1) their release to a family member or sponsor in the United States or abroad, in appropriate cases, (2) their removal to their home country by Department of Homeland Security (DHS) immigration officials, (3) they receive lawful immigration status, or (4) they turn 18 years of age;
- to assess the suitability of sponsors of unaccompanied children; and
- to provide post-release services to children released from ORR custody.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about these categories of individuals:

- Unaccompanied children (UC), which include:
 - unaccompanied children currently and formerly in ORR’s care and custody by reason of their immigration status;
 - children of unaccompanied children who are housed together with their unaccompanied child parents who are in ORR custody;
 - unaccompanied children who later receive an adjustment of status or become U.S. citizens; and
 - children referred to ORR as likely to be an unaccompanied child;
- sponsors and potential sponsors of unaccompanied children; and
- members of a sponsor’s or potential sponsor’s household (including both U.S. and non-U.S. citizens, adult caregivers, and foster parents).

Unaccompanied children are children who have no lawful immigration status in the United States; have not attained 18 years of age; and with respect to whom (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. *See* 6 U.S.C. 279(g)(2).

The Privacy Act applies only to U.S. citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States. As a matter of discretion, ORR will treat information that it maintains in its mixed systems of records (*i.e.*, those that contain records about both individuals who are—and individuals who aren’t—covered by the Privacy Act) as being subject to the provisions of the Privacy Act, regardless of whether the information relates to individuals covered by the Privacy Act. This implements a 1975 Office of Management and Budget (OMB) recommendation to apply, as a matter of

policy, the administrative provisions of the Privacy Act to records about individuals who aren’t covered by the Privacy Act when the records are maintained in mixed systems of records (referred to as the non-U.S. persons policy).

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of the below categories of records, which are used in providing care, custody, placement, services, and release of unaccompanied children. They include biographical information about unaccompanied children, sponsor background check records, identity documents, and post-release services (PRS) records, further described below:

- *Biographical information about unaccompanied children* includes the child’s name, Alien Registration Numbers (A#), Fingerprint Identification Numbers (FINs), and date and place of birth, as well as information about apprehension; criminal records; financial information; addresses; attorney of record; parents and other family members; sponsors and potential sponsors and their household members (including adult caregivers and foster parents) identified in a sponsor care plan; case disposition information; home-study results; sexual assault hotline and National Call Center information; admission documents; legal records; health information (medical, dental, DNA, mental health, and behavioral health records); child assessments; educational records; incident and grievance reports; release/discharge records; sponsor application and supporting documentation; and sponsor assessments.

• *Sponsor background check records* may include the sponsor’s, potential sponsor’s and, as applicable, household member’s and adult caregiver’s biographical information, such as name, address, and date of birth, as well as FBI fingerprint check results and state criminal and child protective services check results.

• *Identity documents* include, for example, birth certificates, driver’s licenses, Permanent Resident Cards or Alien Registration Receipt Cards, passports, document authentication records, and other official domestic and foreign government-issued identity documents.

• *Post-release services (PRS) records* may include monthly reports, case notes, service plans, list of resources and referrals, safety plans, initial assessments, mental health assessments, trafficking assessments, additional ongoing assessments, closing reports, and correspondence with the sponsor.

RECORD SOURCE CATEGORIES:

Record subjects; family members; private individuals; private and public hospitals; doctors, nurses, and other clinicians; law enforcement agencies and officials; attorneys; ORR-funded grantees and contractors; ORR staff; foreign governments; other federal agencies, state and local governments, agencies, and instrumentalities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(1) and (2) and (4) through (11), these routine uses, which are published pursuant to 5 U.S.C. 552a(b)(3) and (e)(4)(D) and (11), specify circumstances under which ACF may disclose information from this system of records without the prior written consent of the record subject. A routine use is defined in the Privacy Act at 5 U.S.C. 552a(a)(7) as a disclosure of a record for a use that is compatible with the purpose for which the record was collected; accordingly, each of these routine uses authorizes disclosures for purposes that are compatible with the purpose for which the information was collected.

Each proposed disclosure of information under these routine uses (and any proposed disclosure in response to a law enforcement request that complies with 5 U.S.C. 552a(b)(7)) will be evaluated to ensure that the disclosure is legally permissible and consistent with ORR's responsibilities under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. 1232 and the Homeland Security Act, 6 U.S.C. 279 to provide for the care and custody of unaccompanied children in Federal custody by reason of their immigration status, place them in the least restrictive setting while in HHS custody, and release them to a suitable sponsor, primarily their parent or a family member, pending resolution of their immigration status. ORR is not an immigration enforcement agency and does not maintain records for immigration enforcement purposes. Accordingly, in no case shall a disclosure under a routine use (or a disclosure in response to a law enforcement request that complies with 5 U.S.C. 552a(b)(7)) include sharing information from this system of records with other federal agencies or entities (e.g., the Department of Homeland Security, the Department of Justice) for purposes that are incompatible with HHS/ORR Unaccompanied Children Bureau statutes, regulations and

policies, such as for immigration enforcement purposes (including initiating immigration enforcement activities, determining whether an individual should be removed from the United States, for immigration detention or bond determinations, or verifying an individual's statements in removal proceedings²). Any disclosure for immigration enforcement purposes would be made only with the prior written consent of the subject individual(s).

1. *Disclosure to an Attorney or Representative.* Information may be disclosed to: an attorney or representative (as defined in 8 CFR 1.2) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before the Department of Homeland Security or the Executive Office for Immigration Review; an attorney representing an unaccompanied child in a state juvenile court matter that may determine or alter the unaccompanied child's custody status or placement or for purposes of obtaining a predicate order needed to obtain Special Immigrant Juvenile (SIJ) classification; an attorney representing an unaccompanied child in a juvenile or criminal court in relation to criminal charges; and an attorney representing an unaccompanied child in a hearing or other matter related to ORR's appellate procedures, including those relating to placement in a restrictive setting, risk determinations, or release from ORR custody. Information may be released to an attorney representing an unaccompanied child with respect to decisions involving the child's placement, care, custody and release, and/or the administration of psychotropic medications to the child. Information regarding a significant incident related to an unaccompanied child may be disclosed to an attorney representing the child. A disability evaluation report pertaining to an unaccompanied child may be disclosed to an attorney representing the child. Information may also be disclosed to an attorney representing a potential sponsor in relation to ORR's appellate procedures concerning a sponsorship denial of a parent, legal guardian, or close relative.

2. *Disclosure for Health and Safety.* Private health information of

unaccompanied children may be disclosed to health care providers for the purposes of coordinating emergency, routine, and necessary medical, mental health, and disability evaluations, services, and care for unaccompanied children while in ORR care and custody. Information may be shared with a health provider to make age determinations for unaccompanied children. Information related to communicable diseases or other illnesses that have the potential to affect public health and safety may be disclosed to any state or local health authorities, to ensure that all health issues potentially affecting public health and safety in the United States are being, or have been, adequately addressed. Private health information not related to communicable diseases or other illnesses that affect public health and safety is not authorized to be disclosed under this routine use.

3. *Disclosure to Protection and Advocacy Organization.* Information may be disclosed to a Protection and Advocacy organization when access is authorized by, and the request is appropriately made under, one or more of the following: The Protection and Advocacy for Individuals with Mental Illness Act (PAMI), 42 U.S.C. 10801 *et seq.*; The Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("DD Act"), 42 U.S.C. 15043 and 15044; Protection and Advocacy for Traumatic Brain Injury (PATBI) Act 42 U.S.C. 300d-53; or the Protection and Advocacy for Individual Rights (PAIR) Act, 29 U.S.C. 794(e).

4. *Disclosure to Child Advocate.* Information may be disclosed to an HHS-appointed child advocate for the purpose of effectively advocating for the best interest of the child. Child advocates are granted access to this information under section 235(c)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. 1232(c)(6).

5. *Disclosure to Department of Homeland Security.* Information may be disclosed to the Department of Homeland Security (DHS) for:

a. Reporting the death or arrest of an unaccompanied child in ORR custody or unauthorized absences of unaccompanied children from ORR custody;

b. Transferring individuals to DHS custody for the limited purpose of facilitating continuity of medical care (subject to the applicable information sharing restrictions set forth in 45 CFR parts 410 and 411 and the ORR UC Policy Guide);

c. Facilitating transfer to DHS custody of individuals determined to be adults,

² See 45 CFR 1201(b) stating "ORR shall not disqualify potential sponsors based solely on their immigration status and shall not collect information on immigration status of potential sponsors for law enforcement or immigration enforcement related purposes. ORR shall not share any immigration status information relating to potential sponsors with any law enforcement or immigration enforcement related entity at any time."

or who turn 18 years old, including information relevant to determining whether the individual committed a crime that ORR determines would make the individual a danger to the community;

d. Communicating reports of abuse, neglect, sexual harassment, or inappropriate sexual behavior that occurred while a child was in DHS custody before being transferred to ORR custody;

e. Correcting the child's information in government systems; and for age determinations, *see* 8 U.S.C. 1232(b)(4);

f. Providing notice of transfers of unaccompanied children in ORR custody between care provider facilities, and for discharge notifications;

g. The limited purpose of facilitating human trafficking investigations by DHS Homeland Security Investigations (HSI) to ensure child safety;

h. Validating the relationship between a child and an accompanying adult (*e.g.*, where DHS potentially separated a child from their parent or legal guardian before transferring the child to ORR);

i. Communicating a child's medical information with the DHS Office of Health Security for the purpose of facilitating continuity of medical care for the child.

In no case shall information from this system of records, including mental health or behavioral information, be shared or used for purposes that are incompatible with HHS/ORR Unaccompanied Children Bureau statutes, regulations and policies, such as for immigration enforcement purposes (including initiating immigration enforcement activities, determining whether an individual should be removed from the United States, for immigration detention or bond determinations, or verifying an individual's statements in removal proceedings).

Disclosures under this routine use will be made with an express written advisory that no other uses by DHS and no subsequent disclosures by DHS the receiving entity to other entities can be made.

6. *Disclosure for Law Enforcement, Child Welfare Investigation, and State Licensing Purposes.* Disclosures under this routine use will be made with an express written advisory that no other uses by the receiving entity and no subsequent disclosures by the receiving entity to other entities can be made. Information may be disclosed to the appropriate federal, state, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant

to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity (other than immigration enforcement) and ORR determines that the disclosure is in the best interest of the child; to assist with investigations into missing children; and for sponsor background checks and case management, to ensure safe releases. Information may be shared with certain state and local agencies that provide child welfare services such as state licensing agencies, Child Protective Services, and education agencies such as state, county, or municipal schools for the purpose of protecting an unaccompanied child's health and welfare and sponsor background check purposes to ensure safe releases. In no case shall information from this system of records be further shared or used for purposes that are incompatible with HHS/ORR Unaccompanied Children Bureau statutes, regulations and policies, such as for immigration enforcement purposes (including initiating immigration enforcement activities, determining whether an individual should be removed from the United States, for immigration detention or bond determinations, or verifying an individual's statements in removal proceedings).

7. *Disclosure to the National Center for Missing and Exploited Children (NCMEC).* Information may be disclosed to the NCMEC to assist with investigations into missing children.

8. *Disclosure to Congressional Office.* Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the written request of the individual.

9. *Disclosure to Department of Justice, or in Proceedings.* Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when any of the following is a party to the proceedings or has an interest in such proceedings, and the use of such records by the Department of Justice or HHS is deemed by HHS to be relevant and necessary to the proceedings:

- HHS, or any component thereof;
- any employee of HHS in his or her official capacity;
- any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- the United States, if HHS determines that litigation is likely to affect HHS or any of its components.

10. *Disclosure to Department of Justice for Legal Orientation Programs for Custodians (LOPC) Facilitation.* Information may be disclosed to the Department of Justice, Executive Office for Immigration Review (EOIR) for purposes of collaboration in facilitating sponsors' participation in LOPCs under section 235(c)(4) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. 1232(c)(4). ORR may also share limited information with EOIR as part of a case status summary in advance of a child's immigration hearing that ORR determines is in the best interest of the child, such as name, Alien Number, and sponsor category.

11. *Disclosure to the National Archives and Records Administration (NARA).* Information may be disclosed to the National Archives and Records Administration in its records management inspections.

12. *Disclosure to the Government Publishing Office (GPO).* Information may be shared with GPO for purposes of creating portable versions of ORR release or discharge records.

13. *Disclosure to Contractors, Grantees, and Stakeholders.* Information may be disclosed to contractors, grantees, consultants, volunteers, or stakeholders (including, but not limited to, legal service providers, case coordinators, medical providers, non-HHS Federal agency partners, child advocates, attorneys of record, sponsors and potential sponsors, educational institutions, and organizations providing services to unaccompanied children and sponsors) performing or working on a contract, service, grant, cooperative agreement, job, or memorandum of understanding, or other activity for HHS relating to the administration of services provided by the Unaccompanied Children Bureau (including ancillary purposes, such as information technology (IT) system support) and who have a need to have access to the information in the performance of their duties or activities for HHS, and for reunification purposes.

14. *Disclosure in Connection with Litigation or Settlement Discussions.* Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against HHS, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or settlement discussions.

15. *Disclosure Incident to Requesting Information.* Information may be disclosed (to the extent necessary to identify the individual, inform the source of the purpose of the request, and

to identify the type of information requested), to any source from which additional information is requested when necessary to obtain information relevant to an agency decision concerning benefits.

16. *Disclosure to State Refugee Coordinators.* Information may be shared with State Refugee Coordinators for children in ORR care who are being transferred into ORR's Unaccompanied Refugee Minors program for purposes of coordinating appropriate placement and services for the child in accordance with 8 U.S.C. 1232(c)(2). The State Refugee Coordinator refers to the individual(s) designated by a Governor or a State to be responsible for, and authorized to, ensure coordination of public and private resources in refugee resettlement.

17. *Disclosure to other Federal Departments and Nongovernmental Organizations and Foreign Governments for Safe Repatriation of Unaccompanied Children and for Reuniting Children with a Parent or Sponsor Abroad.* Information may be disclosed to other federal agencies (such as the Department of State, Department of Justice, Department of Homeland Security), nongovernmental organizations and foreign governments as it relates to the safe repatriation of unaccompanied children to their country of origin as directed under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 section 235(a)(5), 8 U.S.C. 1232(a)(5) and for reuniting unaccompanied children with a parent or sponsor abroad in appropriate cases under the Homeland Security Act, 6 U.S.C. 279(b)(1)(H).

18. *Disclosure in the Event of a Security Breach Experienced by HHS.* Information may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS' efforts to respond to the suspected or confirmed breach, or to prevent, minimize, or remedy such harm.

19. *Disclosure to Assist Another Agency Experiencing a Breach.* Information may be disclosed to another federal agency or federal entity, when HHS determines that information from

this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

20. *Disclosure to Department of State.* Information may be disclosed to the Department of State for humanitarian operations, sponsor background checks, best interest determinations, and family unification efforts, including obtaining and verifying identity documents (birth certificates, passports, and government-issued identifications) of unaccompanied children, their sponsors, and household members who are also eligible for immigration relief, family unification, or humanitarian evacuation. In no case shall such information be shared for immigration enforcement purposes (including initiating immigration enforcement activities, such as determining whether an individual should be removed from the United States, for immigration detention or bond determinations or verifying an individual's statements in removal proceedings). Disclosures under this routine use will be made with an express written advisory that no other uses by the Department of State and no subsequent disclosures by the Department of State to other entities can be made.

21. *Disclosure to State and Local Child Welfare Agencies and State and Local Governments.* ORR may disclose information of children and sponsors to local and state agencies offering post-release services to the child or sponsor for the purpose of facilitating delivery of child welfare services and safe releases if ORR determines that the disclosure is in the child's best interest. ORR may also disclose information of children and sponsors to state and local government entities, such as school districts, for the purpose of facilitating enrollment of unaccompanied children in a school or educational program and for individualized education planning, including but not limited to obtaining special education services when needed. In no case shall such information be shared with state or local entities for immigration enforcement purposes (including initiating immigration enforcement activities, such as determining whether an individual should be removed from the United States, for immigration detention or bond determinations or verifying an individual's statements in removal

proceedings). Disclosures under this routine use will be made with an express written advisory that no other uses by the receiving entity and no subsequent disclosures by the receiving entity to other entities can be made.

22. *Disclosure to a Foreign Government's Embassy or Consulate.* ORR may disclose copies of birth certificates, passports, or other official, foreign government-issued identity documents to foreign embassies and consulates for the purpose of authenticating those documents, verifying identity, and for sponsor background check purposes. ORR may also disclose information of children when notifying foreign embassies and consulates that a child from their country is in ORR custody in accordance with Department of State guidance on applicable law. In no case shall information from this system of records, including mental health or behavioral information, be shared or used for purposes that are incompatible with HHS/ORR Unaccompanied Children Bureau statutes, regulations and policies, such as disclosing information to foreign consulates that may indicate a child may have a fear of persecution or other mistreatment by their country, or may be seeking asylum or refugee status. *Disclosure for Approved Research Purposes.* ORR may disclose information for research purposes and predictive modeling to entities conducting relevant research that ORR determines contributes to ORR's policymaking, operations, and mission of the UC Bureau.

23. *Disclosure to ACF Unaccompanied Children Office of the Ombuds.* ORR may disclose information to the ACF Unaccompanied Children Office of the Ombuds in accordance with the Ombuds' investigation and reporting purposes.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored on cloud web servers and/or in file folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Personal identifiers used for retrieval include the name, Alien Registration Number, and/or date of birth of the unaccompanied child; name and/or date of birth of the potential sponsor; and the name and/or date of birth of the potential sponsor's household member or adult caregiver identified in a sponsor care plan.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained for 50 years after a child is released from ORR custody

(see National Archives and Records Administration-approved record retention and disposition schedules DAA-0292-2019-0009-0001 and DAA-0292-2019-0009-0002).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies. Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse. All record keepers are required to maintain appropriate administrative, technical, and physical safeguards to protect the records from unauthorized access. Administrative safeguards include background checks, as well as training individuals who have access to the records on how to handle them appropriately, incident response plans, mandatory security and privacy awareness training, limiting access to individuals who need to know the information, and reviewing security controls on an ongoing basis. Technical safeguards include the use of antivirus software, vulnerability patching, multi-factor authentication when required, or username and password, and storing electronic records in encrypted form, to limit system access to authorized users. Physical safeguards include storing hard copy records and computer terminals used to access electronic records in physically locked locations when not in use. Safeguards conform to the HHS Information Security Program, <https://www.hhs.gov/ocio/securityprivacy/index.html>.

RECORD ACCESS PROCEDURES:

Individuals may request access to a record about them in this system of records by submitting a written access request to the System Manager. The request must include, as applicable, the individual's name, Alien Registration Number, date and place of birth, telephone number and/or email address, current address, and signature. In addition, to further verify the individual's identity, the individual must provide either a notarization of the request or a written certification that the requester is the individual who the requester claims to be and understands that the knowing and willful request for, or acquisition of, a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a fine of up to \$5,000. An individual may also request an accounting of disclosures that have been made of any records about that individual. Verification of identity is

also required for a parent or legal guardian who makes a request on behalf of a minor (in addition to verifying the minor's identity).

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about them in this system of records must submit a written request for amendment to the System Manager. The request must provide the same information described under "Record Access Procedures," including identity verification information, and must specify the information that is contested, the corrective action sought, and the reason(s) for requesting the correction, and include supporting information. The right to contest records is limited to information that is factually inaccurate, incomplete, irrelevant, or untimely (obsolete).

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them must submit a written notification request to the System Manager. The request must include the same information described under "Record Access Procedures," including identity verification information.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

81 FR 46682 (July 18, 2016), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2024-29113 Filed 12-11-24; 8:45 am]

BILLING CODE 4184-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-0008]

Advisory Committee; Science Board to the Food and Drug Administration; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the renewal of the Science Board to the Food and Drug Administration by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Science Board to the Food and Drug Administration for an additional 2 years beyond the charter expiration date. The

new charter will be in effect until the June 26, 2026, expiration date.

DATES: Authority for the Science Board to the Food and Drug Administration will expire on June 26, 2026, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT:

Rakesh Raghuvanshi, Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993-0002, 301-796-4769, rakesh.raghuvanshi@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102-3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Science Board to the Food and Drug Administration (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee shall provide advice to the Commissioner and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Committee will provide advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

The Committee shall consist of a core of 21 voting members including a Chair and Co-Chair. The members, Chair, and Co-Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of food science, safety, and nutrition; chemistry; pharmacology; translational and clinical medicine and research; toxicology; biostatistics; medical devices; imaging; robotics; cell and tissue based products; regenerative medicine; public health and epidemiology; international health and regulation; product safety; product manufacturing sciences and quality; and other scientific areas relevant to FDA-regulated products such as systems

biology, informatics, nanotechnology, and combination products. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees or representatives. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons.

The Commissioner or designee shall have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members), or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

If functioning as a medical device panel, an additional non-voting representative member of consumer interests and an additional non-voting representative member of industry interests will be included in addition to the voting members.

Further information regarding the most recent charter and other information can be found at <https://www.fda.gov/advisory-committees/committees-and-meeting-materials/science-board-food-and-drug-administration> or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act as amended (5 U.S.C. 1001 *et seq.*). For general information related to FDA advisory committees, please visit us at

<https://www.fda.gov/AdvisoryCommittees/default.htm>.

Dated: December 4, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–29231 Filed 12–11–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–1716]

Registration and Listing of Cosmetic Product Facilities and Products; 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 entitled “Registration and Listing of Cosmetic Product Facilities and Products.” The guidance will assist persons submitting cosmetic product facility registrations and product listing submissions to FDA under the Modernization of Cosmetics Regulation Act of 2022 (MoCRA). This guidance includes three new draft frequently asked questions and answers about cosmetic product facility registrations and product listing submissions, in Appendix B, for comment purposes only. Aside from the three new draft frequently asked questions and answers, this guidance finalizes the draft Appendix B published in an otherwise final guidance on December 19, 2023. This guidance also includes minor changes to the final guidance for clarity.

DATES: The announcement of the guidance is published in the **Federal Register** on December 12, 2024. However, the portion of this guidance in Appendix B that describes three new frequently asked questions and answers, is being distributed for comment purposes only. To ensure that the Agency considers your comment on this draft section before it begins work on the final version of this section of the guidance, submit either electronic or written comments on this section by January 13, 2025.

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–1716 for “Registration and Listing of Cosmetic Product Facilities and Products.” 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 Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., WO1, Silver Spring, MD 20993-0002. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jennifer Ross, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993-0002, 301-796-4880 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled “Registration and Listing of Cosmetic Product Facilities and Products.”

On December 29, 2022, the President signed the Consolidated Appropriations

Act, 2023 (Pub. L. 117-328) into law, which included MoCRA. Among other provisions, MoCRA added section 607 to the Federal Food, Drug, and Cosmetic Act (FD&C Act), establishing requirements for cosmetic product facility registration and cosmetic product listing. Section 607(a) of the FD&C Act (21 U.S.C. 364c(a)) requires every person that owns or operates a facility that engages in the manufacturing or processing of a cosmetic product for distribution in the United States to register each facility. In addition to the registration requirements, section 607(c) of the FD&C Act requires that for each cosmetic product, the responsible person submit to FDA “a cosmetic product listing.” Certain small businesses, as defined in section 612 of the FD&C Act (21 U.S.C. 364h), are exempt from the registration and listing requirements.

In the **Federal Register** of December 19, 2023 (88 FR 87780), we made available a final guidance for industry entitled “Registration and Listing of Cosmetic Product Facilities and Products.” This guidance also included a new draft section, Appendix B, for comment purposes only, that describes frequently asked questions and answers about cosmetic product facility registrations and product listing submissions and gave interested parties an opportunity to submit comments by January 18, 2024, for us to consider before beginning work on the final version of Appendix B. We received a few comments on the draft guidance Appendix B frequently asked questions and answers and have modified the final guidance Appendix B in response to these comments and for clarity, where appropriate. In addition, we made editorial changes to the final guidance to improve clarity. Finally, three new frequently asked questions and answers in Appendix B of this guidance are highlighted in grey and are marked “for comment purposes only” to provide an opportunity for comment before they are finalized. Aside from the three new frequently asked questions and answers in Appendix B, this guidance finalizes the draft guidance Appendix B that was published on December 19, 2023 (88 FR 87780) and reissues the final guidance with minor changes for clarity. No changes were made to Appendix A of the final guidance.

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 “Registration and Listing of Cosmetic Product Facilities

and Products.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521). The collections of information in section 607 of the FD&C Act have been approved under 0910-0599.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/CosmeticGuidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: December 5, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-29237 Filed 12-11-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-5375]

Revocation of Authorization of Emergency Use of B. Braun Medical’s Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to B. Braun Medical, Inc., for the Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES. FDA revoked this Authorization under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as requested by the Authorization holder. The revocation, which includes an explanation of the reasons for revocation, is reprinted at the end of this document.

DATES: The revocation of the Authorization for the B. Braun Medical, Inc.'s Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES is effective as of October 1, 2024.

ADDRESSES: Submit written requests for a single copy of the revocation 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 or include a Fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gertz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993-0002, 240-402-9677 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108-276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113-5) allows FDA

to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or 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 April 11, 2020, FDA issued the Authorization to B. Braun Medical, Inc., for the Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on July 14, 2020 (85 FR 42407), 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 device 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. Authorization Revocation Request

In a request received by FDA on August 6, 2024, B. Braun Medical, Inc., requested the withdrawal of, and on October 1, 2024, FDA revoked, the

Authorization for the B. Braun Medical Inc.'s Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES. Because B. Braun Medical Inc., notified FDA about the lack of customer interest and lack of need for use of the device for the indications granted under this EUA considering the improved COVID-19 situation and requested FDA withdraw the B. Braun Medical Inc.'s Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocation is available on the internet at <https://www.regulations.gov/>.

IV. 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 of the B. Braun Medical Inc.'s Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES. 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.

BILLING CODE 4164-01-P



FDA U.S. FOOD & DRUG
ADMINISTRATION

October 1, 2024

Venkata Vempati
B. Braun Medical, Inc.
3773 Corporate Pkwy
Center Valley, PA 18034

Re: Revocation of EUA200227

Dear Venkata Vempati:

This letter serves to correct an error in our October 1, 2024, revocation letter. We inadvertently stated that this EUA had been issued on April 1, 2020. We have corrected that date below to reflect the April 11, 2020, issuance. The signature on this letter will reflect the date of the correction but the October 1, 2024 date of the letter reflects the effective date of the revocation.

This letter is in response to your request dated August 6, 2024, that the Food and Drug Administration (FDA) provide advice about the process for withdrawing the Emergency Use Authorization (EUA200227) issued on April 11, 2020, for B. Braun Medical's Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES. We are considering this as a request to revoke this EUA. Your request is in response to the lack of customer interest and lack of need for use of the device for the indications granted under this EUA considering the improved COVID-19 situation. The B. Braun Medical's Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES were authorized for emergency use by FDA for use in the tracheal delivery of continuous nebulized medications into a nebulizer to treat patients of all ages with or suspected of having COVID-19 and for ground medical transport use of the Infusomat Space Volumetric Infusion Pump System.

FDA understands that B. Braun Medical does not plan to continue to distribute the Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES for the indications authorized in EUA200227. If you decide later that you want to do so, those indications would require emergency use authorization or marketing authorization (premarket approval under section 515 of the Federal Food Drug and Cosmetic Act (the Act), 510(k) clearance (premarket notification under section 510(k) of the Act), or De Novo classification (under section 513 of the Act)).

You indicated in your email dated September 16, 2024, that the EUA included additional indications beyond the 510(k)-cleared device indications and that the only changes that you made to the 510(k)-cleared device were to include an addendum to the instructions for use and to add fact sheets to the existing labeling. In that email, you committed to, upon EUA revocation, do the following:

- 1) Post a customer letter on your website and send the letter to customers to direct them to dispose of the EUA-related labeling;



- 2) Remove from the website the current EUA Customer Letter, the Fact Sheets for Healthcare Providers, and the corresponding Instructions for Use addendum for the B. Braun Space and Outlook Pumps; and
- 3) Notify customers, via the B. Braun website, that the EUA for the B. Braun infusion pumps has been revoked, and that customers should dispose of the Customer Letter, the Fact Sheets for Healthcare Providers, and the Instructions for Use addendum for the B. Braun Space and Outlook Pumps.

In an additional email, dated September 25, 2024, you indicated that you also intend to:

- 1) Instruct customers to dispose of the EUA-specific IFU addendum and to use the device with the 510(k) cleared labeling; and
- 2) Offer customers the ability to either download the electronic copy of the 510(k)-cleared device labeling from B. Braun's website or contact the customer representative to request a paper copy of the same, as needed.

The authorization of a device 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 B. Braun Medical Inc. has requested that FDA revoke the EUA for the Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes, pursuant to 564(g)(2)(C), EUA200227 for the B. Braun Perfusor Syringe Infusion Pump System, Outlook ES and the Infusomat Space Volumetric Infusion Pump. As of the date of this letter, the Perfusor Space Syringe Infusion Pump System, Infusomat Space Volumetric Infusion Pump System, and Outlook ES are no longer authorized for emergency use by FDA¹.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Ellen J. Flannery, J.D.
Deputy Center Director for Policy
Director, Office of Policy
Center for Devices and Radiological Health
Food and Drug Administration

¹ As outlined in our April 1, 2020, EUA letter, the B. Braun Space and Outlook Pumps have each respectively received marketing authorization from FDA under section 510(k) of the Act. This EUA revocation does not impact the 510(k)-cleared devices or their indications for use.

Page 2 – Venkata Vempati, B. Braun Medical

Dated: December 4, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-29247 Filed 12-11-24; 8:45 am]

BILLING CODE 4164-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of the General Counsel, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: This document revises and restates the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Office of the General Counsel (OGC). Issuance of this Statement of Organization rescinds all prior Statements of Organization.

FOR FURTHER INFORMATION CONTACT: Rachel Park, Principal Deputy General Counsel, Office of the General Counsel, Office of the Secretary, 200

Independence Avenue SW, Washington, DC 20201. (202) 690-7741

SUPPLEMENTARY INFORMATION: The Office of the Secretary (OS) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Office of the General Counsel (OGC), should now read as follows:

Section I. Mission

The General Counsel is responsible for providing all legal services and advice to the Secretary, Deputy Secretary, and all subordinate organizational components of the Department. Under direction of the General Counsel, the Office of the General Counsel (OGC) serves as the sole officially designated source of legal advice and services to the Department's operating and staff divisions (except the OIG) to ensure that all the operating and staff divisions receive uniform advice. The Office of the Inspector General (OIG) is authorized to have its own Office of the Counsel to the Inspector General (OCIG). 62 FR 30859 (June 5, 1997).

Section II. Organization and Leadership

The Office of the General Counsel (OGC), under the supervision of a General Counsel, consists of:

1. Immediate Office
2. Divisions
3. Regional Offices

Subsection A. The Immediate Office of the General Counsel

1. The Immediate Office of the General Counsel.

The Immediate Office of the General Counsel consists of the General Counsel, their executive assistant(s), a Principal Deputy General Counsel, such other Deputy General Counsel as the Secretary deems appropriate and appoints, such other Special Assistant Deputy General Counsel, Senior Counsel, Senior Advisors and attorneys and staff as the General Counsel deems appropriate, and the Office of Legal Resources (OLR).

a. The General Counsel. The General Counsel is the chief legal officer of the Department and is directly responsible to the Secretary.

b. Principal Deputy General Counsel. The career Principal Deputy General Counsel is the second-ranking legal officer of the Department and is directly responsible to the General Counsel and the Secretary. The career Principal Deputy General Counsel is the "first assistant" to the General Counsel within the meaning of the Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*

c. Deputy General Counsels. The Deputy General Counsels report to the General Counsel and each shall be responsible for overseeing such substantive legal areas and corresponding OGC portfolios as designated by the General Counsel.

i. Career Deputy General Counsel. One or more career Deputy General Counsels may be appointed to the Immediate Office. Career Deputy General Counsels (including the career Principal Deputy General Counsel) will generally be responsible for OGC management and operations, oversight of OLR, and such litigation, substantive, or programmatic portfolios and other duties as determined by the General Counsel. For performance evaluation purposes, a career deputy will serve as the rating official for all Associate General Counsels, Chief Counsels, the OLR Director, and any career Senior Counsel or Senior Advisor.

ii. Non-Career Deputy General Counsel. One or more non-career Deputy General Counsels may be appointed to the Immediate Office. Each non-career Deputy shall report to the General Counsel and shall be assigned oversight of one or more portfolios within the Office of the General Counsel.

iii. Special Assistant Deputy General Counsel. The General Counsel may designate one or more attorneys to act as a special assistant and to carry the title Special Assistant Deputy General Counsel. Any Special Assistant Deputy General Counsel shall report directly to the General Counsel or to such Deputy General Counsel as the General Counsel may designate.

d. Senior Counsel, Special Counsel, or Senior Advisor to the General Counsel: Senior Counsels, Special Counsels, or Senior Advisors to the General Counsel perform such duties as may be assigned to them by the General Counsel, Principal Deputy General Counsel, or Deputy General Counsel.

2. Order of Succession.

a. General Counsel Vacancy. In the event of a "vacancy" in the position of General Counsel as a result of death, resignation, or an inability to perform the functions and duties of the office, the Principal Deputy General Counsel shall act in the General Counsel's stead, or serve as the Acting General Counsel as dictated by the Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.* unless the President designates another Acting General Counsel pursuant to the Act.

b. Principal Deputy General Counsel Vacancy. In the event of vacancies in offices of both the General Counsel and the Principal Deputy General Counsel, the non-career Deputy General Counsel

with the greatest seniority in that position shall perform the functions of or serve as the Acting General Counsel as dictated by the Vacancies Reform Act of 1998, unless the President designates another Acting General Counsel pursuant to the Act. In the event that vacancies extend to or include all non-career deputies, then the career Deputy General Counsel with the greatest seniority in that position shall act in or serve as the Acting General Counsel as dictated by the Vacancies Reform Act of 1998.

3. The Office of Legal Resources, Immediate Office of the General Counsel

The Office of Legal Resources shall be headed by a Director, who is responsible for providing personnel, budget, correspondence, and information technology support to the Office of the General Counsel as well as providing legal information law services through the Law Library. The Director shall report to the career Deputy General Counsel responsible for OGC management and operations. The Office of Legal Resources includes six branches, each headed by a Director or Manager:

- a. Budget
- b. Correspondence
- c. Human Capital Services
- d. Information Technology
- e. Legal Information
- f. Procurement, Policy and Planning

Subsection B. Divisions

Each OGC Division is under the general supervision of the General Counsel. Each OGC office head reports directly to the designated Deputy General Counsel on substantive legal matters, litigation strategy, and other matters as directed by the General Counsel. There are ten divisions in the Office of the General Counsel:

1. The Advanced Research Projects Agency for Health (ARPA-H) Division shall be headed by a Chief Counsel/Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel.

2. The Centers for Medicare & Medicaid Services Division (CMSD) shall be headed by an Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The Division consists of three groups each headed by a Deputy Associate General Counsel reporting to the Associate General Counsel:

- a. Litigation Group
- b. Program Review Group
- c. Program Integrity Group

The Associate General Counsel may designate supervisory attorneys to report to the Deputy Associate General Counsels as appropriate.

3. The Children, Families, and Aging Division (CFAD) shall be headed by an Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel. CFAD also includes a Deputy Associate General Counsel, who reports to the Associate General Counsel. The Associate General Counsel may designate supervisory attorneys to report to the Deputy Associate General Counsel as appropriate.

4. The Civil Rights and Health Privacy Division (CRD) shall be headed by an Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The Division consists of two groups, each headed by a Deputy Associate General Counsel who reports to the Associate General Counsel:

- a. Civil Rights Team
- b. Health Privacy Team

5. The Ethics Division (ETH) shall be headed by an Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The Division consists of two branches, each headed by a Deputy Associate General Counsel reporting to the Associate General Counsel:

- a. Ethics Advice and Policy Branch
- b. Ethics Program Administration Branch

The Associate General Counsel and Deputy Associate General Counsel for Ethics Advice and Policy simultaneously serve by secretarial delegation as the Department's Designated Agency Ethics Official and Alternate Designated Agency Ethics Official, respectively.

6. The Food and Drug Division (FDD) shall be headed by a Chief Counsel who shall be either a Deputy General Counsel or an Associate General Counsel. In the event that the Chief Counsel is an Associate General Counsel, they shall report to the General Counsel through a designated Deputy General Counsel. In the event that the Chief Counsel is a Deputy General Counsel, the Associate General Counsel shall report to the Chief Counsel. The Division consists of two branches, each of which is headed by one or more Deputy Associate General Counsels who report to the Associate General Counsel:

- a. Litigation Branch
- b. Program Review Branch

7. The General Law Division (GLD) shall be headed by an Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The Division consists of two branches, each headed by a

Deputy Associate General Counsel reporting to the Associate General Counsel, as well as Assistant Deputy Associate General Counsels selected by the Associate General Counsel to provide oversight and supervision of Sections within the Division:

- a. Claims and Employment Law Branch
- b. Procurement, Fiscal, and Information Law Branch

8. The Legislation Division (GCL) shall be headed by an Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel.

9. The Public Health Division (Ph.D.) shall be headed by an Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The Division consists of four branches, each of which is headed by a Deputy Associate General Counsel reporting to the Associate General Counsel:

- a. Indian Health Service (IHS) Branch
- b. Centers for Disease Control and Prevention Branch
- c. National Institutes of Health Branch
- d. Public Health and Science Branch

10. The National Complex Litigation and Investigations Division (NCLID) shall be headed by an Associate General Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The Division shall also have a designated Deputy Associate General Counsel for E-Discovery, who reports to the Associate General Counsel.

Subsection C. Regional Offices

Each OGC Regional Office is under the general supervision of the General Counsel. Each OGC office head reports directly to the designated Deputy General Counsel on substantive legal matters, litigation strategy, and other matters as directed by the General Counsel. There are ten OGC regional offices in the ten HHS Regional Offices:

1. OGC Region 1—Boston shall be headed by a Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel.
2. OGC Region 2—New York City shall be headed by a Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The office has a Deputy Chief Counsel, who reports to the Chief Counsel.
3. OGC Region 3—Philadelphia shall be headed by a Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The office has a Deputy Chief Counsel, who reports to the Chief Counsel.
4. OGC Region 4—Atlanta shall be headed by a Chief Counsel, who reports

to the General Counsel through a designated Deputy General Counsel. The office consists of two branches, each of which is headed by a Deputy Chief Counsel reporting to the Chief Counsel:

- a. HHR Branch (Administration for Children and Families (ACF) and Centers for Medicare & Medicaid Services (CMS) Program Advice and Litigation)
- b. General Law Branch (Personnel and Contract Advice and Litigation)

5. OGC Region 5—Chicago shall be headed by a Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The office has two Deputy Chief Counsels, each of whom reports to the Chief Counsel and oversees legal work in those program areas assigned to them.

6. OGC Region 6—Dallas shall be headed by a Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The office consists of two branches, each of which is headed by a Deputy Chief Counsel who reports to the Chief Counsel:

- a. HHR Branch (Advice and Litigation)
- b. General Law Branch (Advice and Litigation)

7. OGC Region 7—Kansas City shall be headed by a Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel.

8. OGC Region 8—Denver shall be headed by a Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The office has a Deputy Chief Counsel, who reports to the Chief Counsel.

9. OGC Region 9—San Francisco shall be headed by a Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The office consists of two branches, each of which is headed by a Deputy Chief Counsel, who reports to the Chief Counsel:

- a. Employment, IHS, Office of Civil Rights (OCR)
- b. ACF, CMS, Information Requests

10. OGC Region 10—Seattle shall be headed by Chief Counsel, who reports to the General Counsel through a designated Deputy General Counsel. The office has a Deputy Chief Counsel, who reports to the Chief Counsel.

Section III. Functions

Subsection A. The General Counsel and the Office of the General Counsel

1. The General Counsel. The General Counsel is authorized to promulgate such directives and issue such legal opinions as may be necessary to carry

out the responsibilities of the Office. The General Counsel, directly or through attorneys in the Office of the General Counsel, undertakes the following activities unless an applicable statute provides otherwise or the General Counsel has delegated the responsibility elsewhere:

a. Furnishes all legal services and advice to the Secretary, Deputy Secretary, and all offices, branches, and units of the Department in connection with the operations and administration of the Department and its programs, unless otherwise expressly delegated by statute to another agency or official.

b. Furnishes legal services and advice on such other matters as may be submitted by the Secretary, the Deputy Secretary, any other senior leaders, and other persons authorized by the Secretary to request such service or advice.

c. Represents the Department in all litigation when such direct representation is not precluded by law, and in other cases, supervises the conduct of such litigation.

d. Acts as the Department's representative in communicating with the Department of Justice, including all United States Attorneys, on all civil and criminal matters.

e. Acts as the Department's representative in communicating with Office of White House Counsel and the Offices of General Counsel for any other Department or Agency.

f. Authorizes indemnification of Department employees, as appropriate, pursuant to 45 CFR part 36.

g. Provides legal review of all proposals for Federal legislation originating within the Department, as well as all proposed Federal legislation submitted to the Department or to any operating division of the Department for comment; as appropriate, prepares or reviews reports and letters to congressional committees, the Office of Management and Budget, and others on proposed Federal legislation; and prescribes procedures to govern the routing and review, within the Department, of material relating to proposed Federal legislation.

h. Supervises all legal activities of the Department and its operating and staff divisions, except the OIG.

i. Ensures that no one in the Department, other than those in OGC or expressly authorized by the General Counsel to do so, provides any legal advice to anyone in the Department that implies that they are functioning as a departmental lawyer.

Subsection B. Functions and Responsibilities of the OGC Divisions

The Divisions within OGC provide legal counsel to their clients, as described below, subject to the professional supervision and control of the General Counsel and the designated Deputy General Counsel.

1. The Advanced Research Projects Agency for Health (ARPA-H) Division. The ARPA-H Division provides legal services to ARPA-H.

2. Centers for Medicare & Medicaid Services Division (CMSD). CMSD provides legal services to the Centers for Medicare & Medicaid Services (CMS), the Office of Medicare Hearings and Appeals (OMHA) and the Departmental Appeals Board (DAB). CMSD also provides legal services to the Assistant Secretary for Technology Policy and Office of the National Coordinator for Health Information Technology (ASTP/ONC).

3. Children, Families, and Aging Division (CFAD). CFAD provides legal services to the Administration for Children and Families and its various agencies, including the Office of Refugee Resettlement and Administration for Community Living. In addition, the Division advises the Department on the 477 initiative authorized by the Indian Employment, Training, and Related Services Demonstration Act of 2017.

4. Civil Rights and Health Privacy Division (CRD). CRD provides legal services for the Office for Civil Rights (OCR) and provides advice with respect to the enforcement of civil rights laws, conscience statutes, the Health Insurance and Portability and Accountability Act of 1996 (Social Security Act sec. 1171 *et seq.*), the Health Information Technology for Economic and Clinical Health (HITECH) Act, and the rules implementing them with respect of HHS-funded programs and activities. CRD does not defend claims filed by HHS employees.

5. Ethics Division (ETH). ETH administers and oversees Department-wide implementation of comprehensive government ethics program requirements under the Ethics in Government Act of 1978 as amended, Executive Order 12731, and implementing regulations at 5 CFR part 2638. This includes providing legal advice, training, and policy instruction and guidance consistent with core ethics program elements, including conflict of interest, impartiality, financial disclosure, outside activities, political activity, lobbying, pre-clearance ethics agreements, gifts, and

travel payments from non-Federal sources.

ETH also communicates on matters related to government ethics with the Office of Counsel to the President, the Office of Government Ethics, the Office of Special Counsel, the Office of the Inspector General, Special Investigations Unit, the Department of Justice, the Office of Personnel Management, and the General Services Administration.

In addition, ETH develops component-specific conduct regulations and implementing procedures.

6. Food and Drug Division (FDD). FDD acts as the legal advisor to the Commissioner of Food and Drugs and provides legal services to the Food and Drug Administration (FDA). This includes representing the FDA in connection with judicial and administrative proceedings involving programs administered by the FDA, providing legal advice and policy guidance for programs administered by the FDA, and reviewing proposed and final regulations and **Federal Register** notices prepared by FDA. FDD acts as the Department and FDA's primary liaison to the Department of Justice and other Federal departments for programs administered by FDA; all criminal prosecutions, investigations, and civil matters may be referred to the Department of Justice only through or in consultation with the Chief Counsel.

7. General Law Division (GLD). GLD provides legal services on business management activities and administrative operations including procurement, contracting, personnel, budget, appropriations, Federal real property, employment, information disclosure and privacy (but not health information privacy) and Federal tort claims. In addition, the Associate General Counsel for GLD acts as the Department Claims Officer.

8. Legislation Division (GCL). GCL:

a. Drafts all proposed legislation originating in the Department, reviews specifications for such proposed legislation, and reviews all proposed legislation submitted to the Department or to any constituent unit of the Department for comment.

b. Prepares or reviews reports and letters to congressional committees, the Office of Management and Budget, and others on proposed legislation.

c. Reviews proposed testimony of Department officials before congressional committees relating to pending or proposed legislation.

d. Acts as Department liaison with the Office of Management and Budget on legislative matters.

e. Prescribes procedures to govern the routing and review, within the Department, of material relating to proposed Federal legislation.

9. National Complex Litigation and Investigation Division (NCLID). NCLID provides legal services to all agencies and offices within the Department, as directed by the General Counsel. NCLID provides legal services in connection with complex litigation or anticipated complex litigation by or against the Department. Such litigation may include cases for which other OGC divisions or regional offices request NCLID participation, cases spanning multiple OGC divisions or regional offices, or cases outside the scope of other OGC divisions or regional offices. NCLID administers the OGC-wide e-discovery program and coordinates the use of e-discovery technology with agencies and offices within the Department.

10. Public Health Division (Ph.D.). Ph.D. provides legal services to all Public Health Service agencies (except to FDA) and their programs, including the Office of the Surgeon General and the Commissioned Corps of the U.S. Public Health Service. Represented Public Health Service agencies include, but are not limited to: (i) the Office of the Assistant Secretary for Health, and its various programs; (ii) the Office of the Secretary's Office of Minority Health; (iii) the Centers for Disease Control and Prevention; (iv) the National Institutes of Health; (v) the Health Resources and Services Administration; (vi) the Indian Health Service; (vii) the Substance Abuse and Mental Health Services Administration; (viii) the Agency for Healthcare Research and Quality, (ix) the Administration for Strategic Preparedness and Response, and (x) the Agency for Toxic Substances and Disease Registry.

Subsection C. Functions and Responsibilities of the OGC Regional Offices

An OGC regional office is located in each of the ten HHS regions, each of which is led by a Regional Director appointed by the Secretary. The Chief Counsel of each Region is the Department's legal representative in that Region. Regional offices within OGC provide a full range of legal services, subject to the professional supervision and direction of the General Counsel and the designated Deputy General Counsel. This includes providing legal advice and representation in administrative and judicial litigation regarding programs operated by the Centers for Medicare and Medicaid

Services, the Administration for Children and Families, the Administration for Community Living, and Public Health Service agencies including the Indian Health Service, the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, and the Centers for Disease Control and Prevention; providing legal services to the Office for Civil Rights, including advice and representation in administrative and judicial litigation with respect to the enforcement of civil rights laws and the Health Insurance and Portability and Accountability Act of 1996 (Social Security Act sec. 1171 *et seq.*); and providing legal advice and representation in administrative and judicial litigation relating to business management activities and administrative operations, such as employment and labor relations, information disclosure and privacy, Federal tort claims, and suspensions, disallowances, and other recoveries of payments made under HHS programs, of HHS components operating in their regions.

The HHS regional offices are located in the following cities and cover all States and territories of the United States, as well as three independent states in the Pacific.

1. OGC Region 1—Boston covers Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

2. OGC Region 2—New York City covers New York, New Jersey, Puerto Rico, and the Virgin Islands.

3. OGC Region 3—Philadelphia covers Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

4. OGC Region 4—Atlanta covers Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

5. OGC Region 5—Chicago covers Illinois, Indiana, Ohio, Michigan, Minnesota, Wisconsin, and the Bemidji Area Office of the Indian Health Service (IHS).

6. OGC Region 6—Dallas covers Arkansas, Louisiana, New Mexico, Oklahoma, Texas, as well as the Albuquerque and Oklahoma City Area Offices of the Indian Health Service (IHS).

7. OGC Region 7—Kansas City (MO) covers Iowa, Kansas, Missouri, and Nebraska.

8. OGC Region 8—Denver covers Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, as well as the Great Plains and Billings Area

Offices of the Indian Health Service (IHS).

9. OGC Region 9—San Francisco covers Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, as well as the California Area, Navajo Area, Phoenix Area, and Tucson Area Offices of the Indian Health Services (IHS).

10. OGC Region 10—Seattle covers Alaska, Idaho, Oregon, Washington, as well as the Alaska Area and Portland Area Offices of the Indian Health Services (IHS).

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–29291 Filed 12–11–24; 8:45 am]

BILLING CODE 4150–26–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; Clinical Trial Readiness for Rare Diseases.

Date: March 6, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Alumi Ishai, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Suite 1E504, Bethesda, MD 20892, (301) 827–5819, alumi.ishai@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 6, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29160 Filed 12–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Small Business: Health Services and Systems C.

Date: January 6, 2025.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tara Roshell Earl, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007C, Bethesda, MD 20892, (301) 402–6857 earltr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29287 Filed 12–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA Panel; Understanding Chronic Conditions Understudied Among Women.

Date: December 13, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Amy Kathleen Wernimont, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, Bethesda, MD 20892, 301–827–6427, amy.wernimont@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial-Host Interactions.

Date: December 13, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Bakary Drammeh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–P, Bethesda, MD 20892, (301) 435–0000, drammehbs@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Disease Control and Applied Immunology.

Date: December 13, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jui Pandhare, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–7735, pandharej2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Topics in Microbial Diagnostics and Anti-Infective Prevention Measures.

Date: December 13, 2024.

Time: 12:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Bidyottam Mitra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20894, (301) 435–4057, bidyottam.mitra@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Health Services Research.

Date: December 18, 2024.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Angela D. Thrasher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 480–6894, thrasherad@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in HIV Virology, Immunopathogenesis, and Drug/Vaccine Development.

Date: December 18, 2024.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kenneth M Izumi, Ph.D., Scientific Review Officer, NIH Center for Scientific Review, 6701 Rockledge Drive, MSC 7808, Bethesda, MD 20892, 301–496–6980, izumikm@csr.nih.gov.

This notice is being published less than 15 days from the meetings' dates due to exceptional circumstances. The technical and scientific peer review of applications assigned to the above meetings must take place urgently so that review evaluations of biomedical research applications addressing multiple major public health priorities, including women's health research, may be submitted to the national advisory councils to make timely funding recommendations. If the meetings are not held on the December 13, 2024 and December 18, 2024 dates, committee members with the requisite scientific expertise will be unable to attend due to unresolvable scheduling conflicts. The result would be a 6–9 month delay in funding and a profound negative impact on health-related research.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29269 Filed 12–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Special Topics: Drug discovery for Neurodevelopmental Disorders.

Date: January 10, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Lai Yee Leung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011D, Bethesda, MD 20892, (301) 827–8106, leungl2@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 6, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29159 Filed 12–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Study Section.

Date: March 5, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Mamatha Garige, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2118, Bethesda, MD 20892, (301) 443–9737, mamatha.garige@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: December 6, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29161 Filed 12–11–24; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Performance Review Board

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Performance Review Board.

SUMMARY: Appointment of individuals to serve as members of the Performance Review Board.

DATES: These appointments were effective on November 27, 2024.

FOR FURTHER INFORMATION CONTACT:

Javier E. Marqués, General Counsel, Advisory Council on Historic Preservation, jmarques@achp.gov; 202–517–0192.

SUPPLEMENTARY INFORMATION: The Chair of the Advisory Council on Historic Preservation (ACHP) has appointed the following individuals to serve on the ACHP's Performance Review Board (PRB):

Chairperson of the PRB: Amelia AM Marchand

Member—Dr. Michael Brennan

Member—Joy Beasley

Authority: 5 U.S.C. 4314(c)(4).

Dated: December 9, 2024.

Javier E. Marqués,

General Counsel.

[FR Doc. 2024–29293 Filed 12–11–24; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–24191]

Intent To Request Extension From OMB of One Current Public Collection of Information: Transportation Worker Identification Credential (TWIC®) Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0047, abstracted below that we will submit to OMB for an extension, in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of biographic and biometric information that TSA uses to verify identity and conduct a security threat assessment (STA) for the Transportation Worker Identification Credential (TWIC®) Program, and a customer satisfaction survey.

DATES: Send your comments by February 10, 2025.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT:

Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652-0047; *Transportation Worker Identification Credential (TWIC®) Program*. The TWIC program is a DHS program administered jointly by TSA and the United States (U.S.) Coast Guard (USCG) to mitigate threats and vulnerabilities in the national maritime transportation system. The program implements authorities set forth in the Aviation and Transportation Security Act (Public Law 107-71; Nov. 19, 2002; sec. 106), the Maritime Transportation Security Act of 2002 (Pub. L. 107-295; Nov. 25, 2002; sec. 102), and the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (Pub. L. 109-59; Aug. 10, 2005; sec. 7105), codified at 49 U.S.C. 5103a(g). TSA and the USCG implemented these requirements through a rulemaking codified at 33 CFR parts 105 and 106, and 49 CFR part 1572.

TWIC is a common credential for all personnel requiring unescorted access to secure areas of facilities and vessels regulated pursuant to requirements in the Maritime Transportation Security Act and certain mariners holding USCG credentials. Individuals in the field of transportation who are required to

undergo an STA in certain other programs, such as the Chemical Facility Anti-Terrorism Standards (CFATS) program, may also apply for a TWIC and the associated STA to satisfy CFATS program requirements.

Before issuing an individual a TWIC, TSA performs an STA that includes checks of criminal history, immigration, and terrorism records. To conduct the STA, TSA must collect the following:

- Certain biographic information, including name, address, date of birth and other information;
- Fingerprints and photographs of applicants; and
- A \$125.25 fee from applicants to cover the cost of the STA, as required by law (*see* 6 U.S.C. 469).

TSA collects this information from applicants during an optional pre-enrollment step or during the enrollment session at an enrollment center. If TSA determines an individual has already completed a comparable STA through other governmental agencies, such as the TSA Hazardous Materials Endorsement program and U.S. Customs and Border Protection Free and Secure Trade Program, the individual is eligible for a reduced fee of \$93.00.

If TSA determines that the applicant is eligible to receive a TWIC as a result of the STA, TSA issues and sends an activated TWIC card to the address provided by the applicant or notifies the applicant that their TWIC is ready for pick up and activation at an enrollment center. Once activated, this credential can be used for facility and vessel access control requirements to include card authentication, card validation, and identity verification.

Once issued by TSA, a TWIC card that is valid for five years. TWIC cards that are issued based on a comparable STA expire five years from the date the comparable STA was issued. In the event of a lost, damaged or stolen credential, the cardholder must notify TSA immediately and may request a replacement card online, via telephone or, from an enrollment center for a \$60.00 fee.

Under 46 U.S.C. 70105(b)(2), as amended by section 809 of the USCG Authorization Act of 2010, Public Law 111-281 (Oct. 15, 2010), certain Merchant Mariners are not required to obtain a credential when they apply for their TWIC STA. Merchant Mariners qualified under this provision only pay the enrollment and vetting segment of the TWIC fee because TSA does not have to create the biometric credential. If a qualified mariner opts to not receive a TWIC card, TSA may collect a \$98.25 fee to cover the cost of the STA.

TSA may also use the information to determine a TWIC holder's eligibility to participate in TSA's expedited screening program for air travel, TSA PreCheck® Application Program. Active (unexpired) TWIC holders who meet the eligibility requirements for TSA PreCheck may use their TWIC card's Credential Identification Number in the appropriate "known traveler number" field of an airline reservation to obtain expedited screening eligibility.

Some TWIC holders are eligible to renew their TWIC online. To be eligible to renew online, applicants must:

- Be U.S. Citizens, U.S. Nationals or Lawful Permanent Residents;
- Not have received their current TWIC based on a comparable STA;
- Have any name changes updated in TSA's system before initiating online renewal; and
- Have enrolled for their current TWIC card in person.

TSA will collect updated applicant data (e.g., address, contact information, eligibility questions, etc.) and a \$117.25 fee to conduct a new STA.

TSA invites all TWIC applicants to complete an optional survey to gather information on the applicants' overall customer satisfaction with the enrollment process. This optional survey is administered by a Enrollment Agent (a representative of the TWIC enrollment service provider, who performs enrollment functions) during the process to activate the TWIC. These surveys are collected at each enrollment center and compiled to produce reports that are reviewed by the contractor and TSA.

TSA estimates that there will be approximately 619,807 respondents to this TWIC information collection. The current estimated annualized hour burden is 573,168 hours.

Dated: December 5, 2024.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2024-29162 Filed 12-11-24; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[BLM_OR_FRN_MO4500175978]

**Notice of Public Meetings of the
Western Oregon Resource Advisory
Council**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Oregon Resource Advisory Council (RAC) will meet January 14–15, 2025.

DATES: The Western Oregon RAC will meet virtually January 14–15, 2025, from 9 a.m. to 4 p.m. Pacific Time (PT).

ADDRESSES: The meeting will be held virtually over the Zoom platform. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice to receive a link to attend the Zoom meeting.

FOR FURTHER INFORMATION CONTACT: Megan Harper, Public Affairs Specialist, Coos Bay District, 1300 Airport Lane, North Bend, OR 97504; phone: (541) 751-4353; email: m1harper@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member Western Oregon RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues across public lands in Western Oregon, including the Coos Bay, Medford, Northwest Oregon, and Roseburg Districts and part of the Lakeview District. The meeting will focus on reviewing projects that have been proposed to receive funding under Title II of the Secure Rural Schools and Community Self-Determination Act. Final agendas will be available on the RAC's web page 2 weeks in advance of the meeting at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/western-oregon-rac>.

The meeting is open to the public, and a public comment period will be held at 3 p.m. PT on January 14, and at 1:30 p.m. PT on January 15. Depending on the number of persons wishing to comment, time allotted for individual oral comments may be limited. The public may present written comments to the RAC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 14 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Detailed minutes for the RAC meetings will be maintained in the Coos Bay District Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Previous minutes, membership information, and upcoming agendas are available at: <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington>.

(Authority: 43 CFR 1784.4–2)

Heather L. Whitman,

Designated Federal Officer.

[FR Doc. 2024–29153 Filed 12–11–24; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO4500181293]

Notice of Segregation of Public Lands for the Pinyon Solar Project, Maricopa County, Arizona and Elisabeth Solar Project, Yuma County, Arizona County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In connection with its consideration of the right-of-way (ROW) application (AZA38172) for the Pinyon Solar Project, and the proposed plan of development for the Elisabeth Solar Project, for which the Bureau of Land Management (BLM) previously issued a right-of-way lease (AZA38371), the BLM is segregating 4,439.92 acres of public lands from appropriation under the public land laws, including location under the Mining Law of 1872, but not the Mineral Leasing Act or Material Sales Act, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This segregation is to allow for the orderly administration of the public lands and to facilitate consideration of

development of renewable energy resources.

DATES: The segregation of the lands identified in this notice is effective on December 12, 2024.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the project mailing list, send requests to: Derek Eysenbach, Project Manager, at telephone (602) 417-9505; address 1 N. Central Ave., Suite 800, Phoenix, AZ 85004; or email deysenbach@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Derek Eysenbach. 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: Regulations found at 43 CFR 2091.3–1(e) and 2804.25(f) allow the BLM to temporarily segregate public lands described within a ROW application for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a notice in the **Federal Register**. The BLM uses the temporary segregation authority to preserve the ability to approve, approve with modifications, or deny a proposed ROW, and to facilitate the orderly administration of the public lands. This temporary segregation is subject to valid existing rights.

The BLM previously segregated the public lands associated with the Pinyon and Elisabeth Solar Projects in a notice of segregation published in the **Federal Register** on December 8, 2022 (87 FR 75283).

265BH 8me, LLC, a subsidiary of Avantus, LLC, submitted a right-of-way application to the BLM Lower Sonoran Field Office for the Pinyon Solar Project requesting authorization to construct, operate, maintain, and eventually decommission a 300-megawatt photovoltaic solar electric generating facility and ancillary facilities. On January 30, 2024, the BLM initiated an Environmental Assessment (EA) by opening a public scoping period. The BLM is currently preparing an EA and in consultation with the applicant, requires additional time to complete the assessment and reach a decision.

Elisabeth Solar, LLC, a subsidiary of Leeward Renewable Energy, LLC, and the BLM executed a right-of-way lease within the Agua Caliente Solar Energy Zone on September 16, 2022. On

September 29, 2023, the BLM initiated an EA to consider Elisabeth Solar, LLC's proposed plan of development for the Elisabeth Solar Project within the lease area. On July 25, 2024, a Draft EA was made available for public comment. The BLM is currently preparing a Final EA and in consultation with the applicant, needs additional time to complete the assessment and reach a decision.

The public lands segregated by this notice are described as follows:

Pinyon Solar Project—AZA38172

Gila and Salt River Meridian, Arizona

- T. 4 S., R. 1 E.,
Sec. 34, SW¹/₄ SE¹/₄;
T. 5 S., R. 1 E.,
Sec. 2, SW¹/₄, NW¹/₄, SW¹/₄, and SW¹/₄,
SE¹/₄;
Sec. 3, lots 1 thru 4, S¹/₂, NE¹/₄, S¹/₂, NW¹/₄,
and S¹/₂;
Sec. 10;
Sec. 11, W1/2.

The areas described as the Pinyon Solar Project contain 1,879.92 acres, according to the official plats of the surveys of the said lands on file with the BLM.

Elisabeth Solar Project—AZA38371

Gila and Salt River Meridian

- T. 5 S., R. 12 W.,
Sec. 15, S¹/₂ NE¹/₄ NE¹/₄, S¹/₂ NW¹/₄ NE¹/₄,
S¹/₂ NE¹/₄, S¹/₂ NE¹/₄ NW¹/₄, S¹/₂ NW¹/₄
NW¹/₄, SE¹/₄;
Sec. 17, SE¹/₄, NE¹/₄, SE¹/₄;
Sec. 20, NE¹/₄, SE¹/₄, NW¹/₄, E¹/₂, SW¹/₄,
SE¹/₄;
Sec. 22, E¹/₂, NE¹/₄, E¹/₂ SE¹/₄;
Sec. 23, W¹/₂;
Sec. 26, N¹/₂, NE¹/₄, NW¹/₄, NW¹/₄, NW¹/₄;
Sec. 28, W¹/₂, NE¹/₄, W¹/₂, W¹/₂, SE¹/₄;
Sec. 29, NE¹/₄, E¹/₂, NW¹/₄, E¹/₂, SW¹/₄,
SE¹/₄;
Sec. 33, NW¹/₄, NW¹/₄, NE¹/₄, N¹/₂, NW¹/₄,
NW¹/₄, SW¹/₄; NW¹/₄.

The areas described as the Elisabeth Solar Project aggregate 2,560 acres, more or less, according to the official plats of the surveys of the said lands on file with the BLM.

As provided in the regulations under 43 CFR 2091.3–1(e)(3), the segregation of the lands described in this notice will not exceed 2 years from the date of publication in the **Federal Register**.

For a period until December 12, 2026, subject to valid existing rights, the public lands described in this notice will be segregated from appropriation under the public land laws, including location under the Mining Law of 1872, but not from leasing under the mineral and geothermal leasing laws, or disposal under the Mineral Materials Act, while the ROW application is being processed. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that will not significantly impact the application area may be allowed with

the approval of the authorized officer of the BLM during the segregation period.

The segregation period will terminate and the lands will automatically open to appropriation under the public land laws, including the Mining Law, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a ROW; without further administrative action at the end of the segregation period; or upon publication of a **Federal Register** notice terminating the segregation and opening the lands. (Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f))

Amber Cargile,

Acting State Director.

[FR Doc. 2024–29142 Filed 12–11–24; 8:45 am]

BILLING CODE 4331–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CA_FRN_MO4500179115]

Notice of Availability of the Record of Decision and Approved Resource Management Plan for the Redding and Arcata Field Offices Northwest California Integrated Resource Management Plan, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of November 13, 2024, announcing the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Redding Field Office and Arcata Field Office, Northwest California Integrated RMP. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Victoria Callahan, Planning and Environmental Specialist, telephone: (707) 825–2315; address: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, California 95521–4573; email: vslaughter@blm.gov or Chad Endicott, Planning and Environmental Specialist, telephone: (530) 224–2140; address: Bureau of Land Management, Redding Field Office, 6640 Lockheed Drive, Redding, CA 96002–9003; email: cendicott@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay

services for contacting Ms. Callahan or Mr. Endicott. 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:

Correction

In the **Federal Register** of November 13, 2024, in FR Doc. 2024–25789, at 89 FR 89656, in the third column, correct the **SUMMARY** caption to read:

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Redding Field Office and Arcata Field Office, Northwest California Integrated RMP. The California State Director signed the ROD on November 6, 2024, which constitutes the decision of the BLM and makes the Approved RMP effective immediately.

In the **Federal Register** of November 13, 2024, in FR Doc. 2024–25789, at 89 FR 89656, in the third column, correct the **DATES** caption to read:

DATES: The California State Director signed the ROD on November 6, 2024.

Dated: November 14, 2024.

Joseph Stout,

State Director.

[FR Doc. 2024–29288 Filed 12–11–24; 8:45 am]

BILLING CODE 4331–15–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Approved Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approval of Tulalip Tribes Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Dena Wynn, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and

Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every ordinance and approval thereof is posted on the Commission's website (www.nigc.gov) under General Counsel, Gaming Ordinances within five (5) business days of approval.

On December 7, 2023, the Chairman of the National Indian Gaming Commission approved Tulalip Tribes Class III Gaming Ordinance. A copy of the approval letter is posted with this notice and can be found with the approved ordinance on the NIGC's website (www.nigc.gov) under General Counsel, Gaming Ordinances. A copy of the approved Class III ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Dena Wynn, 1849 C Street NW, MS #1621, Washington, DC 20240 or at info@nigc.gov.

National Indian Gaming Commission.

Dated: December 12, 2023.

Rea Cisneros,

General Counsel (Acting).

Editorial note: This document was received for publication by the Office of the Federal Register on December 3, 2024.

December 7, 2023

VIA E-MAIL

Chair Teri Gobin

Board of Directors, Tulalip Tribes 6406

Marine Drive

Tulalip, WA 98271

Re: Tulalip Tribes Amended Gaming Ordinance

Dear Chair Gobin:

This letter responds to the September 11, 2023 email submission on behalf of the Tulalip Tribes (Tribes) informing the National Indian Gaming Commission that the Tribes amended its gaming ordinance on

September 1, 2023 through Resolution 2023-401. The amendment adds a subsection to the Tribes' ordinance that permits the Tulalip Gaming Agency to issue civil fines to tribal gaming operators, vendors, and manufacturers for failure to comply with the Tribes' gaming compact with the State of Washington.

Thank you for bringing this amendment to our attention and for providing us with a thorough submission of the Tribes' gaming laws and regulations. Please be aware, on August 15, 2023, the NIGC published final rules for Parts 502 (Definitions) and 558 (Gaming Licenses for Key Employees and Primary Management Officials), among other revisions, which became effective on September 14, 2023. The Nation's Ordinance does not reflect the recent changes made to the definitions of "key employee" and "primary management official" at 25 CFR 502.14 and 502.19, respectively. However, I have been assured that the Tribes are aware of the changes to NIGC regulations and will incorporate them into the Tribes' gaming ordinance. The Tribes' attorney has indicated that they had attended NIGC's informational session on the regulation changes and will submit additional amendments after tribal leadership has a chance to approve them. As such, the amended ordinance is approved.

If you have any questions, please contact NIGC Staff Attorney Josh Proper at joshua.proper@nigc.gov or 540-760-3026.

Sincerely,

E. Sequoyah Simermeyer, Chairman
1 88 FR 55, 366 (August 15, 2023).

[FR Doc. 2024-28753 Filed 12-11-24; 8:45 am]

BILLING CODE 7565-01-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0039189;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: The University of Kansas, Lawrence, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Kansas intends to repatriate certain a cultural item that meets the definition of an unassociated funerary object 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 January 13, 2025.

ADDRESSES: Dr. Thomas Torma, Repatriation Program Manager, Office of Audit, Risk & Compliance, The University of Kansas, 1450 Jayhawk Boulevard, 351 Strong Hall, Lawrence,

KS 66045, telephone (406) 850-2220, email t-torma@ku.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Kansas, 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 one unassociated funerary object is a discoidal stone from an unknown site in McCracken County, Kentucky. This item was accessioned into the University of Kansas in 1992 when the Menninger Foundation deaccessioned its collection to the University.

Determinations

The University of Kansas has determined that:

- The one unassociated funerary object described in this notice is reasonably believed to have been placed intentionally with or near human remains, and is 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 object has 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 item described in this notice and The Chickasaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item 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 item in this notice to a requestor may occur on or after January 13, 2025. If competing requests for repatriation are received, the University of Kansas 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 University of Kansas 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29249 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039191;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of the Interior, Bureau of Reclamation, Region 10: California-Great Basin, Sacramento, CA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The National Park Service is correcting a notice of intended disposition published in the **Federal Register** on October 30, 2024.

ADDRESSES: Dr. Melanie Ryan, Bureau of Reclamation, Region 10: California-Great Basin, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5526, email emryan@usbr.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA.

Correction

In the **Federal Register** (89 FR 86364–86365, October 30, 2024), replace all instances of “BLM Region 10” with “Bureau of Reclamation, Region 10.”

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29265 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039178;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: 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, Department of Anthropology (WWU), intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony 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 January 13, 2025.

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@www.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 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 two cultural items have been requested for repatriation. The two objects of cultural patrimony are a shell bead and a red ochre sample.

In the summers of 1999 and 2000, Drs. Campbell and Koetje of Western Washington University led field schools as part of a multi-year “Whidbey Island Prehistory Project”. 45–SK–46, the Lighthouse Point Midden, and 45–SK–144 were two of the sites investigated during this project. The field school participants excavated six 1 x 1m units

and fifteen shovel tests at 45–SK–46 during the 2000 field season. This site was chosen for investigation because it was a small, shallow shell midden, subject to trail and bank erosion, and they were focusing on smaller sites most in need of documentation (WWU Field School Permit Application, 2000).

45–SK–144 is located to the north of 45–SK–46, on the east side of the tombolo that connects Lighthouse Point to the mainland, separating Lottie and Bowman Bays. Seven 1 x 1m units were excavated at this site during the 1999 field season (Anderson, 2001 “Sediment Analysis of Two Archaeological Sites in the Deception Pass Area, Fidalgo Island, Washington: A Geoarchaeological Approach”).

No hazardous chemicals are known to have been used to treat the items while in the custody of WWU.

Determinations

The WWU has determined that:

- The two objects of cultural patrimony described in this notice have 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), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Lummi Tribe of the Lummi Reservation; Samish Indian Nation; and the Swinomish Indian Tribal Community.

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 January 13, 2025. If competing requests for repatriation are received, the WWU 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 WWU 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29254 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039176;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Indiana University intends to repatriate certain a cultural item that meets the definition of a sacred object 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 January 13, 2025.

ADDRESSES: Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, Student Building 318, 701 E Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email thomajay@iu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Indiana University 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 one sacred object is a mask. It was collected by Mollie Geist between 1916–1931 in Barrow, Alaska.

Determinations

Indiana University has determined that:

- The one sacred object described in this notice is a specific ceremonial

object needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a reasonable connection between the cultural item described in this notice and the Native Village of Barrow Inupiat Traditional Government.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item 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 item in this notice to a requestor may occur on or after January 13, 2025. If competing requests for repatriation are received, Indiana University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. Indiana University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29252 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039177;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Indiana University 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 January 13, 2025.

ADDRESSES: Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, Student Building 318, 701 E Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email thomajay@iu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Indiana University 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, 481 individuals have been identified. The six associated funerary objects are one lot shell; one lot lithics; one lot stone; one lot charcoal; one lot faunal; and one lot ceramics. This collection was excavated from the Fisher site in Will County, Illinois by George Langford in 1926–1929 and the University of Chicago in 1940. There are no known pesticide contaminants.

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 and associated funerary objects described in this notice.

Determinations

Indiana University has determined that:

- The human remains described in this notice represent the physical remains of 481 individuals of Native American ancestry.
- The six 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 Absentee Shawnee Tribe of Indians of

Oklahoma; Citizen Potawatomi Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Fond du Lac Band and Mille Lacs Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shawnee Tribe; and the Winnebago Tribe of Nebraska.

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 January 13, 2025. If competing requests for repatriation are received, Indiana University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Indiana University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29253 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS–WASO–NAGPRA–NPS0039188;
PPWOCRADN0–PCU00RP14.R50000]**

Notice of Inventory Completion: The Kikuchi Center at Kaua'i Community College, Līhu'e, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Kikuchi Center at Kaua'i Community College 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 January 13, 2025.

ADDRESSES: Jason Ford, The Kikuchi Center at Kaua'i Community College, 3–1901 Kaumuali'i Highway, Līhu'e, HI 96766, telephone (808) 245–8236, email jford9@hawaii.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 Kikuchi Center at Kaua'i Community College, 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, six individuals have been identified in the Kikuchi Center at Kaua'i Community College. The two lots of associated funerary objects are listed in the item descriptions below.

The Kikuchi Center is an archive curating the work of Dr. William Kikuchi. Dr. Kikuchi co-founded the Archaeology Research Center of Hawai'i, ARCH, with Francis Ching, Jr. He inherited a collection of ARCH project materials, including ARCH projects 14–

152 III and 14–122. These project sites are located within North and South Kona on Hawai'i island. These materials were excavated circa 1980, and the founding of the Kikuchi Center and processing of these materials began in September 2022. In March of 2024, an osteologist analyzed the bones in the collection and positively identified the listed iwi kupuna as human. These bones are associated with Native Hawaiian sites, cultural layers, and items. Some bones and bone artifacts listed are too small for identification. Due to their association with the positively identified iwi kupuna, they are being listed for consultation and repatriation, and treated as human.

Item: Human remains. Site Name: ARCH 14–122. Geographical Location: Keahole, North Kona, Hawai'i. Collection History: Excavated for ARCH 14–122 project at Keahole circa 1980, these iwi kupuna were positively identified as human by an osteologist in March 2024.

Item: Human remains and associated funerary objects. Site Name: ARCH 14–152 III, Site 4564. Geographical Location: La'aloa, Kona, Hawai'i. Collection History: Excavated for ARCH project 14–152 III circa June 1980, these iwi kupuna were identified as human by an osteologist in March 2024. Associated funerary objects: one lot of basalt and coral abraders, basalt hammer and grinding stones, adze fragments, two small adze, one breadloaf sinker, three bone awls, wood and gourd fragments, urchin files, ili konane. Additional information: Site 4564 is identified as a blister cave and contained the iwi kupuna listed above.

Item: Human remains and associated funerary objects. Site Name: ARCH 14–152 III, Site 4579. Geographical Location: La'aloa, Kona, Hawai'i. Collection History: Excavated for ARCH project 14–152 III circa June 1980, these iwi kupuna were identified as human by an osteologist in March 2024.

Associated funerary objects: two fish hooks, one lot of coral basalt abraders and hammer stones, lot of urchin files, one horse shoe, one micro adze, lot of shell beads, shell fish hook fragment, lauhala fibers, one bag of faunal bone midden, one bone awl, and one dog tooth pendant. Additional information: Site 4579 is identified as a lava tube.

Item: Human remains. Site Name: ARCH 14–152 III, Site 4581, 4559, 6482. Geographical Location: La'aloa, Kona, Hawai'i. Collection History: Excavated for ARCH project 14–152 III circa June 1980, these modified fragments were too small for positive identification by the osteologist. Preponderance of evidence suggests high likelihood they are

human, and consultation with NHOs resulted in the determination they be treated as iwi kupuna and repatriated.

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 Kikuchi Center at Kaua'i Community College has determined that:

- The human remains described in this notice represent the physical remains of an estimated six individuals of Native Hawaiian ancestry.
- The two lots of 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 Hale Mua Cultural Group and Protect Keopuka Ohana.

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 January 13, 2025. If competing requests for repatriation are received, the Kikuchi Center at Kaua'i Community College 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 Kikuchi Center at Kaua'i Community College 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29266 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039180; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Investigative Services Branch, Boulder City, NV

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, Investigative Services Branch (ISB) 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 January 13, 2025.

ADDRESSES: Brian Lake, Assistant Special Agent in Charge, Investigative Services Branch, 1400 Colorado Street, Suite C, Boulder City, NV 89005, telephone (702) 293–8732, email brian_lake@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 Assistant Special Agent in Charge, ISB, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The two associated funerary objects are one stone mortar base and one ground stone pestle. The human remains and associated funerary objects

were removed from Contra Costa County, CA during a federal highway project in the early 1960s. The remains and cultural items were collected and removed from the site by a contractor and remained in the contractor's possession until his death, when they were passed to his descendant. In 2015 they were seized during a criminal investigation by the ISB. After seizure, the human remains were stored at Joshua Tree National Park until their transfer in March of 2022 to the curatorial facility at Lake Mead National Recreation Area. Cultural affiliation was determined based on anthropological, historical, geographic, and Native American traditional knowledge. These human remains and cultural items have not been treated with hazardous substances.

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 and associated funerary objects described in this notice.

Determinations

ISB has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The two 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 reasonable connection between the human remains and associated funerary objects described in this notice and the Wilton Rancheria, California.

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 and, if joined to a request from one or more of the Indian Tribes, the North Valley Yokuts Tribe, a non-federally recognized Indian group.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 13, 2025. If competing requests for repatriation are received, ISB 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. ISB 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29256 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039190;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Georgia Department of Natural Resources, Atlanta, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Georgia Department of Natural Resources 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 January 13, 2025.

ADDRESSES: Dr. Rachel Black, State Archaeologist, Georgia Department of Natural Resources, 2610 GA Hwy. 155 SW, Stockbridge, GA 30281, telephone (770) 389–7862, email rachel.black@dnr.ga.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 Georgia Department of Natural Resources, 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. In December 2023, this individual was located by a hunter on private property in Athens-Clarke County, GA north of Athens. The hunter removed the human remains from the ground surface and brought them to the Athens-Clarke County Police Department. Once the individual was determined to not be part of a forensic case, the human remains were examined by the University of Georgia, Department of Anthropology. Skeletal measurements were taken and run through the FORDISC program indicating possible Native American ancestry. The Georgia Department of Natural Resources was notified and worked with the Athens-Clarke County Police Department to inspect the area where the human remains were found. No archaeological sites or cultural features are associated with the individual. The individual is housed in a secured facility at the Georgia Department of Natural Resources, Office of the State Archaeologist.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the human remains described in this notice.

Determinations

The Georgia Department of Natural Resources 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 Eastern Band of Cherokee Indians and The Muscogee (Creek) Nation.

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 January 13, 2025. If competing requests for repatriation are received, the Georgia Department of Natural Resources 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 Georgia Department of Natural Resources 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29264 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–38451; PPNEGATEB0,
PPMVSCS1Z.Y00000]

Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of renewal.

SUMMARY: The Secretary of the Interior is giving notice of renewal of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee. The Committee provides advice on the development of a reuse plan and on matters relating to future uses of the Fort Hancock Historic Landmark District of Gateway National Recreation Area.

FOR FURTHER INFORMATION CONTACT:

Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, or by telephone (718) 815–3651, or by email daphne_yun@nps.gov.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 1008 of the Federal Advisory Committee Act of 1972, as amended (5 U.S.C. ch.10).

Certification Statement: I hereby certify that the renewal of the Gateway National Recreation Area Fort Hancock

21st Century Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the National Park Service Organic Act (54 U.S.C. 100101(a) *et seq.*), and other statutes relating to the administration of the National Park Service.

Authority: 5 U.S.C. ch. 10.

Deb Haaland,

Secretary of the Interior.

[FR Doc. 2024–29296 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039183;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Beloit College, Logan Museum of Anthropology (LMA) 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 January 13, 2025.

ADDRESSES: Nicolette B. Meister, Beloit College, Logan Museum of Anthropology, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email meister@beloit.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 LMA, 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 five cultural items have been requested for repatriation. The five unassociated funerary objects (catalog numbers 970.1–.5) are shell gorgets removed from a grave in Sacramento County, CA on an unknown date by an

unknown individual. The LMA obtained the gorgets from NE Carter of Elkhorn, WI in 1935. Mr. Carter was a well-known collector and dealer of Native American items active in the early 1900s. The Sacramento Valley is home to Nisenan-speaking groups, of which Wilton Rancheria, California is one. The LMA has no record that the shell gorgets were exposed to any hazardous substances while in the LMA's stewardship.

Determinations

The LMA has determined that:

- The five 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 January 13, 2025. If competing requests for repatriation are received, the LMA 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 LMA 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29258 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039185;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum intends to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after January 13, 2025.

ADDRESSES: June Carpenter, NAGPRA Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7820, email jcarpenter@fieldmuseum.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 Field 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 17 cultural items have been requested for repatriation. The 17 sacred objects are four plumes, five baskets, a stone pestle, a fish dip, two stone balls, two pieces of tinder, a medicine charm, and a meal leach bag. In 1901, the sacred objects were removed from Fresno and Madera Counties in California. The items were collected by Dr. John Hudson on behalf of the Field Museum during a two-year expedition among the Native populations of California and accessioned by the Museum in 1901.

Determinations

The Field Museum has determined that:

- The 17 sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Table Mountain Rancheria.

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 January 13, 2025. If competing requests for repatriation are received, the Field 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 Field 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29260 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–WASO–NAGPRA–NPS0039184;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum intends to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after January 13, 2025.

ADDRESSES: June Carpenter, NAGPRA Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7820, email jcarpenter@fieldmuseum.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 Field 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 11 cultural items have been requested for repatriation. The 11 sacred objects are three baskets, two stone pestles, three meal sifters, a fish dip, a scoop, and a stone knife. In 1901, the sacred objects were removed from Tulare Lake in Kings Co., CA. The items were collected by Dr. John Hudson on behalf of the Field Museum during a two-year expedition among the Native populations of California and accessioned by the Museum in 1901.

Determinations

The Field Museum has determined that:

- The 11 sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Santa Rosa Indian Community of the Santa Rosa 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 January 13, 2025. If competing requests for repatriation are received, the Field 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 Field 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29259 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–WASO–NAGPRA–NPS0039175;
PPWOCRADN0–PCU00RP14.R50000]

**Notice of Inventory Completion:
Indiana University, Bloomington, IN**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Indiana University 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 January 13, 2025.

ADDRESSES: Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, Student Building 318, 701 E Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email thomajay@iu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Indiana University 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, four individuals have been identified. No associated funerary objects are present. The ancestral remains were collected in Missouri and notes state these individuals were part of the 'McCormick Adams' collection. Robert McCormick Adams was an archaeologist that excavated in Jefferson County, Missouri during the 1930s-1940s. The collection was transferred in the 1950s to W. Adams from the Missouri Historical Society. There is no known presence of potentially hazardous substances.

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

Indiana University has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and The Osage Nation.

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 January 13, 2025. If competing requests for repatriation

are received, Indiana University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Indiana University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-29251 Filed 12-11-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS-WASO-NAGPRA-NPS0039181;
PPWOCRADNO-PCU00RP14.R50000]**

Notice of Intended Repatriation: Cincinnati Museum Center, Cincinnati, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Cincinnati Museum Center intends to repatriate a certain cultural item that meets the definition of an 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 January 13, 2025.

ADDRESSES: Tyler Swinney, Cincinnati Museum Center, 1301 Western Avenue, Cincinnati, OH 45203, telephone (513) 287-7000 Ext. 7287, email tswinney@cincymuseum.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 Cincinnati Museum Center, 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 one object of cultural patrimony is a "Hohokam Indian Paint Palette". The Paint Palette is made of slate, was found in the foothills of the Santa Catalina Mountains north of Tucson, Arizona, and was donated to the Cincinnati Museum of Natural History by Mr. and Mrs. Frank B. Schuler of Hamilton, Ohio. It was accessioned in 1952 (Acc. 745) and was assigned catalog number A46688. The Cincinnati Museum Center has no records indicating that this Paint Palette was exposed to any hazardous substances while in the stewardship of the Museum.

Through consultation, it has been determined that Paint Palettes made by Hohokam ancestors were used for mixing paints and/or dried medicinal plants. Traditional medicine persons of today on the Tohono O'odham Nation regard these palettes as objects of religious importance that were used in association with the preparation of materials for religious ceremonies.

Determinations

The Cincinnati Museum Center has determined that:

- The one object of cultural patrimony described in this notice 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), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural item described in this notice and the Tohono O'odham Nation of Arizona.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item 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 item in this notice to a requestor may occur on or after January 13, 2025. If competing requests for repatriation are received, the Cincinnati Museum Center 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 Cincinnati Museum Center 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29257 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039179;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: 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, Department of Anthropology (WWU), intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony 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 January 13, 2025.

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@www.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 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 five cultural items have been requested for repatriation.

The four objects of cultural patrimony are one net weight, one ground shell, one incised stone, and one adze blade. In 1982, Western Washington University entered a contract with the Bureau of Indian Affairs to conduct a cultural resource survey of selected portions of the Swinomish Indian Reservation, Skagit County, Washington. Both sites, 45–SK–32 and 45–SK–91, are located adjacent to the Swinomish Slough within the boundaries of the Swinomish Reservation. Materials were collected by excavation of four 1x2 meter test cuts (Chesmore 1984, A Cultural Resource Survey and Test Excavations of Selected Portions of the Swinomish Indian Reservation, Skagit County, Washington, Contract No. 2P10–0100515 with the Bureau of Indian Affairs, Reports in Archaeology No. 22, Department of Anthropology, Western Washington University, Bellingham, Washington).

The one object of cultural patrimony is a worked bone point. The materials described in this notice were collected in the spring of 2003 as part of a collaborative effort between Dr. Sarah Campbell and field school students from WWU, Equinox Research and Consulting International, Inc. (ERCI) and the Samish Indian Nation to mitigate erosion of a cut bank on Weaverling Spit. An area approximately 150 m long between a jetty for a private residence and a field south of the Cove at Fidalgo Condominium property was examined. The crew excavated eight shovel tests, faced, and profiled the bank in six locations and collected column samples from two locations. During this work, two burials were observed eroding out of the bank in front of the condominiums. Human remains were also observed and collected beneath the bank on the beach. All these remains were repatriated to the Samish Indian Nation (Nelson, 2006).

No hazardous chemicals are known to have been used to treat the items while in the custody of WWU.

Determinations

The WWU has determined that:

- The five objects of cultural patrimony described in this notice have 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), according to the Native American traditional knowledge

of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Samish Indian Nation and the Swinomish Indian Tribal Community.

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 January 13, 2025. If competing requests for repatriation are received, the WWU 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 WWU 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29255 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039186;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The Kikuchi Center at Kaua'i Community College, Lihue, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Kikuchi Center at Kaua'i Community College 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 January 13, 2025.

ADDRESSES: Jason Ford, The Kikuchi Center at Kaua'i Community College, 3–1901 Kaumuali'i Highway, Lihue, HI 96766, telephone (808) 245–8236, email jford9@hawaii.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 Kikuchi Center at Kaua'i Community College, 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, five individuals have been identified. This includes 15 associated funerary objects which are pearl shell fish hook blanks and pre-form fish hooks, sea urchin files, and basalt fragments. They were identified during the processing of the materials held by the Kikuchi Center at Kaua'i Community College.

The Kikuchi Center is an archive curating the work of Dr. William Kikuchi. Dr. Kikuchi co-founded the Archaeology Research Center of Hawai'i, ARCH, with Francis Ching, Jr. At an unknown date, he inherited a collection of ARCH project materials, including ARCH project 14–42 II. This project was an archaeological surface survey at Kiahuna, Kōloa, Kona, Kaua'i. These materials were excavated circa 1980, and the founding of the Kikuchi Center and processing of these materials began in 2022. In March of 2024, an osteologist analyzed the bones in the collection and positively identified the listed bones as human. They are associated with Native Hawaiian sites and cultural layers. The modified bones listed here are unidentifiable, but because of their association with positively identified iwi kupuna, they are being treated as human. Unidentifiable bones associated with positively identified iwi kupuna are also listed.

Dr. Kikuchi was also a professor at Kaua'i Community College. He established the Anthropology Club at Kaua'i Community College circa 1975. In July of 1975, he and the club began excavating at the Weli K–10 site, SIHP number 50–30–09–3050. This site is

identified as a shelter cave, located in Wahiawa, moku of Kona, Kaua'i. The positively identified iwi kupuna from this site are from pits B, C and D, and are associated with Native Hawaiian cultural layers including 15 associated funerary objects. Item: Human remains Site Name: ARCH 14–42 II, Sites 206 and 304 Geographical Location: Kiahuna, Kōloa, Kona, Kaua'i.

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 Kikuchi Center at Kaua'i Community College has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native Hawaiian ancestry.
- The 15 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 Kaua'i/Ni'ihau Island Burial Council; Ke Kahu O Kaneiolouma; and E Ola Kakou Hawaii.

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 January 13, 2025. If competing requests for repatriation are received, the Kikuchi Center at Kaua'i Community College 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 Kikuchi Center at Kaua'i Community College 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: December 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29261 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039187; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: The Kikuchi Center at Kaua'i Community College, Lihue, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Kikuchi Center at Kaua'i Community College 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 January 13, 2025.

ADDRESSES: Jason Ford, The Kikuchi Center at Kaua'i Community College, 3–1901 Kaumuali'i Highway, Lihue, HI 96766, telephone (808) 245–8236, email jford9@hawaii.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 Kikuchi Center at Kaua'i Community College, 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 five cultural items have been requested for repatriation. The five unassociated funerary objects are one 19th century non-human bone

toothbrush, one hohoa style kapa beater, and three coral abraders. Item: one unassociated funerary object. Site Name: ARCH 14–138, site E2, site 50–10–37–6655. Geographical Location: Hōlualoa, Kona, Hawai‘i. Collection History: ARCH 14–138 is an archaeological surface survey and excavation conducted by the Archaeology Research Center of Hawai‘i (ARCH) circa 1980. The excavated materials for this project were inherited by the late Dr. Kikuchi, emeritus professor at Kaua‘i Community College. The founding of the Kikuchi Center at Kaua‘i Community College, an archive curating Dr. Kikuchi’s materials, began September 2022, and processing of these materials began in 2024. Processing of ARCH 14–138 materials resulted in the discovery that the 19th century non-human bone toothbrush is an unassociated funerary object. The artifact bag containing this item states that this non-human bone toothbrush is associated with a Native Hawaiian burial and was found at the feet of the burial. It is dissociated from any known iwi kupuna. The ARCH 14–138 project report describes the burial crypt at site 50–10–37–6655, including a description of the non-human bone toothbrush being present there with iwi kupuna. Accession #: 50–10–37–6655–AR110.

Item: four unassociated funerary objects. Site Name: ARCH 14–152 III, site 50–10–37–6479, surface chamber 2, field #1, code 1. Geographical Location: La‘āloa, Kona, Hawai‘i. Collection History: ARCH 14–152 III is an archaeological surface survey and excavation conducted by the Archaeology Research Center of Hawai‘i (ARCH) circa 1980. The excavated materials for this project were inherited by the late Dr. Kikuchi, emeritus professor at Kaua‘i Community College. The founding of the Kikuchi Center at Kaua‘i Community College, an archive curating Dr. Kikuchi’s materials, began September 2022, and processing of these materials began in 2024. Processing and provenance research of ARCH 14–152 III materials resulted in the discovery that the one hohoa kapa beater and three coral abraders are unassociated funerary objects. Site 50–10–37–6479 is identified in the report as a lava tube with multiple chambers. The report states that the lava tube contained human remains. The items are dissociated from any known iwi kupuna. Accession #: 10–6479–AR83, 10–6479–AR76, 10–6479–AR78, 10–6479–AR77

Determinations

The Kikuchi Center at Kaua‘i Community College has determined that:

- The five 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 Hale Mua Cultural Group and Protect Keopuka Ohana.

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 January 13, 2025. If competing requests for repatriation are received, the Kikuchi Center at Kaua‘i Community College 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 Kikuchi Center at Kaua‘i Community College 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: December 4, 2024.

Melanie O’Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–29262 Filed 12–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 245R5065C6, RX.59389832.1009676]

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate.

SUMMARY: The Bureau of Reclamation is announcing the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 3.00 percent for fiscal year 2025.

DATES: This discount rate is to be used for the period October 1, 2024, through and including September 30, 2025.

FOR FURTHER INFORMATION CONTACT: Brandee Blumenthal, Bureau of Reclamation, Reclamation Law Administration Division, P.O. Box 25007, Denver, Colorado 80225; telephone (303) 445–2435; or email at bblumenthal@usbr.gov.

SUPPLEMENTARY INFORMATION: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2025 is 3.00 percent. The prior year’s rate, as announced in the **Federal Register** on November 16, 2023 (88 FR 78785), was 2.75 percent for fiscal year 2024. Discounting is used to convert future monetary values to present values.

This rate has been computed in accordance with section 80(a), Public Law 93–251 (88 Stat. 34), and 18 CFR 704.39, which: (1) specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 4.5055 percent. In accordance with the Water Resource Council Rules and Regulations, the maximum adjustment allowed for the current fiscal year rate is one-quarter of one percentage point from the previous fiscal year rate, which was 2.75 percent. Therefore, the fiscal year 2025 rate is 3.00 percent.

All Federal agencies will use the rate of 3.00 percent in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Christopher Beardsley,

Director, Mission Assurance and Protection Organization.

[FR Doc. 2024–29263 Filed 12–11–24; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1372]

Certain Vaporizer Devices, Cartridges Used Therewith, and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 5, 2024, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of Section 337. On December 5, 2024, the ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a

violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order and a cease and desist order directed to certain vaporizer devices, cartridges used therewith, and components thereof imported, sold for importation, and/or sold after importation by respondent JUUL Labs, Inc. of Washington, DC Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ’s Recommended Determination on Remedy and Bonding issued in this investigation on December 5, 2024. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, 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 recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended 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 recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on January 6, 2025.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission’s paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (“Inv. No. 337–TA–1372”) in a prominent place on the cover page and/or the first page. (See *Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure

agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 6, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–29157 Filed 12–11–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Urine Splash Guards and Components Thereof*, DN 3790; 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 For

Kids By Parents, Inc. on December 6, 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 urine splash guards and components thereof. The complaint names as respondents: Shenzhenshi Dijiaaotuman Trading Co., Ltd. (d/b/a Tigaman) of China; Junyaxin caiwuzixunyouxiangongsi (d/b/a Junyaxin) of China; Hezeyunjiangjixieshe ebeiyouxiangongsi (d/b/a Maomaohouse) of China; Shenzhen shiranbodianshiyouxiangongsi (d/b/a Eurbus) of China; Hefeiweifeng shidaishidaimaoyiyouxiangongsi (d/b/a HealthSTEC) of China; ShenzhenShi Julonghui Trading Co., Ltd. (d/b/a Edermurs) of China; Shenzhenshi Lishian Keji Youxiangongsi (d/b/a Lishian) of China; Shenzhen Paisi Industrial Co., Ltd. (d/b/a Sunyoka123) of China; Guangzhou Lesenyu Dianzishangwu Youxiangongsi (d/b/a Le Sengyu) of China; and Shenzhen Sibaite Industrial Co., Ltd. (d/b/a SeLucky) of China. The complainant requests that the Commission issue a general exclusion order, or in the alternative issue a limited 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(j).

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. 3790") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). 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

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

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 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: December 6, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–29185 Filed 12–11–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0014]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Application for Registration and Application for Registration Renewal; DEA Forms 224, 224A

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day Notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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. This proposed information collection

was previously published in the **Federal Register** on October 7, 2024, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until January 13, 2025.

FOR FURTHER INFORMATION CONTACT: If you have 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 Heather E. Achbach, Regulatory Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 776–3882; Email: DEA.PRA@dea.gov or Heather.E.Achbach@dea.gov.

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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- 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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number 1117–0014. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of

Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection:

1. *Type of Information Collection:* Revision of a Previously Approved Collection.

2. *Title of the Form/Collection:* Application for Registration and Application for Registration Renewal.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* DEA Forms 224, 224A. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

Affected public who will be asked or required to respond, as well as a brief abstract:

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, Local, and tribal governments.

Abstract: The Controlled Substances Act (CSA) (21 U.S.C. 801–971) requires all persons that manufacture, distribute, dispense, conduct research with, import, or export any controlled substance to obtain a registration issued by the Attorney General. DEA would be revising the proposed information collection instruments as statutorily mandated by the Protecting Patient Access to Emergency Medications Act of 2017. DEA would be creating a new business activity and adding it to forms DEA–224 and DEA–224A to allow Emergency Medical Services agencies to register as such, if authorized by state law. This new business activity would allow EMS agencies to obtain a DEA registration that will permit EMS agencies to deliver controlled substances to their designated locations without obtaining a separate registration as a Distributor. This registration would allow EMS personnel to administer controlled substances outside the physical presence of a medical director or authorizing medical professional in the course of providing emergency medical services. Upon issuance of an EMS agency registration, the EMS agency should use the online system to identify all of the locations it intends to designate under the EMS agencies' DEA

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

registration. This proposed collection would also allow EMS agencies to choose the option of a single registration in each state where the EMS agency operates. If the agency operates EMS facilities in multiple states, the agency must have a separate registration in each state where the agency operates.

4. *Obligation to Respond:* Required to Obtain or Retain Benefits.

5. *Total Estimated Number of Respondents:* 670,481.

6. *Estimated Time per Respondent:* 0.203029 hours.

7. *Frequency:* 1 per year.

8. *Total Estimated Annual Time Burden:* 136,366 hours.

9. *Total Estimated Annual Other Costs Burden:* \$0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218 Washington, DC 20530.

Dated: December 6, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-29122 Filed 12-11-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

[OMB Number 1117-0060]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Information Collection Request; Emergency Medical Services Recordkeeping and Notice Requirements

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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 30 days until January 13, 2025.

FOR FURTHER INFORMATION CONTACT: If you have 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 Heather E. Achbach, Regulatory

Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 776-3882; Email: DEA.PRA@dea.gov or Heather.E.Achbach@dea.gov.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on October 7, 2024, at 89 FR 81110, allowing for a 60-day comment period.

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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- 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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number 1117-0060. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs

receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* New Information Collection.

2. *Title of the Form/Collection:* Emergency Medical Services Recordkeeping and Notice Requirements.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number is associated with this collection. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, Local, and tribal governments.

Abstract: The Controlled Substances Act (CSA) (21 U.S.C. 801–971) requires all persons who handle controlled substances to obtain a registration from the Attorney General. 21 U.S.C. 822, 823, 831, 957, and 958. The “Protecting Patient Access to Emergency Medications Act of 2017,” (hereafter the “Act”) which became law on November 17, 2017, amended the Controlled Substances Act to allow for a new registration category for emergency medical services agencies that handle controlled substances. It also established standards for registering emergency medical services agencies, and set forth new requirements for delivery, storage, and recordkeeping related to their handling of controlled substances.

With this proposed collection, DEA is proposing recordkeeping regulations for EMS agencies to incorporate the Act's CSA amendments regarding recordkeeping, and to ensure an accurate accounting of the controlled substances outside the two-registrant integrity system.

The Act require EMS agencies to maintain records of the EMS personnel whose State license or certification gives them the ability to administer controlled substances, in compliance with their State laws. Under 21 U.S.C 827(b), controlled substance records for all DEA registrants are required to be maintained for at least two years from the date of such inventory or records. Following the Act, 21 U.S.C. 823(k)(9)(B)(ii), DEA would require that records be maintained, whether electronically or otherwise, at each registered and

designated location of the agency where the controlled substances involved are received, administered, or otherwise disposed of.

Consistent with the Act's amendments to the CSA, 21 U.S.C. 823(k)(9), DEA would require an EMS agency to maintain records for each controlled substance administered or disposed of in the course of providing emergency medical services. In addition, any EMS personnel who disposes of or administers controlled substances to a patient in the course of providing emergency medical care would have to record the name of the controlled substance(s) and detailed information about the circumstances surrounding the administration of the controlled substance(s) (e.g., name of the substance, date dispensed, identification of the patient).

Additionally, in accordance with 21 U.S.C 821(k)(9)(b), that an EMS agency must maintain records of controlled substances delivered between registered and designated locations of the agency (except agencies restocking at the hospital under which the EMS agency is operating, because the hospital is required to keep records of such restocking). These records, for example, should include the name of the controlled substance(s), finished form, number of units in the commercial container, date delivered, and the address of the EMS agency location where the controlled substances were delivered.

5. *Obligation to Respond*: Voluntary.
6. *Total Estimated Number of Respondents*: 21,283.
7. *Estimated Time per Respondent*: 5 minutes.
8. *Frequency*: 52 per year.
9. *Total Estimated Annual Time Burden*: 92,226 hours.
10. *Total Estimated Annual Other Costs Burden*: \$0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218 Washington, DC 20530.

Dated: December 6, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-29121 Filed 12-11-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board; Notice of Meeting

This notice announces a forthcoming meeting of the National Institute of Corrections (NIC) Advisory Board. At least one portion of the meeting will be closed to the public.

Name of the Committee: NIC Advisory Board.

General Function of the Committee: To aid the National Institute of Corrections in developing long-range plans, advise on program development, and recommend guidance to assist NIC's efforts in the areas of training, technical assistance, information services, and policy/program development assistance to Federal, state, and local corrections agencies.

Date and Time: 1 p.m.–4 p.m. ET on Tuesday, January 7, 2025, and 1 p.m.–4 p.m. ET on Wednesday, January 8, 2025.

Location: Virtual.

Contact Person: Leslie LeMaster, Designated Federal Official (DFO) to the NIC Advisory Board, The National Institute of Corrections, 320 First Street NW, Room 901-3, Washington, DC 20534. To contact Ms. LeMaster, please call (202) 305-5773 or llemaster@bop.gov.

Agenda: On January 7–8, 2025, the Advisory Board will: (1) receive a brief Agency Report from the NIC Director, (2) receive project-specific updates from all NIC divisions, and (3) updates from association and agency partners to the Board. Time for questions and counsel from the Board is built into the agenda.

Procedure: On Tuesday, January 7, 2025, 1 p.m.–4 p.m. ET, and Wednesday, January 8, 2025, 1 p.m.–3:30 p.m. ET, the meeting is open to the public. Interested persons may request to attend virtually, and present data, information, or views, orally and/or in writing, on issues pending before the committee. Such requests must be made to the contact person on or before Friday, December 20, 2024. The public comment period is scheduled for 3 p.m.–3:10 p.m. ET on January 8, 2025. The time allotted for each presentation and/or comment is limited. Those who wish to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names, titles, agencies, addresses, and email addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 20, 2024.

Closed Committee Deliberations: On January 8, 2025, between 3:30 p.m.–4 p.m. ET, the meeting will be closed to permit discussion of information that (1) relates solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and (2) is of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

General Information: NIC welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leslie LeMaster by December 20, 2024. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Leslie LeMaster,

Designated Federal Official, National Institute of Corrections.

[FR Doc. 2024-29131 Filed 12-11-24; 8:45 am]

BILLING CODE 4410-36-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Compensation for Federal Employees Handbook 391

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 13, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The UCFE law (5 U.S.C. 8501, *et seq.*) requires state workforce agencies to administer the UCFE program in accordance with the same terms and provisions of the paying state's unemployment insurance law, which apply to unemployed claimants who worked in the private sector. Each state agency must be able to obtain certain information (wage, separation data) about each claimant filing claims for UCFE benefits to enable them to determine his/her eligibility for benefits. The Department of Labor (DOL) has prescribed forms to enable the state agencies to obtain this necessary information from the individual's Federal employing agency. Each of these forms is essential to the UCFE claims process and the frequency of use varies depending upon the circumstances involved. These are model forms which states may customize as needed to collect the necessary information required to operate the UCFE program. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 27, 2024 (89 FR 53653).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-ETA.

Title of Collection: Unemployment Compensation for Federal Employees Handbook 391.

OMB Control Number: 1205-0179.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 565.

Total Estimated Number of Responses: 72,117.

Total Estimated Annual Time Burden: 5,410 hours.

Total Estimated Annual Other Costs Burden: \$1,989.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-29217 Filed 12-11-24; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Authorization for Release of Medical Information for Black Lung Benefits

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 13, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and

(4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: OWCP Form CM-936 is used to obtain the black lung claimant's authorization for the Division of Coal Mine Workers' Compensation to request medical evidence in support of the black lung claim. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 5, 2024 (89 FR 72900).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-OWCP.

Title of Collection: Authorization for Release of Medical Information for Black Lung Benefits.

OMB Control Number: 1240-0034.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 5,990.

Total Estimated Number of Responses: 5,990.

Total Estimated Annual Time Burden: 1,995 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2024-29215 Filed 12-11-24; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Organization and Auxiliary Reports**

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Labor-Management Standards, Department of Labor (OLMS)—sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 13, 2025.

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 information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Secretary of Labor administers and enforces provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended, Public Law 86–257, 73 Stat. 519–546, codified at 29 U.S.C. 401–531. The LMRDA, in part, establishes labor-management transparency through reporting and disclosure requirements for labor organizations and officials, employers, labor relations consultants, and surety companies. Section 203(a) of the LMRDA imposes reporting requirements on employers who enter into specified financial transactions or arrangements with a labor union, union official, employee, or labor relations consultant. 29 U.S.C. 433(a). Section 203(b) of the LMRDA additionally requires public disclosure of certain agreements or arrangements between any person, including labor relations consultants and other individuals and organizations, to undertake certain activities concerning employees or labor organizations. 29 U.S.C. 433(b). Under LMRDA section 208, the Secretary of Labor is authorized to issue, amend, and

rescind rules and regulations prescribing the form and publication of required reports, as well as “such other reasonable rules and regulations . . . as [s]he may find necessary to prevent the circumvention or evasion of such reporting requirements.” 29 U.S.C. 438. The Secretary published the Form LM–10 “Employer Report” for employers, and the Form LM–20 “Agreement and Activities Report” and Form LM–21 “Receipts and Disbursements Report” for labor relations consultants.

The Department seeks to amend the Form LM–10, Form LM–20, and Form LM–21 to supplement the identifying information OLMS already collects from employers and consultants by requiring an Employer Identification Number (EIN). An EIN uniquely identifies each employer or consultant, and its inclusion on the Form LM–10, Form LM–20, and Form LM–21 would avoid confusion and allow the public and employees to confirm the identity of filers and consultants more easily. This revision will also improve the efficiency of OLMS operations, as OLMS will be able to use the unique EIN number to differentiate existing filers from new filers, and crossmatch employer and consultant reports more effectively. If a consultant does not have an EIN, OLMS would require that the filing employer or other consultant identify the consultant by providing the consultant’s LM file number, if it already had obtained one.

The Department also seeks to amend the Form LM–20 to differentiate requirements for primary consultants and sub-consultants to the underlying employer-consultant agreement. These revisions to the Form LM–20 would require primary consultants to disclose whether any individuals through whom an employer-consultant agreement was performed is a sub-consultant and to provide the name and EIN of that sub-consultant in Item 11.d, as well as require sub-consultants to provide the name, EIN, and mailing address of the primary consultant the sub-consultant entered into agreement within Item 8. These revisions would help avoid confusion and allow the public and employees to confirm the identity of filers and consultants more easily, as well as provide greater efficiency to OLMS for cross-matching employer and consultant reports.

The Department is seeking comment on the collection of the EIN on Forms LM–10, LM–20, and LM–21, as well as revisions to Form LM–20 to differentiate between primary consultants and sub-consultants to the employer-consultant agreement, which would additionally require the disclosure of EIN for those

sub-consultants. The Department is seeking comments on the necessity of these revisions for the performance of OLMS, the accuracy of the estimated reporting burden, and any methods by which OLMS could continue to minimize the burden of collecting information.

The Department also seeks to require each filer to provide the email addresses of the corresponding parties to the agreement that triggered the reporting requirement (underlying agreement). The email addresses will not appear on the submitted forms or otherwise be publicly available, but OLMS will seek to use the email addresses to ensure compliance. The Department also proposes a technical revision to the Form LM–1 instructions, Item 9, to match the corresponding item on the form.

The Department is also seeking comments on handling instances when a consultant or employer does not provide or does not have an EIN, or a file number given by OLMS. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 3, 2024 (89 FR 80605).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs

receive a month-to-month extension while they undergo review.

Agency: Department of Labor, Office of Labor-Management Standards.

Title of Collection: Labor Organization and Auxiliary Reports

OMB Control Number: 1245-0003.

Affected Public: Private Sector—Business or other for-profits and not-for-profit institutions

Total Estimated Number of Annual Respondents: 32,791.

Total Estimated Number of Responses: 35,067.

Total Estimated Annual Time Burden: 4,644,740 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

PRA Department Clearance Officer.

[FR Doc. 2024-29218 Filed 12-11-24; 8:45 am]

BILLING CODE 4510-86-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Work Opportunity Tax Credit (WOTC) Implementation Evaluation

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Chief Evaluation Office (CEO)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 13, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3)

ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This implementation evaluation of the Work Opportunity Tax Credit has been authorized by the Department of Labor's Chief Evaluation Office, in partnership with the Employment and Training Administration and the Office of Disability Employment Policy. This implementation evaluation is authorized to fulfill the requirements of the Foundations for Evidence-Based Policymaking Act of 2018 and associated Office of Management and Budget guidance. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 12, 2023 (88 FR 238).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-CEO.

Title of Collection: Work Opportunity Tax Credit (WOTC) Implementation Evaluation.

OMB Control Number: 1290-0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1,450.

Total Estimated Number of Responses: 1,450.

Total Estimated Annual Time Burden: 505 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-29213 Filed 12-11-24; 8:45 am]

BILLING CODE 4510-HX-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; United States-Mexico-Canada Agreement (USMCA) Web-Based Hotline

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of International Labor Affairs (ILAB)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 13, 2025.

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 information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202-693-8633, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This information collection is necessary as DOL is required by the USMCA Implementation Act to establish and monitor a web-based hotline as an information collection system. This USMCA web-based hotline serves as an electronic portal to collect and receive confidential information regarding labor issues among USMCA countries directly from interested parties, including Mexican workers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 9, 2024 (89 FR 72897).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and

cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-ILAB.

Type of Review: Extension of a currently approved collection.

Title of Collection: United States-Mexico-Canada Agreement (USMCA) Web-based Hotline.

OMB Control Number: 1255-0001.

Affected Public: Individuals or Households.

Number of Respondents: 2,200.

Number of Responses: 2,200.

Annual Burden Hours: 550 hours.

Annual Respondent or Recordkeeper Cost: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

PRA Department Clearance Officer.

[FR Doc. 2024-29214 Filed 12-11-24; 8:45 am]

BILLING CODE 4510-28-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Self-Employment Assistance (SEA) Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-

sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 13, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Reporting Form ETA-9161, Self-Employment Assistance, includes information about people who enter the SEA program and the benefits they receive and some limited outcome data. These data are used for oversight and to provide data responsive to statutorily required evaluations of this program. A State summarizes information collected from SEA program participants to prepare the reports. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 15, 2024 (89 FR 57432).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not

display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-ETA.

Title of Collection: Self-Employment Assistance (SEA) Program.

OMB Control Number: 1205-0490.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 2,208.

Total Estimated Number of Responses: 17,616.

Total Estimated Annual Time Burden: 8,832 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-29216 Filed 12-11-24; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Request for Nominations

AGENCY: Bureau of Labor Statistics (BLS).

ACTION: Request for nominations for membership on the BLS Technical Advisory Committee.

SUMMARY: The BLS is soliciting new members for the Technical Advisory Committee (TAC) to address six member terms expiring on April 13, 2025, and any additional vacancies that may occur on the TAC between the date of publication of this notice and April 13, 2025.

DATES: Nominations for the TAC membership should be transmitted by January 13, 2025.

ADDRESSES: Nominations for the TAC membership should be emailed to BLSTAC@bls.gov. Nominations are only being accepted through email as BLS is in maximum telework status pending its relocation to Suitland.

FOR FURTHER INFORMATION CONTACT: Jay Stewart, Senior Research Economist, U.S. Bureau of Labor Statistics. Telephone: 202-691-7376. This is not a toll-free number. Email: BLSTAC@bls.gov.

SUPPLEMENTARY INFORMATION: The TAC provides advice to the Bureau of Labor Statistics on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. On some technical issues, there are differing views and receiving feedback at public meetings provides BLS with the opportunity to consider all viewpoints.

The Committee consists of approximately 16 members who serve as Special Government Employees. Members are appointed by the BLS and are approved by the Secretary of Labor. Committee members are experts in economics, statistics, data science, and survey design. Members typically have Ph.D.s in their field and have significant experience. They are prominent experts in their fields and recognized for their professional achievements and objectivity. The economic experts will have research experience with technical issues related to BLS data and will be familiar with employment and unemployment statistics, price index numbers, compensation measures, productivity measures, occupational and health statistics, or other topics relevant to BLS data series. The statistical experts will have experience with sample design, data analysis, computationally intensive statistical methods, non-sampling errors or other areas which are relevant to BLS work. The data science experts will have experience compiling, modeling, analyzing, and interpreting large sets of structured and unstructured data. The survey design experts will have experience with questionnaire design, usability, or other areas of survey development. Collectively, the members will provide a balance of expertise in all of these areas.

BLS invites persons interested in serving on the TAC to submit their names for consideration for committee membership. Typically, TAC members are appointed to three-year terms and serve as unpaid Special Government Employees.

The Bureau often faces highly technical issues while developing and maintaining the accuracy and relevancy of its data on employment and unemployment, prices, productivity, and compensation and working conditions. These issues range from how to develop new measures to how to make sure that existing measures account for the ever-changing economy. BLS presents issues and then draws on the specialized expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics and data science,

and survey design. Committee members are also invited to bring to the attention of BLS issues that have been identified in the academic literature or in their own research.

The TAC was established to provide advice to the Commissioner of Labor Statistics on technical topics selected by the BLS. Responsibilities include, but are not limited to providing comments on papers and presentations developed by BLS research and program staff, conducting research on issues identified by BLS on which an objective technical opinion or recommendation from outside of BLS would be valuable, recommending BLS conduct internal research projects to address technical problems with BLS statistics that have been identified in the academic literature, participating in discussions of areas where the types or coverage of economic statistics could be expanded or improved and areas where statistics are no longer relevant, and establishing working relationships with professional associations with an interest in BLS statistics, such as the American Statistical Association and the American Economic Association.

Nominations: BLS is looking for committed TAC members who have a strong interest in, and familiarity with, BLS data. The Agency is looking for nominees who use and have a comprehensive understanding of economic statistics. BLS is committed to bringing greater diversity of thought, perspective, and experience to its advisory committees. Nominees from all races, gender, age, and disabilities are encouraged to apply. Interested persons may nominate themselves or may submit the name of another person who they believe to be interested in and qualified to serve on the TAC. Nominations may also be submitted by organizations. Nominations should include the name, address, and telephone number of the candidate. Each nomination should include a summary of the candidate's training or experience relating to BLS data specifically, or economic statistics more generally, and a curriculum vitae. In selecting TAC members, BLS will consider individuals nominated in response to this notice, as well as other qualified individuals. Candidates should not submit information they do not want publicly disclosed. BLS will conduct a basic background check on candidates before their appointment to the TAC. The background check will involve accessing publicly available, internet-based sources. BLS will contact nominees for information on their status as registered lobbyists. Anyone currently subject to federal registration

requirements as a lobbyist is not eligible for appointment to the TAC. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the TAC. Historically, this has meant a commitment of at least two days per year.

Authority: This notice was prepared in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. 10.

Signed at Washington, DC, this 9th day of December 2024.

Leslie Bennett,

Chief, Division of Management Systems.

[FR Doc. 2024–29271 Filed 12–11–24; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 13, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0106 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA–2024–0106.
2. *Fax:* 202–693–9441.
3. *Email:* petitioncomments@dol.gov.
4. *Regular Mail or Hand Delivery:*

MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards,

Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–081–C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000 Lexington KY 40507.

Mine: Flying Eagle Mine, MSHA ID No. 46–09471, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) within 150 feet of pillar workings or longwall faces. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Flying Eagle Mine currently makes available to all miners NIOSH-approved high efficiency 100 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Flying Eagle Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the "fit test" requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be used within 150 feet of pillar workings or longwall faces.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used within 150 feet of pillar workings or longwall faces. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used within 150 feet of pillar workings or longwall faces shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the "power unit" assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR within 150 feet of

pillar workings or longwall faces, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR-800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR-800 PAPR are provided, all battery "change outs" shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR-830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR-830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR-830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR-641N, which includes one 3M Charger Cradle TR-640 and one 3M Power Supply TR-941N; or

(ii) 3M 4-Station Battery Charger Kit TR-644N, which includes four 3M Charger Cradles TR-640 and one 3M 4-Station Battery Charger Base/Power Supply TR-944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF-0066.

(4) Neither the 3M TR-830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR-830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR-800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR-800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo

TR-800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining LLC, Flying Eagle Mine, are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Rockwell Mining LLC, Flying Eagle Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024-29212 Filed 12-11-24; 8:45 am]

BILLING CODE 4520-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 13, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA-2024-0105 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2024-0105.
2. *Fax:* 202-693-9441.
3. *Email:* petitioncomments@dol.gov.
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering

documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2024-080-C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000, Lexington, KY 40507.

Mine: Flying Eagle Mine, MSHA ID No. 46-09471, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.507-1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507-1(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut or used in the return air outby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR-800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR-800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR-800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR-800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Flying Eagle Mine currently makes available to all miners NIOSH-approved high efficiency 100 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Flying Eagle Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR-800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the "fit test" requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used in by the last open crosscut or used in return air outby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M

Versaflo TR-800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR-800 or CleanSpace EX PAPR can be used in by the last open crosscut or in the return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR-800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR-800 and CleanSpace EX PAPRs to be used in by the last open crosscut or in the return air outby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR-800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery.

The internal battery and motor/blower assembly are both contained within the "power unit" assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR-800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR-800 or the CleanSpace EX PAPR in by the last open crosscut or in the return air outby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR-800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR-800 PAPR are provided, all battery "change outs" shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR-830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR-830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR-830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR-641N, which includes one 3M Charger Cradle TR-640 and one 3M Power Supply TR-941N; or

(ii) 3M 4-Station Battery Charger Kit TR-644N, which includes four 3M Charger Cradles TR-640 and one 3M 4-Station Battery Charger Base/Power Supply TR-944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF-0066.

(4) Neither the 3M TR-830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the

3M TR-830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR-800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR-800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR-800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining, LLC, Flying Eagle Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Rockwell Mining, LLC, Flying Eagle Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024-29210 Filed 12-11-24; 8:45 am]

BILLING CODE 4520-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 13, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA-2024-0104 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2024-0104.

2. *Fax:* 202-693-9441.

3. *Email:* petitioncomments@dol.gov.

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2024-079-C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000, Lexington, KY, 40507.

Mine: Flying Eagle Mine, MSHA ID No. 46-09471, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used in by the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR-800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR-800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR-800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR-800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Flying Eagle Mine currently makes available to all miners NIOSH-approved high efficiency 100 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Flying Eagle Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR-800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the "fit test" requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used in by the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR-800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR-800 or CleanSpace EX PAPR can be used in by the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR-800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR-800 and CleanSpace EX PAPRs to be used in by the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR-800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the "power unit" assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR-800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR-800 or the CleanSpace EX PAPR in by the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR-800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR-800 PAPR are provided, all battery "change outs" shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR-830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR-830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR-830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR-641N, which includes one 3M Charger Cradle TR-640 and one 3M Power Supply TR-941N; or

(ii) 3M 4-Station Battery Charger Kit TR-644N, which includes four 3M Charger Cradles TR-640 and one 3M 4-Station Battery Charger Base/Power Supply TR-944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the

manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF-0066.

(4) Neither the 3M TR-830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR-830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR-800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR-800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR-800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining, LLC, Flying Eagle Mine, are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Rockwell Mining, LLC, Flying Eagle Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024-29211 Filed 12-11-24; 8:45 am]

BILLING CODE 4520-43-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2025-011]

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS-PAC); Meeting

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: We are announcing an upcoming meeting of the State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS-PAC) in accordance with the Federal Advisory Committee Act and implementing regulations.

DATES: The meeting will be on January 8, 2025, from 10 a.m. to 11 a.m.

ADDRESSES: This meeting will be a hybrid of virtual and in person in the Adams Conference Room, 700 Pennsylvania Avenue, Washington, DC 20408. We will send instructions on how to access the meeting to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Heather Harris Pagán, ISOO Senior Program Analyst, at SLTPS_PAC@nara.gov or (202) 357-5351. Contact ISOO at ISOO@nara.gov.

SUPPLEMENTARY INFORMATION: This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulations at 41 CFR 102-3. The Committee will discuss matters relating to the classified national security information program for State, local, Tribal, and private sector entities.

Procedures: Members of the public must register in advance for the virtual meeting through the Intellor link <https://events.intellor.com/?do=register&t=7&p=509225> if they wish to attend.

Merrily Harris,
Committee Management Officer.

[FR Doc. 2024-29234 Filed 12-11-24; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection

Activities: Comment Request; National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing the opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting

Office of Management and Budget (OMB) clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by February 10, 2025 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: “U.S. National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide.”

OMB Approval Number: 3145-0058.
Expiration Date of Approval: November 30, 2026.

Type of Request: Intent to seek approval to extend with revision an information collection for three years. The primary purpose of this revision is to update the *U.S. NSF Proposal and Award Policies and Procedures Guide* (PAPPG) to incorporate mandated statutory, regulatory, National Science and Technology Council (NSTC), Executive Order, and policy-related changes and clarifications of language. The draft NSF PAPPG is now available for your review and consideration on the NSF website at <https://www.nsf.gov/bja/dias/policy/>. To facilitate review, revised text has been highlighted in yellow throughout the document to identify significant changes. A brief comment explanation of the change also is provided.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81-507) sets forth NSF’s mission and purpose:

“To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . .”

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;

- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF’s core purpose resonates clearly in everything it does: promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF’s vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 40,000 proposals annually for new projects and makes approximately 10,500 financial assistance awards, including grants and cooperative agreements.

NSF funding is primarily made through issuance of grants, cooperative agreements awarded to approximately 3,000 institutions of higher education, non-profit organizations, tribal nations, for-profit organizations, and state and local governments. The awards are based primarily on the merit review of proposals submitted to the Foundation.

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 40,000 proposals are expected to be received during the course of one year for a total of 4,800,000 public burden hours annually.

Comments: 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; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 9, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–29244 Filed 12–11–24; 8:45 am]

BILLING CODE 7555–01–P

PUBLIC BUILDINGS REFORM BOARD

Public Meeting

AGENCY: Public Buildings Reform Board.

ACTION: Notice of public meeting.

SUMMARY: As provided by the Federal Assets Sale and Transfer Act of 2016 (FASTA), the Public Buildings Reform Board (PBRB) is holding its tenth public meeting. At this meeting, the Board will discuss the progress of past rounds and well as plans for a potential future round.

DATES: The meeting is scheduled for Tuesday, January 28, 2025 from 10 a.m. to 12 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the U.S. Department of Agriculture, South Building, Jefferson Auditorium, 1400 Independence Avenue SW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Walden, PBRB, at (202) 716–8165, or questions and comments can be forwarded to the PBRB Team by email at fastainfo@pbrb.gov.

SUPPLEMENTARY INFORMATION:

Background: FASTA created the PBRB as an independent Board to identify opportunities for the Federal government to significantly reduce its inventory of civilian real property and thereby reduce costs. The Board is directed, within 6 months of its formation, to recommend to the Office of Management and Budget (OMB) the sale of not fewer than five properties not on the list of surplus or excess with a fair market value of not less than \$500 million and not more than \$750 million. In two subsequent rounds over a five-year period, the Board is responsible for making recommendations for other sales, consolidations, property disposals or redevelopment of up to \$7.25 billion.

Format and Registration: The format for the meeting will be panel discussions with appropriate time allowed for a Q&A segment. Interested participants must register for the public meeting via this link: <https://forms.gle/aBdVvJhcMPp128417>.

Individuals wishing to attend who require special assistance or accommodations must contact the PBRB Team at fastainfo@pbrb.gov at least 12 days prior to the event.

Portions of the meeting may be held in executive session if the Board is

considering issues involving classified or proprietary information.

A transcript of the public meeting will be uploaded to pbrb.gov shortly after the session.

If you have any additional questions, please email fastainfo@pbrb.gov.

Paul Walden,

Executive Director, Federal Register Liaison, Public Buildings Reform Board.

[FR Doc. 2024–29184 Filed 12–11–24; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–641 and K2025–640; MC2025–642 and K2025–641; MC2025–643 and K2025–642; MC2025–644 and K2025–643; MC2025–645 and K2025–644; MC2025–646 and K2025–645; MC2025–647 and K2025–646; MC2025–648 and K2025–647; MC2025–651 and K2025–650; MC2025–652 and K2025–651; MC2025–653 and K2025–652; MC2025–654 and K2025–653; MC2025–655 and K2025–654; MC2025–663 and K2025–662; MC2025–664 and K2025–663; MC2025–665 and K2025–664; MC2025–666 and K2025–665; MC2025–667 and K2025–666; MC2025–668 and K2025–667; MC2025–669 and K2025–668; MC2025–670 and K2025–669; MC2025–671 and K2025–670; MC2025–672 and K2025–671]

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:* December 13, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. 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. 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

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).

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)*.: MC2025–641 and K2025–640; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 911 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Arif Hafiz; *Comments Due*: December 13, 2024.

2. *Docket No(s)*.: MC2025–642 and K2025–641; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 912 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Samuel Robinson; *Comments Due*: December 13, 2024.

3. *Docket No(s)*.: MC2025–643 and K2025–642; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 913 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 13, 2024.

4. *Docket No(s)*.: MC2025–644 and K2025–643; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 509 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 13, 2024.

5. *Docket No(s)*.: MC2025–645 and K2025–644; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 914 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: December 13, 2024.

6. *Docket No(s)*.: MC2025–646 and K2025–645; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage

Contract 915 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: December 13, 2024.

7. *Docket No(s)*.: MC2025–647 and K2025–646; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 510 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 13, 2024.

8. *Docket No(s)*.: MC2025–648 and K2025–647; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 916 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 13, 2024.

9. *Docket No(s)*.: MC2025–651 and K2025–650; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 512 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 13, 2024.

10. *Docket No(s)*.: MC2025–652 and K2025–651; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 918 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 13, 2024.

11. *Docket No(s)*.: MC2025–653 and K2025–652; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 919 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 13, 2024.

12. *Docket No(s)*.: MC2025–654 and K2025–653; *Filing Title*: USPS Request to Add Priority Mail Express, Priority

Mail & USPS Ground Advantage Contract 920 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 13, 2024.

13. *Docket No(s)*.: MC2025–655 and K2025–654; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 921 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 13, 2024.

14. *Docket No(s)*.: MC2025–663 and K2025–662; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 926 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: December 13, 2024.

15. *Docket No(s)*.: MC2025–664 and K2025–663; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 927 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 13, 2024.

16. *Docket No(s)*.: MC2025–665 and K2025–664; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 928 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: December 13, 2024.

17. *Docket No(s)*.: MC2025–666 and K2025–665; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 516 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: December 13, 2024.

18. *Docket No(s)*.: MC2025–667 and K2025–666; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 929 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: December 13, 2024.

19. *Docket No(s)*.: MC2025–668 and K2025–667; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 930 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: December 13, 2024.

20. *Docket No(s)*.: MC2025–669 and K2025–668; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 931 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 13, 2024.

21. *Docket No(s)*.: MC2025–670 and K2025–669; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 932 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 13, 2024.

22. *Docket No(s)*.: MC2025–671 and K2025–670; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 933 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 13, 2024.

23. *Docket No(s)*.: MC2025–672 and K2025–671; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 934 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39

CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 13, 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. 2024–29158 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[**Docket Nos. MC2025–613 and K2025–612; MC2025–614 and K2025–613; MC2025–615 and K2025–614; MC2025–616 and K2025–615; MC2025–617 and K2025–616; MC2025–618 and K2025–617; MC2025–619 and K2025–618; MC2025–620 and K2025–619; MC2025–621 and K2025–620; MC2025–622 and K2025–621; MC2025–623 and K2025–622; MC2025–624 and K2025–623; MC2025–629 and K2025–628; MC2025–630 and K2025–629; MC2025–631 and K2025–630; MC2025–632 and K2025–631; MC2025–633 and K2025–632; MC2025–634 and K2025–633; MC2025–635 and K2025–634; MC2025–636 and K2025–635; MC2025–637 and K2025–636; MC2025–638 and K2025–637; MC2025–639 and K2025–638; MC2025–640 and K2025–639]**

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:* December 13, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Public Proceeding(s)
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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. 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

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).

17. *Docket No(s)*: MC2025-633 and K2025-632; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 907 to the Competitive Product List and Notice of Filing Materials

Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 13, 2024.

18. *Docket No(s)*: MC2025–634 and K2025–633; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 505 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Christopher Mohr; *Comments Due*: December 13, 2024.

19. *Docket No(s)*: MC2025–635 and K2025–634; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 506 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: December 13, 2024.

20. *Docket No(s)*: MC2025–636 and K2025–635; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 507 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: December 13, 2024.

21. *Docket No(s)*: MC2025–637 and K2025–636; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 908 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Christopher Mohr; *Comments Due*: December 13, 2024.

22. *Docket No(s)*: MC2025–638 and K2025–637; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 508 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: December 13, 2024.

23. *Docket No(s)*: MC2025–639 and K2025–638; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 909 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*:

December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Arif Hafiz; *Comments Due*: December 13, 2024.

24. *Docket No(s)*: MC2025–640 and K2025–639; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 910 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Arif Hafiz; *Comments Due*: December 13, 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. 2024–29156 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 798 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–503, K2025–501.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29170 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 819 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–527, K2025–525.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29197 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 821 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–529, K2025–527.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29199 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 803 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–508, K2025–506.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29175 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 804 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–509, K2025–507.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29176 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 818 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–526, K2025–524.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29196 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 796 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–501, K2025–499.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29168 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 823 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–531, K2025–529.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29201 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 815 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–523, K2025–521.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29193 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 487 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–519, K2025–517.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29189 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–12–P**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 800 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–505, K2025–503.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29172 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 829 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–537, K2025–535.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29207 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–12–P**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 822 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–530, K2025–528.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29200 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–12–P**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 805 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-510, K2025-508.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29177 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 826 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-534, K2025-532.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29204 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 811 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-516, K2025-514.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29183 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 814 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025-522, K2025-520.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29192 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 812 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-520, K2025-518.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29190 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 817 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–525, K2025–523.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29195 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 801 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–506, K2025–504.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29173 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 827 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–535, K2025–533.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29205 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 828 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–536, K2025–534.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29206 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 820 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–528, K2025–526.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29198 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 806 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–511, K2025–509.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29178 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 486 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–518, K2025–516.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29165 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 808 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–513, K2025–511.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29180 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 807 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–512, K2025–510.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29179 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 810 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–515, K2025–513.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29182 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 799 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–504, K2025–502.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29171 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 794 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–499, K2025–497.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29166 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 816 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–524, K2025–522.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29194 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 485 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–517, K2025–515.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29164 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 830 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–538, K2025–536.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29208 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 813 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–521, K2025–519.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29191 Filed 12–11–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 825 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-533, K2025-531.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29203 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 795 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-500, K2025-498.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29167 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 797 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-502, K2025-500.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29169 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 809 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025-514, K2025-512.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29181 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 802 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-507, K2025-505.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-29174 Filed 12-11-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 12, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 824 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–498, K2025–496.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–29202 Filed 12–11–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101832; File No. SR–NYSECHX–2024–36]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Article 3

December 6, 2024

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b–4 thereunder, ³ notice is hereby given that, on December 3, 2024, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article 3, Rule 1 to add clarity to the process for a broker-dealer to become or remain a Participant on the Exchange notwithstanding the existence of a statutory disqualification. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article 3, Rule 1 to add clarity to the process for a broker-dealer to become or remain a Participant on the Exchange notwithstanding the existence of a statutory disqualification.

Background and Proposed Rule Filing

Section 3(a)(39) of the Act defines the term “statutory disqualification” and the circumstances that can cause a person (either a Member, or a person associated with a Member) to be subject to a statutory disqualification. ⁴ Absent relief, a statutory disqualification would preclude a broker-dealer or person associated with a broker-dealer from certain activities, including membership in a self-regulatory organization (“SRO”).

There is, however, a well-established process through which a broker-dealer (or a person associated with a broker-dealer) may continue to operate in the securities industry (and either become a member of, or continue as a member of, one or more SROs) despite being subject to a statutory disqualification. ⁵ In particular, SEC Rule 19h–1 ⁶ describes several ways an SRO may seek relief for a member (or prospective member) that is subject to a statutory disqualification, including whether an SRO must file a notice with the Commission in order to allow the disqualified firm to become or continue as a member with the SRO (a “19h–1 Notice”). A 19h–1 Notice does not, for instance, need to be filed by an SRO if the firm subject to a statutory

disqualification is a member of at least one other SRO, and that SRO intends to file a 19h–1 Notice for the firm. ⁷

Article 3, Rule 1 (Qualifications) governs the qualifications for Participants to transact business on the Exchange, and provides in subsection (b) that an applicant or Participant (including any Associated Person) may not be subject to an order of the Commission (1) denying, suspending or revoking the registration of such person as a broker or dealer, or (2) barring or suspending such person from being associated with a broker or dealer. ⁸

Recently, a non-member broker-dealer firm subject to a statutory disqualification that is currently under review by the Financial Industry Regulatory Authority, Inc. (“FINRA”) applied for Exchange membership. ⁹ In reviewing this application, the Exchange determined that this situation is not explicitly addressed in its rules as it is in the rules of other exchanges. ¹⁰ Specifically, BOX, Cboe BZX, Cboe BYX, Cboe EDGX, and Cboe EDGA each amended their respective rules in 2016 to provide more clarity as to the authority of each exchange to determine whether to admit a prospective member that is subject to a statutory disqualification. ¹¹ The 2016 rule change filings of these exchanges also amended several other aspects of their application procedures, but the Exchange only seeks to harmonize its rules insofar as they apply to Participants and prospective Participants (and associated person of Participants) that are subject to a statutory disqualification in order to

⁷ *Id.* at (a)(3).

⁸ See Article 3, Rule 1(b).

⁹ The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations of prospective Participants and persons associated with a Participant. Review, assessment, and processing of these membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement.

¹⁰ See Cboe EDGX Exchange, Inc. (“Cboe EDGX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BZX Exchange, Inc. (“Cboe BZX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BYX Exchange, Inc. (“Cboe BYX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe EDGA Exchange, Inc. (“Cboe EDGA”) Rule 2.5(a) & Interpretation and Policies .04; and BOX Options Exchange LLC (“BOX”) Rule 2040(a) & IM–2040–08.

¹¹ See Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR–BOX–2016–26); Securities Exchange Act Release No. 79229 (November 3, 2016), 81 FR 78875 (November 9, 2016) (SR–BatsBZX–2016–67); Securities Exchange Act Release No. 79233 (November 3, 2016), 81 FR 78869 (November 9, 2016) (SR–BatsBYX–2016–28); Securities Exchange Act Release No. 79234 (November 3, 2016), 81 FR 78867 (November 9, 2016) (SR–BatsEDGA–2016–23); Securities Exchange Act Release No. 79236 (November 3, 2016), 81 FR 78878 (November 9, 2016) (SR–BatsEDGX2016–59).

⁴ 15 U.S.C. 78c(a)(39).

⁵ See FINRA Regulatory Notice 09–19 (“Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications”).

⁶ 17 CFR 240.19h–1.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

address the membership application described herein.¹²

The Exchange accordingly proposes to align its rule with these other exchanges specifically with respect to the process of assessing an applicant for membership that is subject to a statutory disqualification.¹³ As discussed below, the Exchange is making the proposed rule changes and seeks waiver of the 30-day operative delay in order to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange Participant during the pendency of the process by which the firm is seeking relief from the statutory disqualification.

To effectuate these changes, the Exchange proposes to add Interpretation and Policy .02 to Article 3, Rule 1 to provide that the Exchange could approve an applicant for membership (or association with a member) that is subject to a statutory disqualification when a proceeding is pending before another SRO to determine whether to permit a Participant or associated person of a Participant to become or continue membership or association notwithstanding a statutory disqualification. This provision, which is consistent with SEC Rule 19h-1(a)(3), would provide as follows (additions italicized):

.02 The Exchange may waive the provisions of Article 3, Rule 1(b) when a proceeding is pending before another self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory

disqualification. In the event the Exchange determines to waive the provisions of Article 3, Rule 1(b) with respect to an existing or prospective Participant or associated person of an existing or prospective Participant, the Exchange shall determine whether it will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to the Participant or associated person.

This Interpretation and Policy is substantively identical to IM-2040-8 to BOX Rule 2040 and Interpretation and Policies .04 to Cboe BZX, BYX, EDGX, and EDGA Rules 2.5, except for language clarifying that the new supplementary material would apply to both prospective and existing Participants and associated persons of Participants.

The Exchange also proposes a conforming amendment to Article 3, Rule 1(b) to delete the existing text providing that an applicant or Participant (including any Associated Person) may not be subject to an order of the Commission (1) denying, suspending or revoking the registration of such person as a broker or dealer, or (2) barring or suspending such person from being associated with a broker or dealer since not every statutory disqualification requires a Commission order.¹⁴ As proposed, Article 3, Rule 1(b) would read “Except as otherwise permitted by the Exchange, no person may become a Participant or continue as a Participant in any capacity on the Exchange where such person is subject to a statutory disqualification.” The proposed language is based on the rules of the Exchange’s affiliates the New York Stock Exchange LLC (“NYSE”) and NYSE American LLC (“NYSE American”), specifically NYSE Rule 346 (Statutory Disqualification—Association of Member Organizations, and Persons Associated With Member Organizations) and NYSE American Rule 342 (Association of Members, Member Organizations, and Persons Associated With Member Organizations), and is also substantively identical to BOX Rule 2040(a)(3) and Cboe BZX, BYX, EDGX, and EDGA Rules 2.5(a)(3).

The Exchange believes that the proposed rule change would appropriately align its rules with the Commission’s rules regarding statutory disqualifications and harmonize the Exchange’s process with several other SROs. The Exchange notes that in assessing the statutory disqualification of a Participant or prospective Participant, it must act consistent with

the protection of investors and in the public interest and cannot unfairly discriminate against Participants or prospective Participants.¹⁵ Moreover, as noted above, a Participant or Participant Firm can seek relief from the Exchange’s eligibility or qualification requirements pursuant to the Rule 10.9520 Series.¹⁶ In addition, any prospective Participant that has been denied membership in the Exchange or barred from becoming associated with a Participant is entitled to certain due process pursuant to the procedures set forth in Article 15 (Hearings and Reviews), which includes, but is not limited to, potential review by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(5),¹⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the proposed rule change would better align the Exchange’s rules with the Commission’s rules regarding statutory disqualifications and enable a consistent process across the Exchange and several other SROs to make appropriate filings with respect to persons subject to a statutory disqualification, thereby protecting investors and the public interest by providing more clarity and consistency with respect to the process of seeking relief from a statutory disqualification and in general enabling the Exchange to more efficiently administer membership applications involving statutory disqualifications. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest add clarity, transparency and consistency to the Exchange’s rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion.

¹² The 2016 rule filings also added some other conditions for eligibility for exchange membership such as adding a restriction that members must meet any condition the exchange placed on such member, which the Exchange believes are adequately addressed in other Exchange rules. See, e.g., Article 3, Rule 1; Article 3, Rule 2 (Rights and Privileges of Participants); Article 6, Rule 2 (Registration and Approval of Participant Personnel). Moreover, the Rule 10.9520 Series sets forth procedures for a covered person (defined in Rule 10.9120(g) as an Associated Person as defined in Article 1, Rule 1(d) and any other person subject to the jurisdiction of the Exchange) to become or remain associated with a Participant or Participant Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current Participant, Participant Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange’s Rules, referred to in the Rule as “eligibility proceedings.”

¹³ The proposed changes mirror the language in the following rules: BOX Rule 2040(a) and IM-2040-08; Cboe BZX Rule 2.5(a) and Interpretation and Policies .04; Cboe BYX Rule 2.5(a) and Interpretation and Policies .04; Cboe EDGA Rule 2.5(a) and Interpretation and Policies .04; and Cboe EDGX Rule 2.5(a) and Interpretation and Policies .04.

¹⁴ See the list of disqualifying events in Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See note 12, *supra*.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

The Exchange also believes it is reasonable to remove language in Article 3, Rule 1(b) limiting statutory disqualification to a Commission order because, as discussed above, not every statutory disqualification requires a Commission order. In addition, the proposed changes would align Article 3, Rule 1 with the equivalent rules of BOX, Cboe BZX, Cboe BYX, Cboe EDGA, Cboe EDGX, as well as the rules of the Exchange's affiliates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with aligning the Exchange's rules with those of other exchanges and with the Commission's approach to handling firms that are subject to statutory disqualification.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

NYSE Chicago has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. NYSE Chicago states that waiving the 30-day delay in this manner would allow the Exchange to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

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.

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-NYSECHX-2024-36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSECHX-2024-36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-NYSECHX-2024-36 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-29145 Filed 12-11-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101834; File No. SR-CBOE-2024-052]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Auction Response and Execution Price Cap for AIM and SAM Auctions

December 6, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 22, 2024, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Chicago has satisfied this requirement.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rules 5.37 and 5.39. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 5.37 (Automated Price Improvement Mechanism ("AIM" or "AIM Auction")) and 5.39 ("Solicitation Auction Mechanisms ("SAM" or "SAM Auction")) to modify the agency side execution price cap to allow for further price improvement.

By way of background, Rule 5.37 contains the requirements applicable to the execution of certain customer orders ("Agency Orders") using AIM. An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer ("NBBO")). Rule 5.39 contains the requirements applicable to the execution of Agency Orders using SAM. Similarly, a SAM Auction is an electronic auction intended to provide a

larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into an AIM or SAM Auction, the initiating Trading Permit Holder ("Initiating TPH") must also submit a contra-side second order ("Initiating Order") for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.⁵ At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order.⁶ At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order.⁷

Rules 5.37(c)(5)(B) and 5.39(c)(5)(B) provide that the System may not execute AIM responses (against Agency Orders) outside of the BBO at the conclusion of the AIM Auction or the Initial NBBO. Similarly, Rules 5.37(e) and 5.39(e) provide that the execution price of any Agency Order must be not outside the Exchange best bid or offer ("BBO") at the conclusion of the auction or the Initial NBBO.⁸ The Exchange proposes to amend Rules 5.37(c)(5)(B) and (e) and 5.39(c)(5)(B) and (e) to eliminate the requirement that the execution price of an AIM response or Agency Order be at or better than the Initial NBBO.⁹ The Exchange believes this may provide Agency Orders with further opportunities for price

improvement, including in the event the market changes during an AIM or SAM Auction.

To illustrate the impact of the proposed rule change, suppose the following market exists when an Initiating TPH submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):
BBO: 0.85–1.20 (no priority customers)
ABBO: 1.00–1.10
Initial NBBO: 1.00–1.10

After the Auction begins, the ABBO moves to 0.90–1.10 and the Exchange receives on its book a non-priority customer order to sell 1 contract at 0.95. During the Auction, one response to sell one contract at 0.75 is submitted. Therefore, when the AIM Auction concludes, the following market exists:
BBO: 0.85–0.95 (no priority customers)
ABBO: 0.90–1.10
NBBO: 0.90–0.95

Under the current rules, the execution price would be capped at the Initial NBB of 1.00, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 1.00
1 contract against the sell order @ 1.00
3 contracts against the Initiating Order at 1.05

As proposed, the execution price would be capped at BBO at the conclusion of the Auction of 0.85, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 0.85
1 contract against the sell order @ 0.95
3 contracts against the Initiating Order @ 1.05

Therefore, as proposed, the Agency Order is able to buy one contract at 0.15 less and another contract at 0.05 less than what occurs under the current Rules, which ultimately results in price savings for this customer.

To illustrate what would happen if the away market moved the other direction during an AIM Auction, suppose the following market exists when an Initiating TPH submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):

BBO: 0.85–1.20 (no priority customers)
ABBO: 1.00–1.10
Initial NBBO: 1.00–1.10

After the Auction begins, the ABBO moves to 1.10–1.20 and the Exchange receives on its book a non-priority customer order to sell 1 contract at 1.15. During the Auction, one response to sell one contract at 0.95 is submitted. Therefore, when the AIM Auction concludes, the following market exists:

⁵ See Rules 5.37(c)(5) and 5.39(c)(5).

⁶ See Rule 5.37(e).

⁷ See Rule 5.39(e).

⁸ The term "Initial NBBO" means the national best bid or national best offer at the time an auction is initiated. See Rules 5.37 (introductory paragraph) and 5.39 (introductory paragraph). The Exchange notes that Rules 5.37(b) and 5.39(b) reference the "then-current NBBO" when describing the stop price conditions. The "then-current NBBO" is the NBBO at the time the System receives the Agency Order and contra-order, which (assuming all conditions are satisfied) becomes the time at which the auction commences, and thus the then-current NBBO is ultimately the NBBO at the commencement of the auction, which is also the "Initial NBBO."

⁹ The proposed rule change makes nonsubstantive changes to Rule 5.37(e) to delete the redundant phrase "as follows," and makes other grammatical changes, which changes have no impact on these provisions and merely improve readability. The proposed rule change also makes nonsubstantive changes to Rule 5.37(e) to replace "better than both sides of" with "between," as those terms mean the same thing with respect to the BBO. This makes the language in Rule 5.37(e) consistent with the analogous language in Rule 5.39(e).

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

BBO: 0.85–1.15 (no priority customers)
 ABBO: 1.10–1.20
 NBBO: 1.10–1.15

Under the current rules, the execution price would be capped at the Initial NBB of 1.00, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 1.00

4 contracts against the Initiating Order at 1.05

As proposed, the execution price would be capped at BBO at the conclusion of the Auction of 0.85, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 0.95

4 contracts against the Initiating Order @ 1.05

Therefore, as proposed, the Agency Order is able to buy one contract at 0.05 less than what occurs under the current Rules, which ultimately results in price savings for this customer. This example also demonstrates that if the Agency Order side of the market crosses the auction/stop price, the Agency Order will still not trade at a price worse than the auction/stop price.

Another example illustrates what would happen if the Exchange's market moved during an AIM Auction and the Agency Order side of the market crossed the auction/stop price, suppose the following market exists when an Initiating TPH submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):

BBO: 0.85–1.20 (no priority customers)
 ABBO: 1.00–1.10
 Initial NBBO: 1.00–1.10

After the Auction begins, the Exchange receives on its book a non-priority customer order to buy 1 contract at 1.15. No responses were received prior to the receipt of this order. This would cause the Agency Order's stop price of 1.05 to be outside of the BBO of 1.15–1.20. As a result, pursuant to Rule 5.37(d)(1)(C), the AIM Auction would conclude. All five contracts of the Agency Order would execute against the Initiating Order at 1.05. The proposed rule change would have no impact on this scenario since the execution price is still within the Initial NBBO.

The proposed change will continue to protect interest resting on the Exchange's book (including priority customers) and interest at away markets in accordance with linkage rules¹⁰

while providing customers with additional opportunities for price improvement. Additionally, customers will continue to never receive an execution at a price worse than the auction/stop price.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change will help perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors. In particular, the Exchange believes the proposed rule change will provide opportunities for further price improvement for Agency Orders in the event an away market fades during an auction. The Exchange believes that the proposed rule change may permit Agency Orders submitted into AIM and SAM Auctions (or parts of them) to execute at better prices, including against Auction responses, than they may execute at today. The Exchange believes the proposed changes may provide Agency Orders with increased opportunities for meaningful price improvement without inadvertently penalizing them if markets happen to move during an auction. The Exchange believes the proposed rule change will permit customers to take advantage of market moves that occur during an auction, which may result in these orders receiving further price

improvement compared to what they may receive under current Rules, which ultimately benefits investors.

The Exchange further notes that the proposed rule change remains consistent with the Options Order Protection and Locked/Crossed Market Plan ("Linkage Plan") approved by the Securities and Exchange Commission (the "Commission") pursuant to Regulation NMS¹⁴ and the Exchange's Rules adopted in accordance with the Linkage Plan.¹⁵ In particular, the proposed rule change is consistent with the trade-through exception that permits an order to trade at a price outside of the NBBO at the time of execution (*i.e.*, the conclusion of an AIM or SAM Auction) if the order was stopped at a price that did not constitute a trade-through at the time of the stop (*i.e.*, the Initial NBBO).¹⁶ This stop price is required for AIM and SAM auctions.¹⁷ While this trade-through exception requires a stop price to be at or between the Initial NBBO, it does not require an execution price to be at or between the Initial NBBO.¹⁸ When the Commission discussed this trade through exception when approving the Linkage Plan, it noted the purpose of this exception was to allow for "price improvement for an order, even if the market moves in the interim, and the transaction is effected at a price that would trade through the then currently-displayed market," as occurs in price improvement auctions of several exchanges.¹⁹ As proposed, executions will always occur at prices at

¹⁴ See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.) ("Linkage Approval Order")

¹⁵ See Rules 5.65 through 5.67.

¹⁶ See Rule 5.66(b)(9).

¹⁷ See Rules 5.37(b) and 5.39(b).

¹⁸ The Exchange notes at least one other options exchange with similar auction mechanisms does not limit executions prices to being at or better than the Initial NBBO. See, e.g., Nasdaq ISE, LLC ("ISE") Rulebook Options 3, Section 11(d) (permissible execution prices for orders submitted into the solicited order mechanism (comparable to SAM) do not take into account prices of away markets); and Section 13 (permissible execution prices for orders submitted into the price improvement mechanism (comparable to AIM) do not take into account prices of away markets).

¹⁹ See Linkage Approval Order at 39368. The Commission continued by stating that "[d]uring [an] auction period, the NBBO could move from where it was when the order was received. However, the Exchange is only required to guarantee a price no worse than the NBBO at the time the order was received." The Commission found this exception to be "in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets." *Id.*

¹⁰ See Rule 5.66(b)(9) (which permits transactions that trade through the NBBO if an order was stopped at a price that did not constitute a trade-through at the time of the stop).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

or between the BBO at the conclusion of the Auction, thus respecting prices from away markets while providing an Agency Order with the opportunity to benefit from any market changes that occur during an auction. Additionally, customers will continue to never receive an execution at a price worse than the auction/stop price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply uniformly to AIM and SAM orders and responses of all TPHs. Additionally, the Exchange notes that participation in the AIM and SAM Auctions is completely voluntary. The Exchange believes all market participants may benefit from any additional price improvement in the AIM and SAM Auctions that may result from the proposed rule change. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to Exchange-specific auction mechanisms and, as noted above, will continue to ensure that execution prices occur in a manner consistent with linkage rules and protect customers on the book. As noted above, at least one other options exchange with similar auction mechanisms does not limit executions prices to being at or better than the Initial NBBO.²⁰

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

²⁰ See, e.g., ISE Rulebook Options 3, Section 11(d)(3) (permissible execution prices for orders submitted into the solicited order mechanism (comparable to SAM) do not take into account prices of away markets); and Section 13(d) (permissible execution prices for orders submitted into the price improvement mechanism (comparable to AIM) do not take into account prices of away markets).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6)²² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-052 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-CBOE-2024-052. 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

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6).

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-CBOE-2024-052 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-29147 Filed 12-11-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101838; File No. SR-NYSE-2024-77]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 346

December 6, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on December 3, 2024, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 346 to add clarity to the process for a broker-dealer to become or remain a member organization notwithstanding a statutory disqualification. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 346 to add clarity to the process to permit a member organization to become or remain a member organization notwithstanding a statutory disqualification.

Background and Proposed Rule Filing

Section 3(a)(39) of the Act defines the term "statutory disqualification" and the circumstances that can cause a person (either a Member, or a person associated with a Member) to be subject to a statutory disqualification.⁴ Absent relief, a statutory disqualification would preclude a broker-dealer or person associated with a broker-dealer from certain activities, including membership in a self-regulatory organization ("SRO").

There is, however, a well-established process through which a broker-dealer (or a person associated with a broker-dealer) may continue to operate in the securities industry (and either become a member of, or continue as a member of, one or more SROs) despite being subject to a statutory disqualification.⁵ In

particular, SEC Rule 19h-1⁶ describes several ways an SRO may seek relief for a member (or prospective member) that is subject to a statutory disqualification, including whether an SRO must file a notice with the Commission in order to allow the disqualified firm to become or continue as a member with the SRO (a "19h-1 Notice"). A 19h-1 Notice does not, for instance, need to be filed by an SRO if the firm subject to a statutory disqualification is a member of at least one other SRO, and that SRO intends to file a 19h-1 Notice for the firm.⁷

Rule 346 (Statutory Disqualification—Association of Member Organizations, and Persons Associated With Member Organizations) provides that, except as otherwise permitted by the Exchange, no member organization, principal executive, approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any "statutory disqualification" defined in Section 3(a)(39) of the Act.

Recently, a non-member broker-dealer firm subject to a statutory disqualification that is currently under review by the Financial Industry Regulatory Authority, Inc. ("FINRA") applied for Exchange membership.⁸ In reviewing this application, the Exchange determined that this situation is not explicitly addressed in its rules as it is in the rules of other exchanges.⁹ Specifically, BOX, Cboe BZX, Cboe BYX, Cboe EDGX, and Cboe EDGA each amended their respective rules in 2016 to provide more clarity as to the authority of each exchange to determine whether to admit a prospective member that is subject to a statutory disqualification.¹⁰ The 2016 rule change

Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications").

⁶ 17 CFR 240.19h-1.

⁷ *Id.* at (a)(3).

⁸ The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations. Review, assessment, and processing of these membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement.

⁹ See Cboe EDGX Exchange, Inc. ("Cboe EDGX") Rule 2.5(a) & Interpretation and Policies .04; Cboe BZX Exchange, Inc. ("Cboe BZX") Rule 2.5(a) & Interpretation and Policies .04; Cboe BYX Exchange, Inc. ("Cboe BYX") Rule 2.5(a) & Interpretation and Policies .04; Cboe EDGA Exchange, Inc. ("Cboe EDGA") Rule 2.5(a) & Interpretation and Policies .04; and BOX Options Exchange LLC ("BOX") Rule 2040(a) & IM-2040-08.

¹⁰ See Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016)

filings of these exchanges also amended several other aspects of their application procedures, but the Exchange only seeks to harmonize its rules insofar as they apply to member organizations and prospective member organizations (and associated persons of member organizations) that are subject to a statutory disqualification in order to address the membership application described herein.¹¹

The Exchange accordingly proposes to align its rule with these other exchanges specifically with respect to the process of assessing an applicant for membership that is subject to a statutory disqualification.¹² As discussed below, the Exchange is making the proposed rule changes and seeks waiver of the 30-day operative delay in order to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification.

To effectuate these changes, the Exchange proposes to add Supplementary Material .01 to Rule 346 to provide that the Exchange could approve an applicant for membership (or association with a member organization) that is subject to a

(SR-BOX-2016-26); Securities Exchange Act Release No. 79229 (November 3, 2016), 81 FR 78875 (November 9, 2016) (SR-BatsBZX-2016-67); Securities Exchange Act Release No. 79233 (November 3, 2016), 81 FR 78869 (November 9, 2016) (SR-BatsBYX-2016-28); Securities Exchange Act Release No. 79234 (November 3, 2016), 81 FR 78867 (November 9, 2016) (SR-BatsEDGA-2016-23); Securities Exchange Act Release No. 79236 (November 3, 2016), 81 FR 78878 (November 9, 2016) (SR-BatsEDGX2016-59).

¹¹ The 2016 rule filings also added some other conditions for eligibility for exchange membership such as adding a restriction that members must meet any condition the exchange placed on such member, which the Exchange believes are adequately addressed in other Exchange rules. See, e.g., Rule 301 (Qualifications for Membership); Rule 311 (Formation and Approval of Member Organizations). Moreover, the Rule 9520 Series sets forth procedures for a covered person (defined in Rule 9120(g) as a member, principal executive, approved person, registered or non-registered employee of a member organization, or other person (excluding a member organization) subject to the jurisdiction of the Exchange) to become or remain associated with a member organization notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current member organization or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, referred to in the Rule as "eligibility proceedings."

¹² The proposed changes mirror the language in the following rules: BOX Rule 2040(a) and IM-2040-08; Cboe BZX Rule 2.5(a) and Interpretation and Policies .04; Cboe BYX Rule 2.5(a) and Interpretation and Policies .04; Cboe EDGA Rule 2.5(a) and Interpretation and Policies .04; and Cboe EDGX Rule 2.5(a) and Interpretation and Policies .04.

⁴ 15 U.S.C. 78c(a)(39).

⁵ See FINRA Regulatory Notice 09-19 ("Amendments to FINRA Rule 9520 Series to

statutory disqualification when a proceeding is pending before another SRO to determine whether to permit a member organization, principal executive, approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member organization to become or continue membership or association notwithstanding a statutory disqualification. This provision, which is consistent with SEC Rule 19h-1(a)(3), would provide as follows (additions italicized):

.01 Statutory Disqualification Proceedings Pending Before Another SRO. The Exchange may waive the provisions of this Rule when a proceeding is pending before another self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of this Rule with respect to an existing or prospective member organization, principal executive, approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member organization, the Exchange shall determine whether it will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to such person.

This Supplementary Material is substantively identical to IM-2040-8 to BOX Rule 2040 and Interpretation and Policies .04 to Cboe BZX, BYX, EDGX, and EDGA Rules 2.5, except for language clarifying that the new supplementary material would apply to both prospective and existing member organizations, principal executives, approved persons, persons associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member organization.

The Exchange believes that the proposed rule change would appropriately align its rules with the Commission's rules regarding statutory disqualifications and harmonize the Exchange's process with several other SROs. The Exchange notes that in assessing the statutory disqualification of a member organization or prospective member organization, it must act consistent with the protection of investors and in the public interest and cannot unfairly discriminate against existing or prospective member

organizations.¹³ Moreover, as noted above, a current member organization or covered person can seek relief from the Exchange's eligibility or qualification requirements pursuant to the Rule 9520 Series.¹⁴ In addition, any prospective member organization that has been denied membership in the Exchange or barred from becoming associated with a member organization is entitled to certain due process pursuant to the Rule 308 (Acceptability Proceedings), which includes, but is not limited to, potential review by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the proposed rule change would better align the Exchange's rules with the Commission's rules regarding statutory disqualifications and enable a consistent process across the Exchange and several other SROs to make appropriate filings with respect to persons subject to a statutory disqualification, thereby protecting investors and the public interest by providing more clarity and consistency with respect to the process of seeking relief from a statutory disqualification and in general enabling the Exchange to more efficiently administer membership applications involving statutory disqualifications. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See note 11, *supra*.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with aligning the Exchange's rules with those of other exchanges and with the Commission's approach to handling firms that are subject to statutory disqualification.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. NYSE states that waiving the 30-day delay in this manner would allow the Exchange to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

statutory disqualification. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSE-2024-77. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-77 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101833; File No. SR-NYSE-2024-77]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 2.4(a)

December 6, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that on December 3, 2024, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2.4(a) to add clarity to the process for a broker-dealer to become an ETP Holder or remain an ETP Holder on the Exchange notwithstanding the existence of a statutory disqualification. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and

at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 2.4(a) to add clarity to the process for a broker-dealer to become an ETP Holder or remain an ETP Holder on the Exchange notwithstanding the existence of a statutory disqualification.

Background and Proposed Rule Filing

Section 3(a)(39) of the Act defines the term "statutory disqualification" and the circumstances that can cause a person (either a Member, or a person associated with a Member) to be subject to a statutory disqualification. ⁴ Absent relief, a statutory disqualification would preclude a broker-dealer or person associated with a broker-dealer from certain activities, including membership in a self-regulatory organization ("SRO").

There is, however, a well-established process through which a broker-dealer (or a person associated with a broker-dealer) may continue to operate in the securities industry (and either become a member of, or continue as a member of, one or more SROs) despite being subject to a statutory disqualification. ⁵ In particular, SEC Rule 19h-1 ⁶ describes several ways an SRO may seek relief for a member (or prospective member) that is subject to a statutory disqualification, including whether an SRO must file a notice with the Commission in order to allow the disqualified firm to become or continue as a member with the SRO (a "19h-1 Notice"). A 19h-1 Notice does

⁴ 15 U.S.C. 78c(a)(39).

⁵ See FINRA Regulatory Notice 09-19 ("Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications").

⁶ 17 CFR 240.19h-1.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

not, for instance, need to be filed by an SRO if the firm subject to a statutory disqualification is a member of at least one other SRO, and that SRO intends to file a 19h-1 Notice for the firm.⁷

Rule 2.4 (Restrictions) sets forth restrictions on persons becoming ETP Holders or continuing as ETP Holders, and provides that no person may become an ETP Holder or continue as an ETP Holder in any capacity on the Exchange unless, among other things, such person is not subject to a statutory disqualification, except that a person may become an ETP Holder or continue as an ETP Holder where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Exchange Act, the Commission has issued an order providing relief from such a disqualification and permitting such a person to become an ETP Holder.⁸

Recently, a non-member broker-dealer firm subject to a statutory disqualification that is currently under review by the Financial Industry Regulatory Authority, Inc. ("FINRA") applied for Exchange membership.⁹

In reviewing this application, the Exchange determined that this situation is not explicitly addressed in its rules as it is in the rules of other exchanges.¹⁰ Specifically, BOX, Cboe BZX, Cboe BYX, Cboe EDGX, and Cboe EDGA each amended their respective rules in 2016 to provide more clarity as to the authority of each exchange to determine whether to admit a prospective member that is subject to a statutory disqualification.¹¹ The 2016 rule change filings of these exchanges also amended

several other aspects of their application procedures, but the Exchange only seeks to harmonize its rules insofar as they apply to ETP Holders and prospective ETP Holders (and associated person of ETP Holders) that are subject to a statutory disqualification in order to address the membership application described herein.¹²

The Exchange accordingly proposes to align its rule with these other exchanges specifically with respect to the process of assessing an applicant for membership that is subject to a statutory disqualification.¹³ As discussed below, the Exchange is making the proposed rule changes and seeks waiver of the 30-day operative delay in order to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange ETP Holder during the pendency of the process by which the firm is seeking relief from the statutory disqualification.

To effectuate these changes, the Exchange proposes to add Commentary .01 to Rule 2.4 to provide that the Exchange could approve an applicant for membership (or association with a member) that is subject to a statutory disqualification when a proceeding is pending before another SRO to determine whether to permit an ETP Holder or associated person of an ETP Holder to become or continue membership or association notwithstanding a statutory disqualification. This provision, which is consistent with SEC Rule 19h-1(a)(3), would provide as follows (additional italicized):

.01 Statutory Disqualification Proceedings Pending Before Another SRO. The Exchange may waive the provisions of Rule 2.4(a)(2) when a proceeding is pending before another

self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of Rule 2.4(a)(2) with respect to an existing or prospective ETP Holder or associated person of an existing or prospective ETP Holder, the Exchange shall determine whether it will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to the ETP Holder or associated person.

This Commentary is substantively identical to IM-2040-8 to BOX Rule 2040 and Interpretation and Policies .04 to Cboe BZX, BYX, EDGX, and EDGA Rules 2.5, except for language clarifying that the new supplementary material would apply to both prospective and existing Exchange Members.

The Exchange also proposes conforming amendments to Rule 2.4(a) to add the clause "except as otherwise permitted by the Exchange," and to delete the clause in Rule 2.4(a)(2) providing that a person subject to statutory disqualification may become an ETP Holder or continue as an ETP Holder where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act, the Commission has issued an order providing relief from such a disqualification and permitting such a person to become an ETP Holder since, as noted above, not every statutory disqualification requires an SRO to make a filing under Rule 19h-1 of the Act and not all filings require a Commission order.¹⁴ As proposed, Rule 2.4(a)(2) would read "No person may become an ETP Holder or continue as an ETP Holder in any capacity on the Exchange unless such person is not subject to a statutory disqualification, except as otherwise permitted by the Exchange." The proposed language is based on the rules of the Exchange's affiliates the New York Stock Exchange LLC ("NYSE") and NYSE American LLC ("NYSE American"), specifically NYSE Rule 346 (Statutory Disqualification—Association of Member Organizations, and Persons Associated With Member Organizations) and NYSE American Rule 342 (Association of Members, Member Organizations, and Persons Associated With Member Organizations), and is also substantively identical to BOX Rule 2040(a)(3) and Cboe BZX, BYX, EDGX, and EDGA Rules 2.5(a)(3).

⁷ *Id.* at (a)(3).

⁸ See Rule 2.4(a)(2).

⁹ The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations of prospective ETP Holders and persons associated with an ETP Holder. Review, assessment, and processing of these membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement.

¹⁰ See Cboe EDGX Exchange, Inc. ("Cboe EDGX") Rule 2.5(a) & Interpretation and Policies .04; Cboe BZX Exchange, Inc. ("Cboe BZX") Rule 2.5(a) & Interpretation and Policies .04; Cboe BYX Exchange, Inc. ("Cboe BYX") Rule 2.5(a) & Interpretation and Policies .04; Cboe EDGA Exchange, Inc. ("Cboe EDGA") Rule 2.5(a) & Interpretation and Policies .04; and BOX Options Exchange LLC ("BOX") Rule 2040(a) & IM-2040-08.

¹¹ See Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR-BOX-2016-26); Securities Exchange Act Release No. 79229 (November 3, 2016), 81 FR 78875 (November 9, 2016) (SR-BatsBZX-2016-67); Securities Exchange Act Release No. 79233 (November 3, 2016), 81 FR 78869 (November 9, 2016) (SR-BatsBYX-2016-28); Securities Exchange Act Release No. 79234 (November 3, 2016), 81 FR 78867 (November 9, 2016) (SR-BatsEDGA-2016-23); Securities Exchange Act Release No. 79236 (November 3, 2016), 81 FR 78878 (November 9, 2016) (SR-BatsEDGX-2016-59).

¹² The 2016 rule filings also added some other conditions for eligibility for exchange membership such as adding a restriction that members must meet any condition the exchange placed on such member, which the Exchange believes are adequately addressed in other Exchange rules. See, e.g., Rule 2.2 (Obligations of ETP Holders and the Exchange); Rule 2.3 (ETP Holder Eligibility); and Rule 2.4 (Restrictions). Moreover, the Rule 10.9520 Series sets forth procedures for an Associated Person (defined in Rule 1.1(x)) to become or remain associated with an ETP Holder notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current ETP Holder or Associated Person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, referred to in the Rule as "eligibility proceedings."

¹³ The proposed changes mirror the language in the following rules: BOX Rule 2040(a) and IM-2040-08; Cboe BZX Rule 2.5(a) and Interpretation and Policies .04; Cboe BYX Rule 2.5(a) and Interpretation and Policies .04; Cboe EDGA Rule 2.5(a) and Interpretation and Policies .04; and Cboe EDGX Rule 2.5(a) and Interpretation and Policies .04.

¹⁴ See the list of disqualifying events in Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39).

The Exchange believes that the proposed rule change would appropriately align its rules with the Commission's rules regarding statutory disqualifications and harmonize the Exchange's process with several other SROs. The Exchange notes that in assessing the statutory disqualification of an ETP Holder or prospective ETP Holder, it must act consistent with the protection of investors and in the public interest and cannot unfairly discriminate against ETP Holders or prospective ETP Holders.¹⁵ Moreover, as noted above, an ETP Holder can seek relief from the Exchange's eligibility or qualification requirements pursuant to the Rule 10.9520 Series.¹⁶ In addition, any prospective ETP Holder that has been denied membership in the Exchange or barred from becoming associated with an ETP Holder is entitled to certain due process pursuant to Rule 2.5(d), which includes, but is not limited to, potential review by the Commission.¹⁷

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹⁸ in general, and furthers the objectives of Section 6(b)(5),¹⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the proposed rule change would better align the Exchange's rules with the Commission's rules regarding statutory disqualifications and enable a consistent process across the Exchange and several other SROs to make appropriate filings with respect to persons subject to a statutory disqualification, thereby protecting investors and the public interest by providing more clarity and consistency with respect to the process of seeking relief from a statutory disqualification and in general enabling the Exchange to more efficiently

administer membership applications involving statutory disqualifications. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion.

The Exchange also believes it is reasonable to remove the references to Rules 19d-1, 19d-2, 19d-3, and 19h-1, as well as the language regarding a Commission order providing relief from a statutory disqualification from Rule 2.4(a)(2) because, as discussed above, not every statutory disqualification requires an SRO to make a filing pursuant to Commission Rule 19h-1 to allow an ETP Holder or person associated with an ETP Holder to continue working in the securities industry notwithstanding a statutory disqualification, and not every filing pursuant to Rule 19h-1 requires a Commission order. In addition, the proposed changes would align Rule 2.4 with the equivalent rules of BOX, Cboe BZX, Cboe BYX, Cboe EDGA, Cboe EDGX, as well as the rules of the Exchange's affiliates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with aligning the Exchange's rules with those of other exchanges and with the Commission's approach to handling firms that are subject to statutory disqualification.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE National has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. NYSE National states that waiving the 30-day delay in this manner would allow the Exchange to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

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.

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:

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE National has satisfied this requirement.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See note 12, *supra*.

¹⁷ The Exchange determined that the procedures for persons aggrieved by adverse action by the Exchange, including but not limited to those persons who have been denied an ETP, were inadvertently deleted when the Exchange was relaunched in 2018. The Exchange will correct this oversight by promptly making an appropriate rule filing with the Commission.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

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-NYSENAT-2024-32 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-NYSENAT-2024-32. 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-NYSENAT-2024-32 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-29146 Filed 12-11-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101839; File No. SR-NASDAQ-2024-076]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Fees Based on the Rate of Inflation

December 6, 2024

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 26, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees based on the rate of inflation.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adjust market data fees for inflation, to be operative on January 1, 2025.³

Many Nasdaq market data fees have not changed for years, some for over 15. As such, the fees have fallen substantially in real terms. The Exchange proposes to restore fees to the real amount intended in the original filings in a one-time inflationary adjustment. This adjustment will become operative in three parts: 45 percent in 2025; 30 percent in 2026; and the final 25 percent in 2027. The Exchange believes that it is necessary to spread the impact of this one-time adjustment for past inflation to prevent any undue impact that execution in a single tranche may have on our customers.⁴

The proposed fee increases will apply to ten product families within Nasdaq: (i) Distributor Fees; (ii) Short Interest; (iii) Depth of Book; (iv) Distribution Models; (v) FilterView; (vi) Nasdaq Last Sale; (vii) Nasdaq Share Volume; (viii) Nasdaq Basic; (ix) Daily Short Volume; and (x) MatchView. A detailed list of fee adjustments is set forth below. The Exchange is not proposing to adjust fees for non-professional usage, administrative fees, extranet fees, or certain categories of Non-Display usage. The Exchange plans to use this inflationary adjustment to support continued investment in innovative, high-quality data products.

Investments in Nasdaq Data Products

Nasdaq has continuously invested in its products in the period after the current fees were first instituted to accommodate the increasing amount of information processed and the changes in technology over time. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen in time impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

These investments have been necessary in part because of significant

³ This proposal was initially filed on November 12, 2024, as SR-Nasdaq-2024-069. On November 26, 2024, SR-Nasdaq-2024, SR-Nasdaq-2024-069 was withdrawn and replaced with the instant filing to provide certain additional information.

⁴ This proposal will adjust for inflation up to August 2024. Depending on inflation thereafter, further adjustments may, or may not, be necessary.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁴ 17 CFR 200.30-3(a)(12).

increases in the amount of information processed. The following message rate metrics for Nasdaq Basic illustrate this increase in throughput:

- *Peak Rate by Millisecond*: up approximately 141%
- *Average Rate per Millisecond*: up approximately 89%
- *Peak Rate per Second*: up approximately 25%
- *Average Rate per Second*: up approximately 23%
- *Peak Total Messages*: up approximately 209%
- *Average Total Messages*: up approximately 121%
- *Average Daily Volume*: up approximately 82%
- *Maximum Message Count*: up approximately 209%

With this increase in message traffic, the Exchange expended significant resources to improve its market data products to meet customer expectations, including continued investment in all aspects of the technology ecosystem (e.g., software, hardware, and network). During the period between 2018 and 2023, advancements in system performance as measured by latency not only accommodated the high message traffic volumes but stayed well ahead of it. The following latency metrics⁵ illustrate the increase in message processing speed, despite the significant message traffic growth:

- Median: down approximately 22%
- Average: down approximately 28%
- Max: down approximately 29%

The Exchange continues to invest in enhancing its technology for the benefit and often at the behest of its customers. Yet the Exchange has not adjusted any of the fees included in this proposal for many years (as set forth below), to even partially offset the costs of maintaining and enhancing its market data offerings.

Inflationary Index

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (PPI), which is a tailored measure of inflation.⁶ As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services, measuring price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI),

that measure price change from the purchaser's perspective.⁷

About 10,000 PPIs for individual products and groups of products are tracked and released each month.⁸ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI ("Data Processing PPI"), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services. The Data Processing PPI was introduced in January 2002 by the Bureau of Labor Statistics (BLS) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.⁹ According to the BLS "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹⁰

The Exchange believes the Data Processing PPI is an adequate measure to for adjusting fees for its proprietary

market data products because the Exchange uses its "own computer systems" and "proprietary software," i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities.¹¹

The Exchange furthermore notes that the Data Processing PPI is a stable metric with limited volatility, unlike other consumer-side inflation metrics. The Data Processing PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data Processing PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was 0.62%, with a cumulative increase of 15.67% over this 21-year period.

The Exchange notes that other exchanges have filed for increases in certain fees, based in part on the rate of inflation.¹²

Calculation and Proposed Fee Changes

The proposed inflationary adjustments are based on a comparison of the Data Processing PPI index on the last date that the relevant fee was adjusted with the level of the Data Processing PPI index on August 1, 2024. For example, for a fee that was last changed on September 1, 2010, the Exchange divided the difference between the Data Processing PPI index on August 2024 (116.022) and the Data Processing PPI index in September 2010 (101.7) by the Data Processing PPI index in September 2010 (101.7), to calculate a total inflationary adjustment of 14 percent to obtain the percentage increase. That percentage increase was then applied to the prior fee to determine the proposed fee, and then rounding the result.¹³ This calculation was repeated for each market data fee.

¹¹ The Exchange notes that the Bureau of Labor Statistics uses a number of measures of inflation that may apply to Exchange market data. For example, there is also an inflation measure related to PPI industry data for data processing, hosting, and related services: Hosting, ASP, and other IT infrastructure provisioning services. This other measure has been used by other SROs in determining price changes and may provide an alternative point of reference.

¹² See, e.g., Securities Exchange Act Release Nos. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012); and 34–100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR–BOX–2024–16); Securities Exchange Act Release No. 100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79).

¹³ The Exchange rounded fees as follows: fee values over \$999.99 were rounded to the nearest \$10; fees between \$99.99 and \$999.99 were rounded to the nearest dollar; fees between \$9.99 and \$99.99 were rounded to the nearest \$0.50; fees less than \$9.99 were rounded to the nearest \$0.10. Where rounding would have caused the proposed fee to

⁷ See <https://www.bls.gov/ppi/overview.htm>.

⁸ See <https://www.bls.gov/ppi/overview.htm>.

⁹ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹⁰ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

⁵ These measurements compare the time difference between events on the matching engine and the time these events are published.

⁶ See <https://fred.stlouisfed.org/series/PCU51825182#0>.

As noted above, the Exchange proposes to adjust fees through a one-time inflationary adjustment to be executed in three tranches: one in 2025 that will cover 45 percent of the

adjustment, another in 2026 to cover an additional 30 percent, and a final tranche in 2027 for the final 25 percent of the adjustment.

Table 1 below shows the proposed changes for 2025, 2026 and 2027, the date of the last fee change, and the overall adjustment:

TABLE 1—PROPOSED INFLATIONARY ADJUSTMENT

Product	Current	2025	2026	2027	Last change	Overall percent change ¹⁴
Market Data Distributor Fees						
Direct Access Fee (Nasdaq)	\$2,000	\$2,125	\$2,224	\$2,281	¹⁵ 9/1/2010	14.1
Direct Access Fee (Non-Nasdaq)	1,000	1,065	1,116	1,141	¹⁶ 9/1/2010	14.1
Internal Distributor Fee (Nasdaq)	1,000	1,070	1,125	1,162	¹⁷ 7/1/2006	16.2
Internal Distributor Fee (Non-Nasdaq)	500	540	565	581	¹⁸ 7/1/2006	16.2
External Distributor Fee (Nasdaq)	2,500	2,680	2,820	2,906	¹⁹ 7/1/2006	16.2
External Distributor Fee (Non-Nasdaq)	1,250	1,340	1,410	1,453	²⁰ 7/1/2006	16.2
Short Interest Report						
Access Fee	500	520	535	543	²¹ 7/1/2017	²² 8.6
Internal Distribution	1,000	1,040	1,070	1,087	²³ 7/1/2017	8.7
External Distribution (1–499 Subscribers)	2,500	2,600	2,680	2,718	²⁴ 7/1/2017	8.7
External Distribution (500–9,999 Subscribers)	5,000	5,200	5,350	5,437	²⁵ 7/1/2017	8.7
External Distribution (10,000+ Subscribers)	7,500	7,800	8,030	8,155	²⁶ 7/1/2017	8.7
External Distribution (Enterprise License)	1,500	1,560	1,610	1,631	²⁷ 7/1/2017	8.7
Depth-of-Book Data						
Level 2 Pro	76	80.50	84.00	86.00	²⁸ 3/1/2012	²⁹ 13.2
TotalView Pro	76	80.50	84.00	86.00	³⁰ 3/1/2012	³¹ 13.2
Non-Display (1–39 Subscribers)	375	396	412	421	³² 1/1/2016	³³ 12.3
Non-Display (40–99 Subscribers)	15,000	15,840	16,490	16,863	³⁴ 1/1/2016	12.4
Non-Display (100–249 Subscribers)	30,000	31,680	32,990	33,727	³⁵ 1/1/2016	12.4
Trading Platform Fee	5,000	5,270	5,480	5,600	³⁶ 12/1/2014	³⁷ 12.0
Trading Platform Fee Threshold	15,000	15,810	16,440	16,800	³⁸ 12/1/2014	³⁹ 12.0
Distribution Models						
Enhanced Display Solutions (EDS) (1–399)	4,000	4,220	4,390	4,479	⁴⁰ 11/1/2014	12.0
Enhanced Display Solutions (400–999)	7,500	7,910	8,230	8,399	⁴¹ 11/1/2014	12.0
Enhanced Display Solutions (1,000+)	15,000	15,810	16,440	16,798	⁴² 11/1/2014	12.0
Enhanced Display Solutions Professional	80	84.50	88.00	89.50	⁴³ 11/1/2014	⁴⁴ 11.9
Enhanced Display Solutions Enterprise License	33,500	34,990	36,150	36,806	⁴⁵ 2/1/2017	9.9
Enterprise License Professional	76	80.50	84.00	86.00	⁴⁶ 3/1/2012	⁴⁷ 13.2
Managed Data Solution per Distributor	2,500	2,640	2,750	2,810	⁴⁸ 1/1/2016	12.4
Managed Data Solution per Professional	375	396	412	421	⁴⁹ 1/1/2016	⁵⁰ 12.3
FPGA Internal	25,000	26,570	27,790	28,490	⁵¹ 5/1/2012	14.0
FPGA External	2,500	2,660	2,780	2,849	⁵² 5/1/2012	14.0
FGPA Internal and External	27,500	29,230	30,570	31,339	⁵³ 5/1/2012	14.0
Managed Data Solution Administration Fee first Subscriber	5,000	5,280	5,500	5,621	⁵⁴ 1/1/2016	12.4
Managed Data Solution Administration Fee additional Subscribers	750	792	825	843	⁵⁵ 1/1/2016	12.4
FilterView Service						
FilterView	750	780	803	815	⁵⁶ 12/1/2017	8.7
Nasdaq Last Sale (NLS)						
NLS per Subscriber (Nasdaq—Specialized Use)	13	13.50	14.10	14.50	⁵⁷ 1/1/2014	⁵⁸ 11.5
NLS per Subscriber (non-Nasdaq—Specialized Use)	13	⁵⁹ 13.80	14.40	14.50	⁶⁰ 1/1/2014	⁶¹ 11.5
NLS Distributor	1,500	1,600	1,680	1,724	⁶² 7/1/2008	⁶³ 14.9
NLS Distributor (Specialized Use)	2,000	2,080	2,140	2,170	⁶⁴ 1/1/2018	⁶⁵ 8.5
Nasdaq Share Volume Service						
Access Fee	2,500	2,680	2,820	2,897	⁶⁶ 2/1/2007	15.9

exceed the rate of inflation, the Exchange rounded downward.

TABLE 1—PROPOSED INFLATIONARY ADJUSTMENT—Continued

Product	Current	2025	2026	2027	Last change	Overall percent change ¹⁴
Nasdaq Basic						
Subscriber Fee (Nasdaq)	13	13.50	14.10	14.50	⁶⁷ 1/1/2014	⁶⁸ 11.5
Subscriber Fee (NYSE)	6.50	6.90	7.20	7.25	⁶⁹ 1/1/2014	⁷⁰ 11.5
Subscriber Fee (Other)	6.50	6.90	7.20	7.25	⁷¹ 1/1/2014	⁷² 11.5
Distributor Fee (Internal)	1,500	1,600	1,680	1,723	⁷³ 1/1/2009	14.9
Distributor Fee (External)	2,000	2,080	2,140	2,170	⁷⁴ 1/1/2018	⁷⁵ 8.5
Nasdaq Daily Short Volume and Monthly Short Sale Transaction Files						
Internal Distribution	750	783	809	824	⁷⁶ 1/1/2017	9.9
External Distribution	1,250	1,300	1,340	1,373	⁷⁷ 1/1/2017	⁷⁸ 9.8
Nasdaq MatchView Feed						
One Server	5,000	5,310	5,550	5,687	⁷⁹ 10/1/2011	13.7
Two or more Servers	10,000	10,620	11,100	11,374	⁸⁰ 10/1/2011	13.7

2. Statutory Basis

The Exchange believes that its proposal to change fees is consistent

¹⁴ The overall percentage change is determined by the Data Processing PPI index, as discussed above. In a few instances, the overall percentage change is below the Data Processing PPI index due to rounding. Such instances are footnoted below.

¹⁵ See Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57324 (September 20, 2010) (SR–Nasdaq–2010–110).

¹⁶ See *id.*

¹⁷ See Securities Exchange Act Release No. 54179 (July 20, 2006), 71 FR 42428 (July 26, 2006) (SR–Nasdaq–2006–013).

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.*

²¹ See Securities Exchange Act Release No. 81256 (July 28, 2017), 82 FR 36168 (August 3, 2017) (SR–Nasdaq–2017–077).

²² The change as calculated by the Data Processing PPI index is 8.7%. The actual change is 8.6% due to rounding of the fee.

²³ See Securities Exchange Act Release No. 81256 (July 28, 2017), 82 FR 36168 (August 3, 2017) (SR–Nasdaq–2017–077).

²⁴ See *id.*

²⁵ See *id.*

²⁶ See *id.*

²⁷ See *id.*

²⁸ See Securities Exchange Act Release No. 66740 (April 5, 2012), 77 FR 21609 (April 10, 2012) (SR–Nasdaq–2012–042).

²⁹ The change as calculated by the Data Processing PPI index is 13.6%. The actual change is 13.2% due to rounding of the fee.

³⁰ See Securities Exchange Act Release No. 66740 (April 5, 2012), 77 FR 21609 (April 10, 2012) (SR–Nasdaq–2012–042).

³¹ The change as calculated by the Data Processing PPI index is 13.6%. The actual change is 13.2% due to rounding of the fee.

³² See Securities Exchange Act Release No. 76779 (December 28, 2015), 81 FR 131 (January 4, 2016) (SR–Nasdaq–2015–157).

³³ The change as calculated by the Data Processing PPI index is 12.4%. The actual change is 12.3% due to rounding of the fee.

³⁴ See Securities Exchange Act Release No. 76779 (December 28, 2015), 81 FR 131 (January 4, 2016) (SR–Nasdaq–2015–157).

³⁵ See *id.*

³⁶ See Securities Exchange Act Release No. 73978 (January 2, 2015), 80 FR 1057 (January 8, 2015) (SR–Nasdaq–2014–125).

³⁷ The change as calculated by the Data Processing PPI index is 12.1%. The actual change is 12.0% due to rounding of the fee.

³⁸ See Securities Exchange Act Release No. 73978 (January 2, 2015), 80 FR 1057 (January 8, 2015) (SR–Nasdaq–2014–125).

³⁹ The change as calculated by the Data Processing PPI index is 12.1%. The actual change is 12.0% due to rounding of the fee.

⁴⁰ See Securities Exchange Act Release No. 73807 (December 10, 2014), 79 FR 74784 (December 16, 2014) (SR–Nasdaq–2014–117).

⁴¹ See *id.*

⁴² See *id.*

⁴³ See *id.*

⁴⁴ The change as calculated by the Data Processing PPI index is 12.0%. The actual change is 11.9% due to rounding of the fee.

⁴⁵ See Securities Exchange Act Release No. 80015 (February 10, 2017), 82 FR 10944 (February 16, 2017) (SR–Nasdaq–2017–007).

⁴⁶ See *id.*

⁴⁷ The change as calculated by the Data Processing PPI index is 13.6%. The actual change is 13.2% due to rounding of the fee.

⁴⁸ See Securities Exchange Act Release No. 76797 (December 30, 2015), 81 FR 544 (January 6, 2016) (SR–Nasdaq–2015–158).

⁴⁹ See Securities Exchange Act Release No. 76779 (December 28, 2015), 81 FR 131 (January 4, 2016) (SR–Nasdaq–2015–157).

⁵⁰ The change as calculated by the Data Processing PPI index is 12.4%. The actual change is 12.3% due to rounding of the fee.

⁵¹ See Securities Exchange Act Release No. 76297 (June 28, 2012), 77 FR 39752 (July 5, 2012) (SR–Nasdaq–2012–063).

⁵² See *id.*

⁵³ See *id.*

⁵⁴ See Securities Exchange Act Release No. 76797 (December 30, 2015), 81 FR 544 (January 6, 2016) (SR–Nasdaq–2015–158).

⁵⁵ See *id.*

⁵⁶ See Securities Exchange Act Release No. 82467 (January 9, 2018), 83 FR 2261 (January 16, 2018) (SR–Nasdaq–2017–134).

⁵⁷ Nasdaq Last Sale (specialized use case) was instituted in 2018. See Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 3790

(February 22, 2018) (SR–Nasdaq–2018–010). At that time, fees were set to be the equivalent of Nasdaq Basic fees set in 2014. See Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–Nasdaq–2014–011). In order to ensure that these fees remained aligned as intended by the 2018 filing, we are using the 2014 date, when the Nasdaq Basic fees were first set, to calculate the inflationary adjustment.

⁵⁸ Fees for NLS (Specialized Use Case) were designed to be equivalent to Nasdaq Basic Fees. The PPI adjustment for Nasdaq Basic is 12.3%. The fee adjustment for NLS Specialized Use Case is 11.5%.

⁵⁹ The fees for NLS (non-Nasdaq—Specialized Use Case for 2025, 2026 and 2027 are being adjusted to remain equivalent to the Subscriber fees for Nasdaq Basic. See Equity 7, Section 147(a)(1). As discussed in note 49 below, the fees for NLS Specialized Use Case were intended to be the same as the fees for Nasdaq Basic. See Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–Nasdaq–2018–010).

⁶⁰ Nasdaq Last Sale (specialized use case) was instituted in 2018. See Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–Nasdaq–2018–010). At that time, fees were set to be the equivalent of Nasdaq Basic fees set in 2014. See Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–Nasdaq–2014–011). In order to ensure that these fees remained aligned as intended by the 2018 filing, we are using the 2014 date, when the Nasdaq Basic fees were first set, to calculate the inflationary adjustment.

⁶¹ Fees for NLS (Specialized Use Case) were designed to be equivalent to Nasdaq Basic Fees. The PPI adjustment for Nasdaq Basic is 12.3%. The fee adjustment for NLS Specialized Use Case is 11.5%.

⁶² See Securities Exchange Act Release No. 55255 (February 8, 2007), 72 FR 7100 (February 14, 2007) (SR–Nasdaq–2006–060).

⁶³ The change as calculated by the Data Processing PPI index is 15.0%. The actual change is 14.9% due to rounding of the fee.

⁶⁴ As noted above, the Nasdaq Last Sale (specialized use case) was instituted in 2018. See Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–Nasdaq–2018–010). At that time, fees were set to be the equivalent of Nasdaq Basic fees. The Nasdaq Basic external distributor fee was set in January of 2018. See Securities Exchange Act Release No. 82541 (January 19, 2018), 83 FR 3790 (January 26, 2018) (SR–Nasdaq–2018–004). To

with Section 6(b) of the Act,⁸¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸² in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity of Exchange systems have increased the performance of the services and products notwithstanding fees having remained static in nominal terms.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees, and other charges because, as noted above, the Exchange has not

maintain equivalence of NLS (specialized use case) fees and Nasdaq Basic, we used the 2018 date for the inflationary adjustment.

⁶⁵ The change as calculated by the Data Processing PPI index is 8.6%. The actual change is 8.5% due to rounding of the fee.

⁶⁶ See Securities Exchange Act Release No. 55444 (March 12, 2007), 72 FR 12648 (March 16, 2007) (SR-Nasdaq-2007-006).

⁶⁷ See Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-Nasdaq-2014-011).

⁶⁸ The change as calculated by the Data Processing PPI index is 12.3%. The actual change is 11.5% due to rounding of the fee.

⁶⁹ See *id.*

⁷⁰ The change as calculated by the Data Processing PPI index is 12.3%. The actual change is 11.5% due to rounding of the fee.

⁷¹ See *id.*

⁷² The change as calculated by the Data Processing PPI index is 12.3%. The actual change is 11.5% due to rounding of the fee.

⁷³ Securities Exchange Act Release No. 59244 (January 13, 2009), 74 FR 4065 (January 22, 2009) (SR-Nasdaq-2008-102).

⁷⁴ Securities Exchange Act Release No. 82541 (January 19, 2018), 83 FR 3790 (January 26, 2018) (SR-Nasdaq-2018-004).

⁷⁵ The change as calculated by the Data Processing PPI index is 8.7%. The actual change is 8.5% due to rounding of the fee.

⁷⁶ See Securities Exchange Act Release No. 79617 (December 20, 2016), 81 FR 95213 (December 27, 2016) (SR-Nasdaq-2016-168).

⁷⁷ See *id.*

⁷⁸ The change as calculated by the Data Processing PPI index is 9.9%. The actual change is 9.8% due to rounding of the fee.

⁷⁹ Securities Exchange Act Release No. 65525 (October 11, 2011), 76 FR 64158 (October 17, 2011) (SR-Nasdaq-2011-139).

⁸⁰ See *id.*

⁸¹ 15 U.S.C. 78f(b).

⁸² 15 U.S.C. 78f(b)(4) and (5).

increased any of the fees included in the proposal since the dates indicated in Table 1. In the years following the last fee increase, the Exchange has made significant investments in upgrades to Exchange systems and enhancing the quality of its services as measured by, among other things, increased throughput. As such, Exchange customers have benefitted while the Exchange's ability to recoup its investments has been hampered, and Exchange fees have fallen in real terms during the relevant period.

Between 2018 and 2023, for example, the overall inflation rate was an average of 3.93% per year, producing a cumulative inflation rate of 21.28%.⁸³ Using the more targeted inflation number of Data Processing PPI, the cumulative inflation rate was 8.07%.⁸⁴ The Exchange believes the Data Processing PPI is a reasonable metric for this fee increase because it is targeted to producer-side increases in the data processing industry, which, based on the definition adopted by BLS, would include the Exchange's market data products. Notwithstanding this inflation, the Exchange has not increased its fees for the subject services for the period of time indicated in Table 1, and therefore the proposed fee changes represent a reasonable increase from the current fees.

The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. The Exchange continues to invest in maintaining and enhancing its market data products for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products. The goal of these enhancements, among other things, is to provide faster and more consistent market data products. The Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its market data products.

The Proposal Does Not Permit Unfair Discrimination

The proposed fee increases are not unfairly discriminatory because they would apply to all data recipients that choose to purchase the market data products identified above. Any person

that chooses to purchase any of these products would be subject to the same fee schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Additionally, the fee increase would be applied uniformly to subscribers without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities.

The proposed changes are also not unfairly discriminatory because the fees would be assessed uniformly across all market participants that purchase these products in the same manner they are today, and all products will remain available for purchase by all market participants.

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.

Intramarket Competition

The proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all customers of the market data products identified above in the same manner as it does today, albeit at inflation-adjusted rates for certain fees, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the level of the proposed fees neither favors nor penalizes any one or more categories of market participants in a manner that would impose an undue burden on competition.

Intermarket Competition

The proposed fees do not impose a burden on competition or on other Self Regulatory Organizations that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing the market data products identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain market data fees to recoup the Exchange's investment in maintaining and enhancing its market data products would not impose a burden on competition.

⁸³ See <https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1>.

⁸⁴ See <https://data.bls.gov/timeseries/PCU518210518210>.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁸⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-NASDAQ-2024-076 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-NASDAQ-2024-076. 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-NASDAQ-2024-076 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-29151 Filed 12-11-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101830; File No. SR-NYSEAMER-2024-75]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 342

December 6, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 3, 2024, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 342 to add clarity to the process for a broker-dealer to become or remain a

member organization notwithstanding a statutory disqualification. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend proposes to amend Rule 342 to add clarity to the process to the process for a broker-dealer to become or remain a member organization notwithstanding a statutory disqualification.

Background and Proposed Rule Filing

Section 3(a)(39) of the Act defines the term "statutory disqualification" and the circumstances that can cause a person (either a Member, or a person associated with a Member) to be subject to a statutory disqualification.⁴ Absent relief, a statutory disqualification would preclude a broker-dealer or person associated with a broker-dealer from certain activities, including membership in a self-regulatory organization ("SRO").

There is, however, a well-established process through which a broker-dealer (or a person associated with a broker-dealer) may continue to operate in the securities industry (and either become a member of, or continue as a member of, one or more SROs) despite being subject to a statutory disqualification.⁵ In particular, SEC Rule 19h-1⁶ describes several ways an SRO may seek relief for a member (or prospective member) that is subject to a statutory disqualification,

⁴ 15 U.S.C. 78c(a)(39).

⁵ See FINRA Regulatory Notice 09-19 ("Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications").

⁶ 17 CFR 240.19h-1.

⁸⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

including whether an SRO must file a notice with the Commission in order to allow the disqualified firm to become or continue as a member with the SRO (a “19h–1 Notice”). A 19h–1 Notice does not, for instance, need to be filed by an SRO if the firm subject to a statutory disqualification is a member of at least one other SRO, and that SRO intends to file a 19h–1 Notice for the firm.⁷

Rule 342 (Association of Members, Member Organizations, and Persons Associated With Member Organizations) of the Office Rules provides that, except as otherwise permitted by the Exchange, no member, member organization, approved person, employee, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any “statutory disqualification” defined in Section 3(a)(39) of the Act.

Recently, a non-member broker-dealer firm subject to a statutory disqualification that is currently under review by the Financial Industry Regulatory Authority, Inc. (“FINRA”) applied for Exchange membership.⁸

In reviewing this application, the Exchange determined that this situation is not explicitly addressed in its rules as it is in the rules of other exchanges.⁹ Specifically, BOX, Cboe BZX, Cboe BYX, Cboe EDGX, and Cboe EDGA each amended their respective rules in 2016 to provide more clarity as to the authority of each exchange to determine whether to admit a prospective member that is subject to a statutory disqualification.¹⁰ The 2016 rule change

filings of these exchanges also amended several other aspects of their application procedures, but the Exchange only seeks to harmonize its rules insofar as they apply to member organizations and prospective member organizations (and associated persons of member organizations) that are subject to a statutory disqualification in order to address the membership application described herein.¹¹

The Exchange accordingly proposes to align its rule with these other exchanges specifically with respect to the process of assessing an applicant for membership that is subject to a statutory disqualification.¹² As discussed below, the Exchange is making the proposed rule changes and seeks waiver of the 30-day operative delay in order to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification.

To effectuate these changes, the Exchange proposes to add Supplementary Material .01 to Rule 342 to provide that the Exchange could approve an applicant for membership (or association with a member organization) that is subject to a statutory disqualification when a proceeding is pending before another SRO to determine whether to permit a member, member organization, approved person, employee, or any person directly or indirectly controlling,

controlled by or under common control with a member or member organization to become or continue membership or association notwithstanding a statutory disqualification. This provision, which is consistent with SEC Rule 19h–1(a)(3), would provide as follows (additions italicized):

.01 Statutory Disqualification Proceedings Pending Before Another SRO. The Exchange may waive the provisions of this Rule when a proceeding is pending before another self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of this Rule with respect to an existing or prospective member, member organization, approved person, employee, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization, the Exchange shall determine whether it will concur in any Exchange Act Rule 19h–1 filing made by another self-regulatory organization with respect to such person.

This Supplementary Material is substantively identical to IM–2040–8 to BOX Rule 2040 and Interpretation and Policies .04 to Cboe BZX, BYX, EDGX, and EDGA Rules 2.5, except for language clarifying that the new supplementary material would apply to both prospective and existing members, member organizations, approved persons, employees, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization.

The Exchange believes that the proposed rule change would appropriately align its rules with the Commission’s rules regarding statutory disqualifications and harmonize the Exchange’s process with several other SROs. The Exchange notes that in assessing the statutory disqualification of a member organization or a prospective member organization, it must act consistent with the protection of investors and in the public interest and cannot unfairly discriminate against existing or prospective member organizations.¹³ Moreover, as noted above, a current member organization or covered person can seek relief from the Exchange’s eligibility or qualification requirements pursuant to the Rule 9520 Series.¹⁴ In addition, any prospective

(November 3, 2016), 81 FR 78878 (November 9, 2016) (SR–BatsEDGX2016–59).

¹¹ The 2016 rule filings also added some other conditions for eligibility for exchange membership such as adding a restriction that members must meet any condition the exchange placed on such member, which the Exchange believes are adequately addressed in other Exchange rules. *See, e.g.,* Rule 310 (Formation of or Admission to Member Organization or Membership Owner). Moreover, the Rule 9520 Series sets forth procedures for a covered person (defined in Rule 9120(g) as a member, principal executive, approved person, registered or non-registered employee of a member organization or an ATP Holder (an options permit holder, *see* Rule 900.2NY (Definitions)), or other person (excluding a member organization) subject to the jurisdiction of the Exchange) to become or remain associated with a member organization or ATP Holder notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current member organization or covered person to obtain relief from the eligibility or qualification requirements of the Exchange’s Rules, referred to in the Rule as “eligibility proceedings.”

¹² The proposed changes mirror the language in the following rules: BOX Rule 2040(a) and IM–2040–08; Cboe BZX Rule 2.5(a) and Interpretation and Policies .04; Cboe BYX Rule 2.5(a) and Interpretation and Policies .04; Cboe EDGA Rule 2.5(a) and Interpretation and Policies .04; and Cboe EDGX Rule 2.5(a) and Interpretation and Policies .04.

⁷ *Id.* at (a)(3).

⁸ The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations. Review, assessment, and processing of these membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement.

⁹ *See* Cboe EDGX Exchange, Inc. (“Cboe EDGX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BZX Exchange, Inc. (“Cboe BZX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BYX Exchange, Inc. (“Cboe BYX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe EDGA Exchange, Inc. (“Cboe EDGA”) Rule 2.5(a) & Interpretation and Policies .04; and BOX Options Exchange LLC (“BOX”) Rule 2040(a) & IM–2040–08.

¹⁰ *See* Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR–BOX–2016–26); Securities Exchange Act Release No. 79229 (November 3, 2016), 81 FR 78875 (November 9, 2016) (SR–BatsBZX–2016–67); Securities Exchange Act Release No. 79233 (November 3, 2016), 81 FR 78869 (November 9, 2016) (SR–BatsBYX–2016–28); Securities Exchange Act Release No. 79234 (November 3, 2016), 81 FR 78867 (November 9, 2016) (SR–BatsEDGA–2016–23); Securities Exchange Act Release No. 79236

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ *See* note 11, *supra*.

member organization that has been denied membership in the Exchange or barred from becoming associated with a member organization is entitled to certain due process pursuant to the Rule 308—Equities (Acceptability Proceedings), which includes, but is not limited to, potential review by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the proposed rule change would better align the Exchange's rules with the Commission's rules regarding statutory disqualifications and enable a consistent process across the Exchange and several other SROs to make appropriate filings with respect to persons subject to a statutory disqualification, thereby protecting investors and the public interest by providing more clarity and consistency with respect to the process of seeking relief from a statutory disqualification and in general enabling the Exchange to more efficiently administer membership applications involving statutory disqualifications. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with aligning the

Exchange's rules with those of other exchanges and with the Commission's approach to handling firms that are subject to statutory disqualification.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE American has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. NYSE American states that waiving the 30-day delay in this manner would allow the Exchange to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE American has satisfied this requirement.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

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.

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-NYSEAMER-2024-75 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-NYSEAMER-2024-75. 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

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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-NYSEAMER-2024-75 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-29143 Filed 12-11-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101831; File No. SR-NYSEARCA-2024-108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 2.4

December 6, 2024

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 3, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2.4 to add clarity to the process for a broker-dealer to become or remain an ETP Holder, OTP Holder or OTP Firm or remain an ETP Holder, OTP Holder or OTP Firm on the Exchange notwithstanding the existence of a statutory disqualification. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 2.4 to add clarity to the process for a broker-dealer to become or remain an ETP Holder, OTP Holder or OTP Firm on the Exchange notwithstanding the existence of a statutory disqualification.

Background and Proposed Rule Filing

Section 3(a)(39) of the Act defines the term “statutory disqualification” and the circumstances that can cause a person (either a Member, or a person associated with a Member) to be subject to a statutory disqualification.⁴ Absent relief, a statutory disqualification would preclude a broker-dealer or person associated with a broker-dealer from certain activities, including membership in a self-regulatory organization (“SRO”).

There is, however, a well-established process through which a broker-dealer (or a person associated with a broker-dealer) may continue to operate in the securities industry (and either become a member of, or continue as a member of, one or more SROs) despite being subject to a statutory disqualification.⁵ In particular, SEC Rule 19h-1⁶ describes several ways an SRO may seek relief for a member (or prospective member) that is subject to a statutory disqualification, including whether an SRO must file a notice with the Commission in order to allow the disqualified firm to become or continue as a member with the SRO (a “19h-1 Notice”). A 19h-1 Notice does not, for instance, need to be filed by an SRO if the firm subject to a statutory

disqualification is a member of at least one other SRO, and that SRO intends to file a 19h-1 Notice for the firm.⁷

Rule 2.4 (Application Procedures) governs application procedures for persons applying to become an ETP Holder, every individual or organization applying to become the holder of an OTP and every individual applying to become a Nominee of an OTP Firm, and provides in subsection (e) that the Exchange shall approve an application if it finds that the applicant meets all of the qualifications for holding an ETP or OTP, as applicable, and shall reject an application if it does not make such a finding or if it finds that, if the application were approved, the ETP Holder, OTP Holder or OTP Firm, as applicable, would be subject to suspension or expulsion under the provisions of the Bylaws, Rules or procedures of the Exchange or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, as amended.⁸

Recently, a non-member broker-dealer firm subject to a statutory disqualification that is currently under review by the Financial Industry Regulatory Authority, Inc. (“FINRA”) applied for Exchange membership.⁹

In reviewing this application, the Exchange determined that this situation is not explicitly addressed in its rules as it is in the rules of other exchanges.¹⁰ Specifically, BOX, Cboe BZX, Cboe BYX, Cboe EDGX, and Cboe EDGA each amended their respective rules in 2016 to provide more clarity as to the authority of each exchange to determine whether to admit a prospective member that is subject to a statutory disqualification.¹¹ The 2016 rule change

⁷ *Id.* at (a)(3).

⁸ See Rule 2.4(e).

⁹ The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations of prospective ETP Holders and persons associated with an ETP Holder. Review, assessment, and processing of these membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement.

¹⁰ See Cboe EDGX Exchange, Inc. (“Cboe EDGX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BZX Exchange, Inc. (“Cboe BZX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BYX Exchange, Inc. (“Cboe BYX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe EDGA Exchange, Inc. (“Cboe EDGA”) Rule 2.5(a) & Interpretation and Policies .04; and BOX Options Exchange LLC (“BOX”) Rule 2040(a) & IM-2040-08.

¹¹ See Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR-BOX-2016-26); Securities Exchange Act Release No. 79229 (November 3, 2016), 81 FR 78875 (November 9, 2016) (SR-BatsBZX-2016-67); Securities Exchange Act Release No. 79233 (November 3, 2016), 81 FR 78869 (November 9, 2016) (SR-BatsBYX-2016-28); Securities Exchange

Continued

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78c(a)(39).

⁵ See FINRA Regulatory Notice 09-19 (“Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications”).

⁶ 17 CFR 240.19h-1.

filings of these exchanges also amended several other aspects of their application procedures, but the Exchange only seeks to harmonize its rules insofar as they apply to ETP Holders, OTP Holders or OTP Firms and prospective ETP Holders, OTP Holders or OTP Firms (and associated persons of ETP Holders, OTP Holders or OTP Firms) that are subject to a statutory disqualification in order to address the membership application described herein.¹²

The Exchange accordingly proposes to align its rule with these other exchanges specifically with respect to the process of assessing an applicant for membership that is subject to a statutory disqualification.¹³ As discussed below, the Exchange is making the proposed rule changes and seeks waiver of the 30-day operative delay in order to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange permit holder during the pendency of the process by which the firm is seeking relief from the statutory disqualification.

To effectuate these changes, the Exchange proposes to add Commentary .01 to Rule 2.4 to provide that the Exchange could approve an applicant for membership (or association with a member) that is subject to a statutory disqualification when a proceeding is pending before another SRO to determine whether to permit an ETP Holder, OTP Holder, OTP Firm or

covered person¹⁴ to become or continue membership or association notwithstanding a statutory disqualification. This provision, which is consistent with SEC Rule 19h–1(a)(3), would provide as follows (additions italicized):

.01 Statutory Disqualification Proceedings Pending Before Another SRO. The Exchange may waive the provisions of Rule 2.4(e) when a proceeding is pending before another self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of Rule 2.4(e) with respect to an existing or prospective ETP Holder, OTP Holder, OTP Firm or covered person, the Exchange shall determine whether it will concur in any Exchange Act Rule 19h–1 filing made by another self-regulatory organization with respect to the permit holder or covered person.

This Commentary is substantively identical to IM–2040–8 to BOX Rule 2040 and Interpretation and Policies .04 to Cboe BZX, BYX, EDGX, and EDGA Rules 2.5, except for language clarifying that the new supplementary material would apply to both prospective and existing Exchange members and covered persons.

The Exchange also proposes a conforming amendment to Rule 2.4(e) to add a clause providing that except as otherwise permitted by the Exchange, no person may become an ETP Holder, OTP Holder or OTP Firm or continue as an ETP Holder, OTP Holder or OTP Firm in any capacity on the Exchange where such person is subject to a statutory disqualification. The proposed language is based on the rules of the Exchange’s affiliates the New York Stock Exchange LLC (“NYSE”) and NYSE American LLC (“NYSE American”), specifically NYSE Rule 346 (Statutory Disqualification—Association of Member Organizations, and Persons Associated With Member Organizations) and NYSE American Rule 342 (Association of Members, Member

Organizations, and Persons Associated With Member Organizations), and is also substantively identical to BOX Rule 2040(a)(3) and Cboe BZX, BYX, EDGX, and EDGA Rules 2.5(a)(3).

The Exchange believes that the proposed rule change would appropriately align its rules with the Commission’s rules regarding statutory disqualifications and harmonize the Exchange’s process with several other SROs. The Exchange notes that in assessing the statutory disqualification of an ETP Holder, OTP Holder or OTP Firm or prospective ETP Holder, OTP Holder or OTP Firm, it must act consistent with the protection of investors and in the public interest and cannot unfairly discriminate against ETP Holders, OTP Holders or OTP Firms or prospective ETP Holders, OTP Holders or OTP Firms.¹⁵ Moreover, as noted above, an ETP Holder, OTP Holder or OTP Firm can seek relief from the Exchange’s eligibility or qualification requirements pursuant to the Rule 10.9520 Series.¹⁶ In addition, any prospective ETP Holder, OTP Holder or OTP Firm that has been denied membership in the Exchange or barred from becoming associated with a ETP Holder, OTP Holder or OTP Firm is entitled to certain due process pursuant to Rule 10.14 (Hearings and Review of Decisions by the Exchange), which includes, but is not limited to, potential review by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(5),¹⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the proposed rule change would better align the Exchange’s rules with the Commission’s rules regarding statutory disqualifications and enable a consistent process across the Exchange and several other SROs to make appropriate filings with respect to persons subject to a statutory disqualification, thereby protecting investors and the public

Act Release No. 79234 (November 3, 2016), 81 FR 78867 (November 9, 2016) (SR–BatsEDGA–2016–23); Securities Exchange Act Release No. 79236 (November 3, 2016), 81 FR 78878 (November 9, 2016) (SR–BatsEDGX–2016–59).

¹² The 2016 rule filings also added some other conditions for eligibility for exchange membership such as adding a restriction that members must meet any condition the exchange placed on such member, which the Exchange believes are adequately addressed in other Exchange rules. See, e.g., Rule 2.2 (Qualifications and Application of Individual OTP Applicants); Rule 2.3 (Qualifications of Firm Applicants); Rule 2.5 (Denial of or Condition to Trading Permits). Moreover, the Rule 10.9520 Series sets forth procedures for a covered person (defined in Rule 10.9120(g) as an Associated Person of an ETP Holder, OTP Holder or OTP Firm, an Approved Person, and any other person subject to the jurisdiction of the Exchange) to become or remain associated with a Participant or Participant Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current ETP Holder, OTP Holder, OTP Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange’s Rules, referred to in the Rule as “eligibility proceedings.”

¹³ The proposed changes mirror the language in the following rules: BOX Rule 2040(a) and IM–2040–08; Cboe BZX Rule 2.5(a) and Interpretation and Policies .04; Cboe BYX Rule 2.5(a) and Interpretation and Policies .04; Cboe EDGA Rule 2.5(a) and Interpretation and Policies .04; and Cboe EDGX Rule 2.5(a) and Interpretation and Policies .04.

¹⁴ Covered person is defined in Rule 10.9120(g) of the Exchange’s disciplinary rules to mean an Associated Person of an ETP Holder, OTP Holder or OTP Firm, an Approved Person, and any other person subject to the jurisdiction of the Exchange. The Rule 10.9500 Series sets forth procedures for a covered person to become or remain associated with an ETP Holder, OTP Holder or OTP Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act and for a current ETP Holder, OTP Holder, OTP Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange’s Rules.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See note 12, *supra*.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

interest by providing more clarity and consistency with respect to the process of seeking relief from a statutory disqualification and in general enabling the Exchange to more efficiently administer membership applications involving statutory disqualifications. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion. In addition, the proposed changes would align Rule 2.4 with the equivalent rules of BOX, Cboe BZX, Cboe BYX, Cboe EDGA, Cboe EDGX, as well as the rules of the Exchange's affiliates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with aligning the Exchange's rules with those of other exchanges and with the Commission's approach to handling firms that are subject to statutory disqualification.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. NYSE Arca states that waiving the 30-day delay in this manner would allow the Exchange to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

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.

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-NYSEARCA-2024-108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

of the proposed rule change, or such shorter time as designated by the Commission. NYSE Arca has satisfied this requirement.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2024-108. 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-NYSEARCA-2024-108 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,
Assistant Secretary.

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²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101836; File No. SR–CboeEDGX–2024–079]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Auction Response and Execution Price Cap for AIM and SAM Auctions

December 6, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on November 22, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend Rules 21.19 and 21.21. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 21.19 (Automated Price Improvement Mechanism (“AIM” or “AIM Auction”)) and 21.21 (“Solicitation Auction Mechanism” (“SAM” or “SAM Auction”)) to modify the agency side execution price cap to allow for further price improvement.

By way of background, Rule 21.19 contains the requirements applicable to the execution of certain customer orders (“Agency Orders”) using AIM. An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (“NBBO”)). Rule 21.21 contains the requirements applicable to the execution of Agency Orders using SAM. Similarly, a SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into an AIM or SAM Auction, the Initiating Member⁵ must also submit a contra-side second order (“Initiating Order”) for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.⁶ At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order.⁷ At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order.⁸

Rules 21.19(c)(5)(B) and 21.21(c)(5)(B) provide that the System may not execute AIM responses (against Agency Orders) outside of the BBO at the conclusion of the AIM Auction or the Initial NBBO. Similarly, Rule 21.21(e)

provides that the execution price of any Agency Order must be not outside the Exchange best bid or offer (“BBO”) at the conclusion of the auction⁹ or the Initial NBBO.¹⁰ The Exchange proposes to amend Rules 21.19(c)(5)(B) and 21.21(c)(5)(B) and (e) to eliminate the requirement that the execution price of an AIM response or Agency Order be at or better than the Initial NBBO.¹¹ The Exchange believes this may provide Agency Orders with further opportunities for price improvement, including in the event the market changes during an AIM or SAM Auction.

To illustrate the impact of the proposed rule change, suppose the following market exists when an Initiating Member submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):

⁹ Rule 21.19(e)(1) similarly provides that the execution price of the Agency Order must be at or better than both sides of the BBO at the conclusion of the AIM Auction but does not include the Initial NBBO restriction. However, the provision in Rule 21.19(c)(5)(B) practically restricts price improvement of the Agency Order outside of the Initial NBBO since the stop price would be better than the Initial NBBO and auto-match would only match the prices of responses, which could not be outside the Initial NBBO.

¹⁰ The term “Initial NBBO” means the national best bid or national best offer at the time an auction is initiated. See Rules 21.19 (introductory paragraph) and 21.21 (introductory paragraph). The Exchange notes that Rules 21.19(b) and 21.21(b) reference the “then-current NBBO” when describing the stop price conditions. The “then-current NBBO” is the NBBO at the time the System receives the Agency Order and contra-order, which (assuming all conditions are satisfied) becomes the time at which the auction commences, and thus the then-current NBBO is ultimately the NBBO at the commencement of the auction, which is also the “Initial NBBO.”

¹¹ In Rule 21.19(c)(5)(B), this change includes the deletion of the phrase “that cross the Initial NBBO” at the beginning of that provision and “Initial NBBO” at the end of the provision. Ultimately, if a response does not cross the Initial NBBO, then the Initial NBBO cap would not be relevant. Additionally, the proposed rule change makes nonsubstantive changes to Rule 21.19(c)(5)(B) to conform the provision to the corresponding provision in Rule 21.21(c)(5)(B), which changes have no impact on these provisions. Specifically, the proposed rule change provides that the prices of the responses are capped at the BBO (or one increment better than the BBO) at the conclusion of the AIM Auction, which merely adds that language from 21.19(e) that practically already caps the prices of responses at the BBO. The proposed rule change also modifies the language to refer to responses being buy or sell and using Exchange best offer or bid as opposed to BBO, which ultimately means the same thing and eliminates the need to discuss on which side of the market the Agency Order is on. This language is identical to Cboe Options Rule 5.37(c)(5)(B). Further, the proposed rule change also makes nonsubstantive changes to Rule 21.21(c)(5)(B) to replace “0.01” with “one minimum increment,” as those terms mean the same thing with respect to the SAM Auction. See Rule 21.21(a)(4). This conforms the language in Rule 21.21(c)(5)(B) to the analogous language in Rule 21.19(c)(5)(B).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

⁵ The “Initiating Member” is the member of the exchange that may electronically submit for execution an Agency Order against contra-side interest into an AIM or SAM Auction. See Rules 21.19 (introductory paragraph) and 21.21 (introductory paragraph).

⁶ See Rules 21.19(c)(5) and 21.21(c)(5).

⁷ See Rule 21.19(e).

⁸ See Rule 21.21(e).

BBO: 0.85–1.20 (no priority customers)
ABBO: 1.00–1.10
Initial NBBO: 1.00–1.10

After the Auction begins, the ABBO moves to 0.90–1.10 and the Exchange receives on its book a non-priority customer order to sell 1 contract at 0.95. During the Auction, one response to sell one contract at 0.75 is submitted. Therefore, when the AIM Auction concludes, the following market exists:
BBO: 0.85–0.95 (no priority customers)
ABBO: 0.90–1.10
NBBO: 0.90–0.95

Under the current rules, the execution price would be capped at the Initial NBB of 1.00, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 1.00
1 contract against the sell order @1.00
3 contracts against the Initiating Order at 1.05

As proposed, the execution price would be capped at BBO at the conclusion of the Auction of 0.85, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 0.85
1 contract against the sell order @0.95
3 contracts against the Initiating Order @1.05

Therefore, as proposed, the Agency Order is able to buy one contract at 0.15 less and another contract at 0.05 less than what occurs under the current Rules, which ultimately results in price savings for this customer.

To illustrate what would happen if the away market moved the other direction during an AIM Auction, suppose the following market exists when an Initiating Member submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):

BBO: 0.85–1.20 (no priority customers)
ABBO: 1.00–1.10
Initial NBBO: 1.00–1.10

After the Auction begins, the ABBO moves to 1.10–1.20 and the Exchange receives on its book a non-priority customer order to sell 1 contract at 1.15. During the Auction, one response to sell one contract at 0.95 is submitted. Therefore, when the AIM Auction concludes, the following market exists:
BBO: 0.85–1.15 (no priority customers)
ABBO: 1.10–1.20
NBBO: 1.10–1.15

Under the current rules, the execution price would be capped at the Initial NBB of 1.00, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 1.00

4 contracts against the Initiating Order at 1.05

As proposed, the execution price would be capped at BBO at the conclusion of the Auction of 0.85, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 0.95
4 contracts against the Initiating Order @1.05

Therefore, as proposed, the Agency Order is able to buy one contract at 0.05 less than what occurs under the current Rules, which ultimately results in price savings for this customer. This example also demonstrates that if the Agency Order side of the market crosses the auction/stop price, the Agency Order will still not trade at a price worse than the auction/stop price.

Another example illustrates what would happen if the Exchange's market moved during an AIM Auction and the Agency Order side of the market crossed the auction/stop price, suppose the following market exists when an Initiating TPH submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):

BBO: 0.85–1.20 (no priority customers)
ABBO: 1.00–1.10
Initial NBBO: 1.00–1.10

After the Auction begins, the Exchange receives on its book a non-priority customer order to buy 1 contract at 1.15. No responses were received prior to the receipt of this order. This would cause the Agency Order's stop price of 1.05 to be outside of the BBO of 1.15–1.20. As a result, pursuant to Rule 5.37(d)(1)(C), the AIM Auction would conclude. All five contracts of the Agency Order would execute against the Initiating Order at 1.05. The proposed rule change would have no impact on this scenario since the execution price is still within the Initial NBBO.

The proposed change will continue to protect interest resting on the Exchange's book (including priority customers) and interest at away markets in accordance with linkage rules¹² while providing customers with additional opportunities for price improvement. Additionally, customers will continue to never receive an execution at a price worse than the auction/stop price.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the

Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change will help perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors. In particular, the Exchange believes the proposed rule change will provide opportunities for further price improvement for Agency Orders in the event an away market fades during an auction. The Exchange believes that the proposed rule change may permit Agency Orders submitted into AIM and SAM Auctions (or parts of them) to execute at better prices, including against Auction responses, than they may execute at today. The Exchange believes the proposed changes may provide Agency Orders with increased opportunities for meaningful price improvement without inadvertently penalizing them if markets happen to move during an auction. The Exchange believes the proposed rule change will permit customers to take advantage of market moves that occur during an auction, which may result in these orders receiving further price improvement compared to what they may receive under current Rules, which ultimately benefits investors.

The Exchange further notes that the proposed rule change remains consistent with the Options Order Protection and Locked/Crossed Market Plan ("Linkage Plan") approved by the Securities and Exchange Commission (the "Commission") pursuant to

¹² See Rule 5.66(b)(9) (which permits transactions that trade through the NBBO if an order was stopped at a price that did not constitute a trade-through at the time of the stop).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

Regulation NMS¹⁶ and the Exchange's Rules adopted in accordance with the Linkage Plan.¹⁷ In particular, the proposed rule change is consistent with the trade-through exception that permits an order to trade at a price outside of the NBBO at the time of execution (*i.e.*, the conclusion of an AIM or SAM Auction) if the order was stopped at a price that did not constitute a trade-through at the time of the stop (*i.e.*, the Initial NBBO).¹⁸ This stop price is required for AIM and SAM auctions.¹⁹ While this trade-through exception requires a stop price to be at or between the Initial NBBO, it does not require an execution price to be at or between the Initial NBBO.²⁰ When the Commission discussed this trade through exception when approving the Linkage Plan, it noted the purpose of this exception was to allow for "price improvement for an order, even if the market moves in the interim, and the transaction is effected at a price that would trade through the then currently-displayed market," as occurs in price improvement auctions of several exchanges.²¹ As proposed, executions will always occur at prices at or between the BBO at the conclusion of the Auction, thus respecting prices from away markets while providing an Agency Order with the opportunity to benefit from any market changes that occur during an auction. Additionally, customers will continue to never receive an execution at a price worse than the auction/stop price.

¹⁶ See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.) ("Linkage Approval Order")

¹⁷ See Rules 27.1 through 27.3.

¹⁸ See Rule 27.2(b)(9).

¹⁹ See Rules 21.19(b) and 21.21(b).

²⁰ The Exchange notes at least one other options exchange with similar auction mechanisms does not limit executions prices to being at or better than the Initial NBBO. See, e.g., Nasdaq ISE, LLC ("ISE") Rulebook Options 3, Section 11(d) (permissible execution prices for orders submitted into the solicited order mechanism (comparable to SAM) do not take into account prices of away markets); and Section 13 (permissible execution prices for orders submitted into the price improvement mechanism (comparable to AIM) do not take into account prices of away markets).

²¹ See Linkage Approval Order at 39368. The Commission continued by stating that "[d]uring [an] auction period, the NBBO could move from where it was when the order was received. However, the Exchange is only required to guarantee a price no worse than the NBBO at the time the order was received." The Commission found this exception to be "in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets." *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply uniformly to AIM and SAM orders and responses of all Members. Additionally, the Exchange notes that participation in the AIM and SAM Auctions is completely voluntary. The Exchange believes all market participants may benefit from any additional price improvement in the AIM and SAM Auctions that may result from the proposed rule change. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to Exchange-specific auction mechanisms and, as noted above, will continue to ensure that execution prices occur in a manner consistent with linkage rules and protect customers on the book. As noted above, at least one other options exchange with similar auction mechanisms does not limit executions prices to being at or better than the Initial NBBO.²²

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective

²² See, e.g., ISE Rulebook Options 3, Section 11(d)(3) (permissible execution prices for orders submitted into the solicited order mechanism (comparable to SAM) do not take into account prices of away markets); and Section 13(d) (permissible execution prices for orders submitted into the price improvement mechanism (comparable to AIM) do not take into account prices of away markets).

pursuant to Section 19(b)(3)(A) of the Act²³ and Rule 19b-4(f)(6)²⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-079 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2024-079. 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

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6).

a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2024-079 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-29148 Filed 12-11-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101837; File No. SR-NYSE-2024-70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 902.02 of the NYSE Listed Company Manual To Establish a Flat Annual Listing Fee Payable by a Limited Partnership That Is At Least 40% Owned by Another Company Listed on the Exchange

December 6, 2024

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on November 26, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (the “Manual”) to establish a flat annual listing fee payable by a limited partnership that is at least

40% owned by another company listed on the Exchange. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 902.02 of the Manual to establish the flat annual listing fee payable by a limited partnership that is at least 40% owned by another company listed on the Exchange (such limited partnership, an “Affiliated Limited Partnership”). The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2025.

All companies listed on the Exchange are obligated to pay annual listing fees. The annual fee for operating companies and limited partnerships is calculated on a per-share basis based on the number of shares issued and outstanding, subject to a minimum and maximum fee.

Many limited partnerships listed on the Exchange are affiliated with another company listed on the Exchange.⁴ For example, the general partner of a listed limited partnership may be a wholly-owned subsidiary of a separate listed company. Similarly, a listed company may have a substantial ownership interest in the outstanding equity securities of a separate listed limited partnership. In such instances, there is generally overlap between the listed company and limited partnership in terms of managing personnel. Therefore,

the Exchange experiences efficiencies in communicating with the issuers and servicing the two listings. However, under the Exchange’s current fee schedule, the listed company and affiliated listed limited partnership are each separately subject to the full annual fee schedule as if they were unaffiliated issuers.

To address the cost savings that is experienced from servicing two affiliated listings, the Exchange proposes to amend Section 902.02 of the Manual to specify that where at least 40% of the outstanding equity interest in a listed limited partnership is owned, either directly or indirectly, by a separate listed company, the annual fee for the primary class of common shares listed by such affiliated limited partnership will be set at the minimum annual fee for a primary class of common shares in effect at that time, as such minimum annual fee is specified in Section 902.03 of the Manual.⁵ Similarly, the annual fee for any additional class of common shares listed by an affiliated limited partnership will be set at the minimum annual fee for an additional class of common shares in effect at that time, as such minimum fee is specified in Section 902.03 of the Manual.⁶ The aforementioned annual fee for a primary or additional class of common shares listed by an Affiliated Limited Partnership shall be referred to as the “Affiliated Limited Partnership Annual Fee.” The annual fee schedule applicable to the listed company that owns the equity interest in the affiliated listed limited partnership will remain unchanged.

In order to qualify for the Affiliated Limited Partnership Annual Fee in any calendar year, the Exchange proposes that an issuer, other than a new listing, must submit satisfactory proof to the Exchange no later than the first trading day of such calendar year to demonstrate that it meets the ownership requirements specified above. In addition, the Exchange proposes that the Affiliated Limited Partnership Annual Fee will be applied to the annual fees payable with respect to the first partial year of listing by any newly-listed company that is able to demonstrate at the time of listing that it qualifies as an Affiliated Limited Partnership of a listed company.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Where such affiliation exists, generally it is between a listed limited partnership and a listed operating company. In some instances, however, the affiliation is between two listed limited partnerships.

⁵ Currently, such minimum fee is \$80,000.

⁶ Currently, such minimum fee is \$20,000. In the Exchange’s experience, generally a limited partnership lists only one class of common shares.

Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4)⁸ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Sections 902.02 to establish a fixed annual fee for Affiliated Limited Partnerships.

The Proposed Changes Are Reasonable

The Exchange believes that the proposed changes to the annual fee for Affiliated Limited Partnerships is reasonable. In that regard, the Exchange notes that when a listed company owns a substantial equity stake in a listed limited partnership there are typically efficiencies experienced by the Exchange in terms of overlapping management and board members. The Exchange notes that the proposed change will be fee-neutral for some issuers (*i.e.*, those that already pay only the minimum annual fee) and will result in an annual fee reduction for other issuers (*i.e.*, those whose annual fee is higher than the minimum fee under the current fee structure). However, because the Exchange experiences similar costs savings as a result of efficiencies in servicing the listing of affiliated limited partnerships, it believes it is reasonable to establish a set annual fee (equal to the minimum annual fee for a primary or additional class of equity securities then in effect) for the Affiliated Limited Partnership.

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities affected by the proposed annual fee adjustments. 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,¹⁰ 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.”¹¹

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the adoption of the proposed Affiliated Limited Partnership Annual Fee will enable the Exchange to more effectively compete for limited partnership listings.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed adoption of the Affiliated Limited Partnership Annual Fee is equitable because it better reflects the costs the Exchange incurs in servicing the listing of an Affiliated Limited Partnership. As discussed above, the Exchange experiences efficiencies in servicing the listing of an Affiliate Limited Partnership in the form of streamlined communication with management that it does not similarly experience with unaffiliated companies. The Exchange therefore believes it is equitable to establish the Affiliated Limited Partnership Annual Fee to reflect these efficiencies.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers because it simply reflects the cost savings experienced by a particular category of issuers in which another listed company has a substantial ownership interest. Further, the

Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange’s fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Securities Exchange Act Release No. 34–51808 (June 9, 2005); 70 FR 37496 (June 29, 2005) (“Regulation NMS”).

¹¹ See Regulation NMS, 70 FR at 37499.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and Rule 19b-4(f)(2) thereunder¹³ 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. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSE-2024-70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-70 and should be submitted on or before January 2, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-29149 Filed 12-11-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20705 and #20706; VIRGINIA Disaster Number VA-20011]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Virginia; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correction.

SUMMARY: This is a correction to amendment 2 of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA-4831-DR), dated October 1, 2024.

Incident: Tropical Storm Helene.

DATES: Issued on December 6, 2024.

Incident Period: September 25, 2024 and continuing.

Physical Loan Application Deadline Date: December 2, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: July 1, 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: The notice of the President's major disaster declaration for the Commonwealth of Virginia, dated October 1, 2024, published at 89 FR 83754, is hereby corrected to include the Independent City of Norton in Virginia as a contiguous county/city. The following areas have been determined to be adversely affected by the disaster:

Primary Counties/Cities (Physical Damage and Economic Injury

Loans): Bedford, Bland, Carroll, Pittsylvania, Independent City of Radford, Russell, Wise.

Contiguous Counties/Cities (Economic Injury Loans Only):

Virginia: Amherst, Botetourt, Campbell, Independent City of Danville, Dickenson, Franklin, Henry, Lee, Independent City of Lynchburg, Independent City of Norton, Patrick, Rockbridge. North Carolina: Caswell, Rockingham. Kentucky: Harlan, Letcher, Pike.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-29277 Filed 12-11-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12593]

60-Day Notice of Proposed Information Collection: Overseas Schools Grant Status Report

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the collection of information via the MyGrants application from schools receiving assistance from the Department of State. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to February 10, 2025.

You may submit comments by any of the following methods:

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4.

¹⁴ 17 CFR 200.30-3(a)(12).

• **Web:** Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: OMB-2024-0045" in the Search field. Then click the "Comment Now" button and complete the comment form.

• **Email:** UlfersME@state.gov with "Comments on OMB-1405-0036" as the subject header of your email.

• **Regular Mail:** Send written comments to: Attn: Comments on OMB-1405-0036, Office of Overseas Schools, U.S. Department of State, 2201 C Street NW, Washington, DC 20520.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Mark Ulfers, Department of State, Office of Overseas Schools, A/OPR/OS, Room H328, SA-1, Washington, DC 20522-0132, who may be reached on 202-261-8200 or at UlfersME@state.gov.

SUPPLEMENTARY INFORMATION:

- **Title of Information Collection:** Overseas Schools Grant Applications.
- **OMB Control Number:** 1405-0036.
- **Type of Request:** Extension of a currently approved collection.
- **Originating Office:** Bureau of Administration, A/OPR/OS.
- **Form Number:** None; MyGrants application.
- **Respondents:** Overseas Schools applying for a grant from the Department of State.
- **Estimated Number of Respondents:** 193.
- **Estimated Number of Responses:** 193.
- **Average Time per Response:** 90 minutes.
- **Total Estimated Burden Time:** 4.8 hours.

- **Frequency:** Annually.
- **Obligation to Respond:** Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The mission of Office of Overseas Schools of the Department of State (A/OPR/OS) is responsible for determining that adequate educational opportunities exist at the elementary and secondary level for dependents of American citizens carrying out the programs of the U.S. Government abroad, and for assisting American-sponsored overseas schools to embody the best educational practices employed in the United States, and promote mutual understanding among peoples through education.

The information submitted by assisted schools through the MyGrants application, enables the technical and professional staff of A/OPR/OS to monitor obligations, expenditures and reimbursements of the grant funds and ensure the grantee is in compliance with the terms of the grant. In addition, A/OPR/OS plans to use information collected via the MyGrants application to ensure accuracy of the information published on its website, namely the Fact Sheets and Special Needs Profiles.

Availability of adequate educational opportunities for dependents of Government personnel is essential to the task of recruiting, placing, and retaining Foreign Service personnel at overseas posts.

Methodology

Information is collected via electronic and paper submission.

Martin Kelly,

Principal Deputy Assistant Secretary, Administration, Department of State.

[FR Doc. 2024-29233 Filed 12-11-24; 8:45 am]

BILLING CODE 4710-24-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2024-0050]

Notice of Technical Workshop and Demonstrations for Vehicle Classification Test Procedure: Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Extension of comment period.

SUMMARY: NHTSA is extending the comment period for the notice NHTSA published on October 29, 2024, seeking public comment on draft test procedure (TP) number TP-523-00, which is intended to assess vehicles for compliance with certain off-road capabilities requirements for vehicle classification within the Corporate Average Fuel Economy (CAFE) program. The comment period for the RFC notice was scheduled to end on November 30, 2024. NHTSA is extending the comment period for the notice to February 28, 2025, to allow for additional time to submit comments.

DATES: The comment period for the notice published on October 29, 2024, at 89 FR 86077, is extended to February 28, 2025.

ADDRESSES:

Workshop and Demonstration

Location: The workshop and demonstration will be held at the McNease Convention Center in San Angelo, Texas. Directions to the meeting location and final agenda will be sent to registered participants as well as posted on the NHTSA Public Information Center (PIC) at <https://www.nhtsa.gov/corporate-average-fuel-economy/cafe-public-information-center>.

Documents for Comment: NHTSA's Office of Vehicle Safety Compliance (OVSC) laboratory test procedure TP-523-00, described in this RFC, is available for viewing in PDF format in this Docket, as identified in the heading of this document.

Comments: You may submit comments to the Docket, identified as the docket number in the head of this document, by any of the following methods:

- **Federal rulemaking Portal:** To submit comments electronically, go to the U.S. Government regulations website at <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** Written comments may be faxed to 202-493-2251.

- **Mail:** Send comments to: 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:** If you submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call 202–366–9826 before coming.

Instructions: For detailed instructions on submitting comments and additional information, see the Public Participation section of this document, which can be found below. Note that all comments received will be posted to <https://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <https://www.transportation.gov/privacy>. If you wish to provide comments containing proprietary or confidential information, please follow the instructions in the section of this notice titled “*How do I submit confidential business information?*”

FOR FURTHER INFORMATION CONTACT:

To register for event attendance: Please contact Ms. Tuwana Taft, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–1008. Email: tuwana.taft@dot.gov. Participants must register in order for NHTSA to determine an approximate head count and in order for NHTSA to deliver site details and a final agenda to all participants. Attendance

will not be permitted without prior registration.

For technical issues: Mr. Michael Brace, Compliance Engineer, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Ave SE, Washington, DC 20590. Telephone: 313–218–2265. Email: michael.brace@dot.gov.

For legal issues: Mr. Paul Connet, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–5547. Email: paul.connet@dot.gov.

SUPPLEMENTARY INFORMATION: On May 2, 2022, NHTSA published a final rule which stated the agency’s intention to use a new test procedure to validate non-passenger automobile (“light truck”) classification data provided by manufacturers in their pre-model reports submitted under 49 CFR part 537.¹ NHTSA published a **Federal Register** notice on October 29, 2024, providing a draft version of TP–523–00 for comment. TP–523–00 is intended to improve NHTSA’s ability to verify light truck compliance with 49 CFR 523.5(b)(2)(i.–v.) by providing guidelines for a uniform testing and information recording format for contracting laboratories who perform testing for NHTSA.

To provide further information to stakeholders regarding how TP–523–00 would work in practice, NHTSA will hold a demonstration that stakeholders may attend in person. The scope of this demonstration is strictly limited to issues surrounding the implementation of the OVSC Laboratory Test Procedure TP–523. In order to provide additional time for comments to be submitted, NHTSA is extending the comment period to February 28, 2025.

Otto G. Matheke, III,
Director, Office of Vehicle Safety Compliance.

[FR Doc. 2024–29270 Filed 12–11–24; 8:45 am]

BILLING CODE 4910–59–P

¹ 87 FR 26025.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels that have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. The vessels placed on the SDN List have been identified as property in which a blocked person has an interest.

DATES: This action was issued on December 3, 2024. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480; Assistant Director for Sanctions Compliance, 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC’s website: <https://ofac.treasury.gov>.

Notice of OFAC Action

On December 3, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Entities

1. CONSTELLATION MARITIME SERVICES LIMITED, 80, Broad Street, Monrovia, Liberia; Organization Established Date 2023; Identification Number IMO 6394368 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of Executive Order 13902 of January 10, 2020, "Imposing Sanctions With Respect to Additional Sectors of Iran," 85 FR 2003, 3 CFR, 2020 Comp., p. 299 (E.O. 13902), for operating in the petroleum sector of the Iranian economy.

2. INAYA SHIP MANAGEMENT PRIVATE LIMITED (a.k.a. INAYA SHIP MANAGEMENT PVT LTD), Shop 1 and 2, Building 48F, 21st Commercial Street, Phase 2, Defence Housing Authority, Karachi, Pakistan; Organization Established Date 20 Aug 2020; Identification Number IMO 6176107; Registration Number 156059 (Pakistan) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

3. LUFINDO HOLDING LIMITED (a.k.a. LUFINDO HOLDING LTD), Seychelles; Identification Number IMO 6174627 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

4. GAFFODIL CO., LIMITED, Rm 906, Block A, Tak Yin House, Hong Kong, China; Room 3-2707, Block Yujin, 21, Dagong Jie, Zhongshan Qu, Dalian, Liaoning, China; Organization Established Date 01 Sep 2022; Identification Number IMO 6462631; Company Number 3186753 (Hong Kong); Business Registration Number 74386200 (Hong Kong) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

5. GALILEOS MARINE SERVICES L.L.C (Arabic: جليليوس للخدمات البحرية ش.ذ.م.م.), Office F98, Ahmad Building, Hor al-Anz, Deira, Dubai, United Arab Emirates Website www.galileosmarine.com; Organization Established Date 23 Jun 2019; Identification Number IMO 6422671; Business Registration Number 840352 (United Arab Emirates); Economic Register Number (CBLS) 11363519 (United Arab Emirates) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

6. OCEAN GLORY GIANT OGG SA, Via Espana, Panama City, Panama; Organization Established Date 05 Oct 2017; Identification Number IMO 6089179; Folio Mercantil No. 155656140 (Panama) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

7. VISION SHIP MANAGEMENT LLP, Unit 401, Space 912 Commercial Complex, Mira Bhayandar Road, Mira Road (E), Mira Bhayandar, Mumbai 401107, India; Identification Number IMO 6379560 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

8. EUNOMIA LIMITED (a.k.a. EUNOMIA LTD), Cayman Islands; 88, Lane 318, Minmin Lu, Pudong Qu, Shanghai, China; Organization Established Date 2022; Identification Number IMO 6205948 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

9. YURIMAGUAS LTD, Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island MH96960, Marshall Islands; Organization Established Date 01 Dec 2023; Registration Number 123120 (Marshall Islands) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

10. CERES SHIPPING LIMITED (a.k.a. CERES SHIPPING LTD-HKG), Room 2703, Richmond Comm. Bldg., 109 Argyle Street, Mongkok, Kowloon, Hong Kong, China; Organization Established Date 17 Sep 2019; Identification Number IMO 6126330; Company Number 2874294 (Hong Kong); Business Registration Number 71177840 (Hong Kong) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

11. LIGHTSHIP MANAGEMENT LTD, ul Chornomorskoho Kozatstva 115, Odessa 65003, Ukraine; India; United Arab Emirates; Bulgaria; Website www.lightshipmanagement.com; Organization Established Date 2020; Identification Number IMO 6141155 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

12. TIGHTSHIP SHIPPING MANAGEMENT (OPC) PRIVATE LIMITED (a.k.a. TIGHTSHIP SHIPPING MANAGEMENT), 103-N, Shelton Sapphire, Sector 15, Plot No. 18-19, CBD Belapur, Navi Mumbai, Maharashtra 400614, India; Organization Established Date 12 May 2022; Identification Number IMO 6344264; Registration Number 382587 (India) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

13. SHANGHAI FUTURE SHIP MANAGEMENT CO LTD (a.k.a. SHANGHAI FUTURE SHIP MGMT CO), Room D11, 3rd Floor, Building 65, 248, Donglan Lu, Minghang Qu, Shanghai 201102, China; Organization Established Date 2019; Identification Number IMO 6171619 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

14. SHANGHAI LEGENDARY SHIP MANAGEMENT COMPANY LIMITED (a.k.a. SHANGHAI LEGENDARY SHIP MGMT), 575, Changjiang Lu, Xigang Qu, Dalian, Liaoning 116014, China; Organization Established Date 2019; Identification Number IMO 6113237 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

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On December 3, 2024, OFAC also identified the following vessels as property in which a blocked person has an interest under the relevant sanctions authority listed below.

Vessels

1. ELVA (S9A3) Crude Oil Tanker Sao Tome and Principe flag; Vessel Registration Identification IMO 9196644; MMSI 668116202 (vessel) [IRAN-EO13902] (Linked To: LUFINDO HOLDING LIMITED).

Identified as property in which LUFINDO HOLDING LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

2. LADY LUCY (a.k.a. DELPHI) (5LKL2) Chemical/Products Tanker Liberia flag; Vessel Registration Identification IMO 9341512; MMSI 636022783 (vessel) [IRAN-EO13902] (Linked To: CONSTELLATION MARITIME SERVICES LIMITED).

Identified as property in which CONSTELLATION MARITIME SERVICES LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

3. FT ISLAND (HQA16) Crude Oil Tanker Honduras flag; Vessel Registration Identification IMO 9166675; MMSI 334017000 (vessel) [IRAN-EO13902] (Linked To: GAFFODIL CO., LIMITED).

Identified as property in which GAFFODIL CO., LIMITED, a person whose property and

interests in property are blocked pursuant to E.O. 13902, has an interest.

4. JAYA (a.k.a. MONOCEROS) (V7A6410) Crude Oil Tanker Marshall Islands flag; Vessel Registration Identification IMO 9410387; MMSI 538010982 (vessel) [IRAN-EO13902] (Linked To: GALILEOS MARINE SERVICES L.L.C.).

Identified as property in which GALILEOS MARINE SERVICES L.L.C., a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

5. MASAL (EPHO6) Crude Oil Tanker Iran flag; Vessel Registration Identification IMO 9169421; MMSI 422169700 (vessel) [IRAN-EO13902] (Linked To: OCEAN GLORY GIANT OGG SA).

Identified as property in which OCEAN GLORY GIANT OGG SA, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

6. LARA II (3EQL7) Oil Products Tanker Panama flag; Vessel Registration Identification IMO 9321421; MMSI 374740000 (vessel) [IRAN-EO13902] (Linked To: VISION SHIP MANAGEMENT LLP).

Identified as property in which VISION SHIP MANAGEMENT LLP, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

7. PHONIX (8RCY3) Crude Oil Tanker Guyana flag; Vessel Registration Identification IMO 9198317; MMSI

750308000 (vessel) [IRAN-EO13902] (Linked To: VISION SHIP MANAGEMENT LLP).

Identified as property in which VISION SHIP MANAGEMENT LLP, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

8. RIO NAPO (E5U4369) Chemical/Oil Tanker Cook Islands flag; Vessel Registration Identification IMO 9256913; MMSI 518998389 (vessel) [IRAN-EO13902] (Linked To: VISION SHIP MANAGEMENT LLP).

Identified as property in which VISION SHIP MANAGEMENT LLP, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

9. FIONA II (a.k.a. SELENE TRADER) (HPOE) Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9262766; MMSI 351073000 (vessel) [IRAN-EO13902] (Linked To: EUNOMIA LIMITED).

Identified as property in which EUNOMIA LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

10. VANITY (a.k.a. BLISSFUL SEA) (T7BL8) Crude Oil Tanker San Marino flag; Vessel Registration Identification IMO 9371608; MMSI 268241802 (vessel) [IRAN-EO13902] (Linked To: YURIMAGUAS LTD).

Identified as property in which YURIMAGUAS LTD, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

11. YURI (a.k.a. SOMERSET) (E5U5230) Crude Oil Tanker Cook Islands flag; Vessel Registration Identification IMO 9235737; MMSI 518999249 (vessel) [IRAN–EO13902] (Linked To: YURIMAGUAS LTD).

Identified as property in which YURIMAGUAS LTD, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

12. CERES I (S9U4) Crude Oil Tanker Sao Tome and Principe flag; Vessel Registration Identification IMO 9229439; MMSI 668116233 (vessel) [IRAN–EO13902] (Linked To: CERES SHIPPING LIMITED).

Identified as property in which CERES SHIPPING LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

13. TONIL (a.k.a. PARAGON DAWN) (3E2323) Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9307932; MMSI 352002482 (vessel) [IRAN–EO13902] (Linked To: LIGHTSHIP MANAGEMENT LTD).

Identified as property in which LIGHTSHIP MANAGEMENT LTD, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

14. BLACK PANTHER (3EZT6) Chemical/Products Tanker Panama flag; Vessel Registration Identification IMO 9285756; MMSI 372988000 (vessel) [IRAN–EO13902] (Linked To: TIGHTSHIP SHIPPING MANAGEMENT (OPC) PRIVATE LIMITED).

Identified as property in which TIGHTSHIP SHIPPING MANAGEMENT (OPC) PRIVATE LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

15. LIONESS (3FLM9) Chemical/Products Tanker Panama flag; Vessel Registration Identification IMO 9285744; MMSI 353722000 (vessel) [IRAN–EO13902] (Linked To: TIGHTSHIP SHIPPING MANAGEMENT (OPC) PRIVATE LIMITED).

Identified as property in which TIGHTSHIP SHIPPING MANAGEMENT (OPC) PRIVATE LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

16. OLIVE (a.k.a. BLUE NIL) (E5U5271) Crude Oil Tanker Cook Islands flag; Vessel Registration Identification IMO 9288265; MMSI 518999290 (vessel) [IRAN–EO13902] (Linked To: TIGHTSHIP SHIPPING MANAGEMENT (OPC) PRIVATE LIMITED).

Identified as property in which TIGHTSHIP SHIPPING MANAGEMENT (OPC) PRIVATE LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

17. MEROPE (3E2648) Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9281891; MMSI 352002495 (vessel) [IRAN–EO13902] (Linked To: SHANGHAI FUTURE SHIP MANAGEMENT CO LTD).

Identified as property in which SHANGHAI FUTURE SHIP MANAGEMENT CO LTD, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

18. VERONICA III (3E2317) Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9326055; MMSI 352002475 (vessel) [IRAN–EO13902] (Linked To: SHANGHAI FUTURE SHIP MANAGEMENT CO LTD).

Identified as property in which SHANGHAI FUTURE SHIP MANAGEMENT CO LTD, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

19. BERTHA (a.k.a. MONICA S) (E5U5084) Crude Oil Tanker Cook Islands flag; Vessel Registration Identification IMO 9292163; MMSI 518999103 (vessel) [IRAN–EO13902] (Linked To: SHANGHAI LEGENDARY SHIP MANAGEMENT COMPANY LIMITED).

Identified as property in which SHANGHAI LEGENDARY SHIP MANAGEMENT COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

20. MIN HANG (E5U5075) Crude Oil Tanker Cook Islands flag; Vessel Registration Identification IMO 9257137; MMSI 518999094 (vessel) [IRAN–EO13902]

(Linked To: SHANGHAI LEGENDARY SHIP MANAGEMENT COMPANY LIMITED). Identified as property in which SHANGHAI LEGENDARY SHIP MANAGEMENT COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

21. VESNA (V3MD7) Crude Oil Tanker Belize flag; Vessel Registration Identification IMO 9233349; MMSI 312242000 (vessel) [IRAN–EO13902] (Linked To: SHANGHAI LEGENDARY SHIP MANAGEMENT COMPANY LIMITED).

Identified as property in which SHANGHAI LEGENDARY SHIP MANAGEMENT COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–29286 Filed 12–11–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Survey of U.S. Ownership of Foreign Securities as of December 31, 2024

AGENCY: Office of the Assistant Secretary for International Affairs, Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of ownership of foreign securities by U.S. residents as of December 31, 2024. This Notice constitutes legal notification to all United States persons (defined below)

who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. The reporting form SHCA (2024) and instructions may be printed from the internet at: <https://home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions/forms-shc#shc>.

SUPPLEMENTARY INFORMATION:

Definition: Pursuant to 22 U.S.C. 3102(3) and (4): a person means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency); and a United States person means any person resident in the United States or subject to the jurisdiction of the United States.

Who Must Report: The reporting panel is based upon the data submitted for the 2023 annual survey and the June 2024 TIC report “Aggregate Holdings, Purchases and Sales, and Fair Value Changes of Long-Term Securities by U.S. and Foreign Residents” (TIC SLT). Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What To Report: This report will collect information on holdings by U.S. residents of foreign securities, including equities, long-term debt securities, and short-term debt securities (including selected money market instruments).

How To Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the website address given above in the Summary. Completed reports can be submitted electronically or via email at SHC.help@ny.frb.org. Inquiries can be made to the survey staff of the Federal Reserve Bank of New York at (212) 720–6300 or email: SHC.help@ny.frb.org. Inquiries can also be made to Dwight Wolkow at (202) 622–1276, or email: comments2TIC@do.treas.gov.

When To Report: Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by March 7, 2025.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0146. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 49 hours per respondent for end-investors

and custodians that file Schedule 3 reports covering their foreign securities entrusted to U.S. resident custodians, 146 hours per respondent for large end-investors filing Schedule 2 reports, and 546 hours per respondent for large custodians of securities filing Schedule 2 reports. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention: Administrator, International Portfolio Investment Data Reporting Systems, Room 1050,

Washington, DC 20220, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. Please also email your comments to Dwight Wolkow at: comments2TIC@do.treas.gov.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2024–29135 Filed 12–11–24; 8:45 am]

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Definition of Energy Property and Rules Applicable to the Energy Credit;
Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 10015]

RIN 1545–BO40

Definition of Energy Property and Rules Applicable to the Energy Credit**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document sets forth final rules relating to the energy credit, including rules for determining whether investments in energy property are eligible for the energy credit and for implementing certain amendments made by the Inflation Reduction Act of 2022. The final regulations impact taxpayers who invest in energy property eligible for the energy credit.

DATES:

Effective date: These regulations are effective on December 12, 2024.

Applicability dates: For dates of applicability, see §§ 1.48–9(g), 1.48–13(f), 1.48–14(j), and 1.6418–5(j).

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, the IRS Office of the Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317–6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Authority**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 48 and 6418 of the Internal Revenue Code (Code) issued by the Secretary of the Treasury or her delegate (Secretary) pursuant to the authority granted under sections 45(b)(12), 48(a)(3)(D), and (a)(16), 6418(g) and (h), and 7805(a) of the Code (final regulations).

Section 48(a)(3)(D) provides a specific delegation of authority for the Secretary to prescribe by regulations performance and quality standards for energy property after consulting with the Secretary of Energy.

Sections 45(b)(12) and 48(a)(16) provide specific delegations of authority with respect to the requirements of section 45(b), including the prevailing wage and apprenticeship (PWA) requirements of section 45(b)(7) and (8), as incorporated by section 48(a)(10) and (11), with each stating, “[t]he Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for

requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.” Section 48(a)(10)(C) grants authority for the Secretary to provide, by regulations or other guidance, for recapturing the benefit of any increase in the credit allowed under section 48(a) allowed to an energy project that initially satisfies the PWA requirements if such energy project should later fail to satisfy such requirements during the recapture period by applying rules similar to the rules of section 50(a) of the Code. Section 48(a)(16) provides a general grant of regulatory authority for section 48(a), by stating: “The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.”

Section 6418(g) provides several specific delegations of authority to the Secretary with regard to enforcing requirements for valid transfers of certain Federal income tax credits under section 6418 and recapturing excessive credit transfers. Section 6418(h) provides a specific delegation of authority with respect to the transfer of credits under section 6418, stating, in part, that “[t]he Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section.”

Finally, section 7805(a) authorizes the Secretary to “prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.”

Background**I. Overview**

Section 38 of the Code allows certain business credits against the Federal income tax imposed by chapter 1 of the Code (chapter 1). Among the credits allowed by section 38 are the investment credit determined under section 46 of the Code, which includes the energy credit determined under section 48 (section 48 credit). See sections 38(b)(1) and 46(2). Section 48(a)(1) generally provides that the section 48 credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year. For most types of energy property, eligibility for the section 48 credit and, in some cases, the amount of the section 48 credit depends

upon meeting certain deadlines for beginning construction of the energy property or for placing the energy property in service.

Section 48 originally was enacted by section 2 of the Revenue Act of 1962, Public Law 87–834, 76 Stat. 960, 963 (October 16, 1962), to spur economic growth by encouraging investments in various capital projects across many industries including energy, transportation, and communications. Section 48 has been amended many times since its enactment, most recently by section 13102 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). The IRA amended section 48 in several ways, including by making additional types of energy property eligible for the section 48 credit, providing a special rule to allow certain lower-output energy properties to include amounts paid for qualified interconnection property in connection with the installation of energy property, and providing an increased credit amount for energy projects that satisfy prevailing wage and apprenticeship requirements, a domestic content bonus credit amount, and an increase in credit rate for energy communities.

The Income Tax Regulations at § 1.48–9 in effect prior to December 12, 2024 (former § 1.48–9), which provide definitions and rules for determining whether property is energy property eligible for the section 48 credit, originally were published on January 23, 1981 (T.D. 7765, 46 FR 7287). Those regulations were amended on July 21, 1987 (T.D. 8147, 52 FR 27336) to provide rules for dual use property. Thus, former § 1.48–9 has not been updated since 1987, which is before many of the current types of energy property became eligible for the section 48 credit.

II. Prior Guidance

Prior to proposing the amendments to the regulations under section 48 being finalized by this treasury decision, the Department of the Treasury (Treasury Department) and the IRS twice requested comments on issues to be addressed in these regulations. On October 26, 2015, the Treasury Department and the IRS published Notice 2015–70, 2015–43 I.R.B. 604, requesting comments regarding statutory updates to section 48 preceding those made by the IRA. On October 24, 2022, in response to the passage of the IRA, the Treasury Department and the IRS published Notice 2022–49, 2022–43 I.R.B. 321, requesting general as well as specific

comments on issues arising under section 48, among other sections, that were amended or added by the IRA.

On August 30, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–100908–23) in the **Federal Register** (88 FR 60018), *corrected* in 88 FR 73807 (Oct. 27, 2023), *corrected* in 89 FR 25550 (April 11, 2024), proposing rules regarding the increased credit amounts available for taxpayers satisfying PWA requirements established by the IRA (PWA Proposed Regulations). Comments were requested and a public hearing was held November 21, 2023.

On November 22, 2023, after consideration of all the comments submitted in response to Notice 2015–70 and Notice 2022–49, and after consultation with the Department of Energy (DOE), the Treasury Department and the IRS published a notice of proposed rulemaking and a notice of public hearing (REG–132569–17) in the **Federal Register** (88 FR 82188), *corrected* in 89 FR 2182 (January 12, 2024), proposing rules that would provide guidance under section 48 (Proposed Regulations). On February 22, 2024, the Treasury Department and the IRS published a second correction to the Proposed Regulations in the **Federal Register** (89 FR 13293) that re-opened the comment period through March 25, 2024 (Correction). The Proposed Regulations withdrew certain portions of the PWA Proposed Regulations and re-proposed regulations that would provide additional guidance on the PWA requirements under section 48, including the statutory exception for energy projects with a maximum output of less than one megawatt (MW) and the recapture rules under section 48(a)(10)(C) related to the PWA requirements.

Although the Proposed Regulations withdrew certain portions of the PWA Proposed Regulations, the Explanation of Provisions section in the preamble to the PWA Proposed Regulations generally remained relevant. Therefore, to the extent consistent with the preamble to the Proposed Regulations, the Explanation of Provisions section of the PWA Proposed Regulations was incorporated in the preamble to the Proposed Regulations.

The preamble to the Proposed Regulations did not address written comments that were submitted in response to the PWA Proposed Regulations. Any comments received in response to the Proposed Regulations, including comments on the re-proposed regulations addressing the PWA requirements specific to section 48, are addressed in the Summary of Comments

and Explanation of Revisions section of this preamble. The Proposed Regulations did not extend the comment period or affect the scheduled hearing for the PWA Proposed Regulations. The PWA Proposed Regulations, other than the portions that were withdrawn, were adopted as final regulations by Treasury Decision (T.D. 9998), which was published in the **Federal Register** (89 FR 53184) on June 25, 2024 (PWA Final Regulations).

On June 21, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–101610–23) in the **Federal Register** (88 FR 40496) proposing rules concerning the election under section 6418 to transfer certain Federal income tax credits, including the section 48 credit (6418 Proposed Regulations). Proposed § 1.6418–5 of the 6418 Proposed Regulations included proposed rules addressing notification requirements and the impact of the credit recapture rules under sections 50(a), 49(b), and 45Q(f)(4) on the transfer of Federal income tax credits. Comments were requested and a public hearing on the 6418 Proposed Regulations was held on August 23, 2023.

The Proposed Regulations would supplement the 6418 Proposed Regulations by adding provisions to proposed § 1.6418–5 addressing notification requirements and the impact of the recapture rules for failing to satisfy the PWA requirements under section 48(a)(10) if an election under § 1.6418–2 or § 1.6418–3 has been made. The preamble to the Proposed Regulations did not address written comments that were submitted in response to the regulations proposed in the 6418 Proposed Regulations. Any comments received in response to the Proposed Regulations, including the additions to proposed § 1.6418–5 described in the Proposed Regulations, are addressed in the Summary of Comments and Explanation of Revisions section of this preamble. The Proposed Regulations did not otherwise extend the comment period for the 6418 Proposed Regulations. On April 30, 2024, a Treasury Decision (T.D. 9993) adopting the 6418 Proposed Regulations as final regulations (6418 Final Regulations) was published in the **Federal Register** (89 FR 34770). The 6418 Final Regulations did not finalize the portion of proposed § 1.6418–5 that was included in the Proposed Regulations.

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received 350 written comments in

response to the Proposed Regulations. The comments are available for public inspection at <https://www.regulations.gov> or upon request. After full consideration of the comments received in response to the Proposed Regulations, these final regulations adopt the Proposed Regulations with modifications as described in this Summary of Comments and Explanation of Revisions.

Comments addressing the requirements for energy property are described in part I of this Summary of Comments and Explanation of Revisions. Comments addressing the PWA requirements are described in part II of this Summary of Comments and Explanation of Revisions. Comments addressing rules applicable to energy property are described in part III of this Summary of Comments and Explanation of Revisions.

Comments summarizing the statute or the Proposed Regulations, recommending statutory revisions, or addressing issues that are outside the scope of this rulemaking (such as revising other Federal regulations and recommending changes to IRS forms) generally are not addressed in this Summary of Comments and Explanation of Revisions or adopted in these final regulations. In addition to modifications described in this Summary of Comments and Explanation of Revisions, the final regulations also include non-substantive grammatical or stylistic changes to the Proposed Regulations. Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the Proposed Regulations with respect to which no comments were received are adopted without substantive change.

I. Requirements for Energy Property

For purposes of the section 48 credit, energy property consists of all the components of property that meet the statutory requirements for an energy property as defined by section 48(a)(3) and (c).

Section 48(a)(3)(B) through (D) provide general requirements for all types of energy property. Section 48(a)(3)(B) limits energy property to property that is constructed, reconstructed, or erected by the taxpayer or that the taxpayer acquires if the original use of such property commences with the taxpayer. Section 48(a)(3)(C) provides that to be eligible as energy property, depreciation (or amortization in lieu of depreciation) must be allowable for the property. Section 48(a)(3)(D) provides that to be eligible as energy property, the property must also meet any performance and

quality standards that have been prescribed by the Secretary, after consultation with the Secretary of Energy, and are in effect at the time of the taxpayer's acquisition of the property. Under section 48(a)(3), energy property does not include property that is part of a qualified facility the production from which is allowed a renewable electricity production credit determined under section 45 (section 45 credit) for the taxable year or any prior taxable year. Lastly, if the statutory text of section 48 provides dates by which construction of energy property must begin or when energy property must be placed in service, such energy property must meet those deadlines to be eligible for the section 48 credit at specified energy percentages.

A. Definitions Related to Requirements for Energy Property

Before 1990, section 48 defined the term "section 38 property" to include, among other types of property, energy property eligible for the section 48 credit. The Revenue Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388 (November 5, 1990) removed the term "section 38 property" in amending section 48. However, section 48 is one of the credits that comprise the investment credit for any taxable year determined under section 46, which is included in section 38(b)(1) and remains subject to the general business credit rules under section 38. As a result, rules related to "section 38 property" remain generally applicable to the section 48 credit.

Sections 1.48-1 and 1.48-2 provide guidance with respect to section 38 property. Section 1.48-1 was last substantially revised on October 11, 1988 (T.D. 8233, 53 FR 39592) and § 1.48-2 was last revised on June 28, 1985 (T.D. 8031, 50 FR 26698). Although subsequent amendments to section 48 have made some of the rules provided by these regulations inapplicable, those rules continue to provide useful definitions related to requirements for energy property, some of which would be adopted under proposed § 1.48-9.

1. Performance and Quality Standards for Energy Property

Section 48(a)(3)(D) provides that energy property is property that meets the performance and quality standards (if any) that have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy) and are in effect at the time of the acquisition of the property. Former § 1.48-9(m)(1) provided that "energy property must meet quality and

performance standards, if any, that have been prescribed by the Secretary (after consultation with the Secretary of Energy) and are in effect at the time of acquisition." Generally, proposed § 1.48-9(c)(2)(i) would adopt this rule for performance and quality standards for energy property from former § 1.48-9(m)(1) by providing that energy property must meet performance and quality standards, if any, which have been prescribed by the Secretary (after consultation with the Secretary of Energy) and are in effect at the time of acquisition of the energy property. The final regulations adopt this rule as proposed.

2. Performance and Quality Standards for Electrochromic Glass Property

Proposed § 1.48-9(c)(2)(ii)(B) would provide rules for performance and quality standards for electrochromic glass property by stating that to be eligible for the section 48 credit, electrochromic windows must be rated in accordance with the National Fenestration Rating Council (NFRC) and secondary glazing systems must be rated in accordance with the Attachments Energy Rating Council (AERC) Rating and Certification Process, or subsequent revisions.

A few commenters addressed the performance and quality standards for electrochromic glass provided in the Proposed Regulations. Generally, these commenters suggested methods to satisfy the NFRC rating requirement and were particularly interested in a simulation-based process. For example, a commenter advocated for a process that emphasizes simulation-based validation to expedite compliance and reduce barriers to implementation, particularly given the lengthy delays associated with physical testing. This commenter stated that simulations, supported by advanced and reliable modeling software, have become a standard practice within the industry. Another commenter also emphasized the need to use simulations to satisfy the NFRC rating requirement.

In response to these comments, the Treasury Department and the IRS consulted with the DOE and learned that the existing NFRC and the AERC ratings systems incorporate simulation methodologies that should address the commenters' concerns. Accordingly, the final regulations adopt this rule as proposed.

3. Placed in Service

a. General Rules

Section 48(a) provides that the section 48 credit for any taxable year is the

energy percentage of the basis of each energy property placed in service during such taxable year. As part of the regulations under section 46 for the investment credit, § 1.46-3(d)(1) provides general rules for determining when a taxpayer has placed a property in service for purposes of the section 48 credit. Under § 1.46-3(d)(1) property is considered placed in service in the earlier of the taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or the taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

Proposed § 1.48-9(b)(5) largely proposed to adopt the general rules of § 1.46-3(d)(1) for determining when a taxpayer has placed an energy property in service. However, to be eligible for the section 48 credit, energy property must be property with respect to which depreciation (or amortization in lieu of depreciation) is allowable. Accordingly, proposed § 1.48-9(b)(5)(i) would provide that the taxable year in which energy property is placed in service is the earlier of the taxable year in which, under the taxpayer's depreciation practice, the period for depreciation of such property begins, or the taxable year in which the energy property is placed in a condition or state of readiness and availability for a specifically assigned function in either a trade or business or in the production of income.

A commenter requested that the final regulations provide a different placed in service rule for energy storage technology. Because energy storage technology may charge and discharge prior to commercial readiness, the commenter suggested that energy storage technology should be treated as placed in service when: (i) such property has all licenses, permits, and approvals required to store and dispatch power; (ii) pre-operational testing is complete; (iii) the taxpayer has title to the property; and (iv) the property is available to store and discharge power on a regular, commercial basis.

Proposed § 1.48-9(b)(5) would adopt the general placed in service rules of § 1.46-3(d)(1), which have applied to the section 48 credit since its enactment, with a modification to reflect the requirement that the property be eligible for depreciation or amortization. Until the IRA amended section 48, energy storage property (referred to as "energy storage technology" after the IRA amendments)

was considered a component of energy property. Without providing specific indicia that an energy property is placed in service, the rule provided at proposed § 1.48–9(b)(5) would provide general principles for a taxpayer to determine when an energy property has been placed in service that are broadly applicable to all types of energy property, well-understood, and widely relied upon by industry. The general principles provided by the final rule are sufficiently broad to address the commenter's concerns. Therefore, the final regulations do not adopt these comments and instead adopt the placed in service rules as proposed.

b. Lease-Passthrough Election

Section 1.46–3(d)(3) provides that, notwithstanding the provisions of § 1.46–3(d)(1), property with respect to which an election is made under § 1.48–4 to treat the lessee as having purchased such property is considered placed in service by the lessor in the taxable year in which possession is transferred to such lessee. Proposed § 1.48–9(b)(5)(ii) would adopt the special rule from § 1.46–3(d)(3) for determining when a leased property has been placed in service. Several commenters provided comments relating to the rule for leased property in the context of qualified biogas property.

A commenter requested clarification on the application of the lease passthrough election under § 1.48–4 to treat a lessee as having purchased such energy property from the lessor with respect to any property comprising a qualified biogas property, including both component properties considered functionally interdependent as a single unit of energy property and property treated as an integral part of energy property. This commenter asked for illustrative examples of the application of the lease passthrough election in the context of a renewable natural gas (RNG) qualified biogas property if the equipment comprising the qualifying biogas production property, including equipment treated as an integral part of the qualifying biogas property, is owned by multiple taxpayers.

Another commenter suggested allowing a single taxpayer to consolidate deemed ownership of an entire qualified biogas property to permit a more efficient use and/or transfer of the section 48 credit under the section 6418 credit transfer rules by relying on existing lease passthrough rules that apply to energy property. The commenter asserted that this would permit greater qualified investment and use of the section 48 credit if, for regulatory or environmental permitting

reasons, some portion of the section 48 credit-eligible qualified biogas property simply cannot be owned by a single or related taxpayers. The commenter acknowledged that under the 6418 Proposed Regulations, the transfer of the tax credits to a lessee under a lease passthrough election will preclude further transfers under section 6418.

Guidance on eligibility for the lease passthrough election is beyond the scope of the Proposed Regulations because proposed § 1.48–9(b)(5)(ii) merely proposed a rule for determining when property with respect to which a lease passthrough election is made under § 1.48–4 is placed in service. Guidance on eligibility for the lease passthrough election is addressed elsewhere, such as in § 1.48–4 and the 6418 Final Regulations. Accordingly, these final regulations do not adopt these comments.

4. Acquisition of Energy Property

Proposed § 1.48–9(b)(2) would provide that the term acquisition of energy property means a transaction by which a taxpayer obtains rights and obligations with respect to energy property, including title to the energy property under the law of the jurisdiction in which the energy property is placed in service, unless the property is possessed or controlled by the taxpayer as a lessee, and physical possession or control of the energy property. This definition was intended to require that the taxpayer establish tax ownership of the energy property for Federal income tax purposes. The final regulations modify the definition in proposed § 1.48–9(b)(2) to make this requirement explicit.

B. Types of Energy Property

Proposed § 1.48–9(e) would expand the definitions of energy property provided in former § 1.48–9 to account for new technologies that were added by amendments to section 48, including by the IRA. Generally, the definitions of the types of energy property provided in the Proposed Regulations incorporate the definitions provided in section 48(a)(3) and (c) but do not provide specific beginning of construction or placed in service deadlines. Taxpayers should refer to the current definitions of energy property provided by section 48 for specific requirements applicable to each type of energy property. The definitions of the types of energy property provided in proposed § 1.48–9(e) were developed by the Treasury Department and the IRS in consultation with the DOE.

Some commenters requested clarification concerning whether a particular type of technology would fall

into one of the categories of energy property. For example, a commenter requested guidance concerning what type of energy property would include sewage energy recovery property and provided three options: geothermal heat pump (GHP) property by reference to “underground fluids,” energy storage technology, or waste energy recovery property (WERP). A definitive response to such comments would require the Treasury Department and the IRS to conduct a complete factual analysis of the property in question, which may include information that was not provided by the commenters. Because more information is needed to make the determinations requested by the commenters, these final regulations do not address the requested clarifications concerning the categorization of specific technologies.

1. Combined Heat and Power System Property

Section 48(a)(3)(A)(v) includes combined heat and power system (CHP) property as a type of energy property. Section 48(c)(3)(A) defines CHP property as property comprising a system that, among other requirements, uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications). Section 48(c)(3)(A) further provides, in part, that a CHP property must produce at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power (or combination thereof), and at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof), and that the energy efficiency percentage of the system must exceed 60 percent.

Section 48(c)(3)(B) provides that the amount of the section 48 credit with respect to CHP property is reduced to the extent that a CHP property has an electrical or mechanical capacity in excess of applicable limits. Subject to the exception for CHP property that uses closed or open-loop biomass as feedstock, CHP property with capacity in excess of the applicable capacity limit (15 MW or a mechanical capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities) is eligible for only a fraction of the otherwise allowable section 48 credit. This fraction is equal to the applicable capacity limit divided by the capacity of the CHP property. However, CHP

property with a capacity in excess of 50 MW or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities does not qualify for the section 48 credit.

Section 48(c)(3)(C) provides that the energy efficiency percentage of a CHP property is the fraction (i) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and (ii) the denominator of which is the lower heating value of the fuel sources for the system. The energy efficiency percentage and the percentages under section 48(c)(3)(A)(ii) are determined on a British thermal unit (Btu) basis. Section 48(c)(3)(C)(iii) specifically provides that the term “combined heat and power system property” does not include property used to transport an energy source to the facility or to distribute energy produced by the facility.

Additionally, section 48(c)(3)(D) provides that a CHP property with a fuel source that is at least 90 percent from closed or open-loop biomass that would otherwise qualify for the section 48 credit but for the failure to meet the efficiency standard is eligible for a credit reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but that only achieves 30-percent efficiency, would be permitted to claim a credit equal to one-half of the otherwise allowable credit.

Proposed § 1.48–9(e)(6)(i) would provide generally that CHP property is property comprising a system that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications). Proposed § 1.48–9(e)(6)(i) would also provide that CHP property must produce at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power (or combination thereof), and at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof). Further, proposed § 1.48–9(e)(6)(i) would provide that the energy efficiency percentage of CHP property must exceed 60 percent (except in the case of CHP systems that use biomass within the

meaning of section 45). Proposed § 1.48–9(e)(6)(i) would also provide that CHP property does not include any property comprising a system if such system has a capacity in excess of 50 MW or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities. Proposed § 1.48–9(e)(6)(ii) would provide that CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

A commenter requested that the final regulations clarify whether a CHP property would be eligible for the section 48 credit, assuming all other criteria are met, if the fuel source is exclusively non-renewable natural gas. There is no requirement that a CHP property use a specific fuel or feedstock. The Treasury Department and the IRS emphasize that all CHP property must meet the requirements of section 48(c)(3) and those provided in proposed § 1.48–9(e)(6)(i), which the final regulations adopt as proposed.

2. Geothermal Heat Pump Property

Section 48(a)(3)(A)(vii) provides, in part, that energy property includes equipment that uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure (geothermal heat pump or GHP property). Proposed § 1.48–9(e)(8) would adopt the statutory definition of GHP property while providing the modification that in addition to the ground and ground water, other underground working fluids may be used as a thermal energy source or as a thermal energy sink. Accordingly, proposed § 1.48–9(e)(8) would provide that GHP property is equipment that uses the ground, ground water, or other underground fluids as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

Several commenters requested revisions to the definition of GHP property to include recovered heat as a thermal energy source. For example, representative of these comments, a commenter requested clarification that equipment used to circulate recovered heat qualifies as GHP property. This commenter asserted that the same GHP property that uses a ground heat exchanger as a source or sink can be designed to operate in a heat recovery mode, simply recycling heat around a building if the potential exists. Another commenter noted that the use of GHP property in heat recovery mode should be considered a qualified energy source for purposes of the calculation to

determine whether the GHP property qualifies as dual use property.

As defined in proposed § 1.48–14(b)(1), the term “dual use property” would mean property that uses energy derived from both a qualifying source (that is, from an energy property including a qualified facility for which a section 48(a)(5) election has been made) and from a non-qualifying source (that is, sources other than an energy property including a qualified facility for which a section 48(a)(5) election has been made). As proposed § 1.48–14(b)(2) would further provide, if dual use property uses energy derived from both a qualifying source and a non-qualifying source it will qualify as energy property if its use of energy from non-qualifying sources does not exceed 50 percent of its total energy input during an annual measuring period (Dual Use Rule). Further, if the energy used from qualifying sources is between 50 percent and 100 percent, only a proportionate amount of the basis of the energy property will be taken into account in computing the amount of the section 48 credit. For example, if 80 percent of the energy used by a dual use property is from qualifying sources, 80 percent of the basis of the dual use property will be taken into account in computing the amount of the section 48 credit.

The Treasury Department and the IRS decline to adopt these suggested revisions because they would conflict with the statutory definition of GHP property. Section 48(a)(3)(A)(vii) specifically provides that GHP property includes equipment that uses the ground or ground water as a thermal energy source. While the Proposed Regulations would provide that underground fluids may be included, this is a clarification that underground fluids other than water may offer another medium that contains thermal energy from the ground or ground water. The statute does not include any other thermal energy sources. For further discussion of the Dual Use Rule see part III.B. of this Summary of Comments and Explanation of Revisions.

Additionally, a few commenters suggested expanding the definition to allow GHP property to be used to heat domestic hot water in addition to a structure. For example, a commenter requested that the final rule clarify that domestic hot water generation by GHP property is included in the definition of GHP property. Another commenter asserted that GHP property eligible for the section 48 credit should also be permitted to provide hot water generation because it would be counterintuitive if heating hot water for space conditioning is included in the

definitions, but heating of domestic hot water is not. The statute requires GHP property heat a structure or cool a structure; therefore, the suggestion to expand the definition is not authorized by the statute. The Treasury Department and the IRS decline to adopt these suggested revisions. The final regulations adopt this rule as proposed.

A commenter mentioned that the energy property definition in proposed § 1.48–9(e)(3) concerning geothermal energy property includes clarifying language on the scope of included property, specifically addressing production and distribution equipment. The commenter recommended including similar language for GHP property described in section 48(a)(3)(A)(vii). The Treasury Department and the IRS declined to adopt this suggestion in the Proposed Regulations, and explained in the preamble to the Proposed Regulations that, while section 48(a)(3)(A)(vii) does not specify energy distribution equipment and components of a building's heating and/or cooling system as components of GHP property, such equipment may be integral to the function of the GHP property to heat or cool a structure. Thus, energy distribution equipment may be considered GHP property for the reasons stated in the preamble to the Proposed Regulations.

3. Waste Energy Recovery Property

Section 48(a)(3)(A)(viii) provides that energy property includes waste energy recovery property (WERP). Section 48(c)(5) defines WERP as property (with a capacity not in excess of 50 MW) that generates electricity solely from heat from buildings or equipment if the primary purpose of such building or equipment is not the generation of electricity. Additionally, section 48(c)(5)(C) prevents taxpayers from claiming a double benefit by providing that any property that could be treated as WERP (determined without regard to section 48(c)(5)(C)) and is part of a CHP property is not treated as WERP for purposes of section 48 unless the taxpayer elects not to treat such system as a CHP property for purposes of section 48.

Proposed § 1.48–9(e)(9)(i) would provide that WERP is property that generates electricity solely from heat from buildings or equipment if the primary purpose of such building or equipment is not the generation of electricity. Proposed § 1.48–9(e)(9)(i) would also provide examples of buildings or equipment the primary purpose of which is not the generation of electricity including, but not limited

to, manufacturing plants, medical care facilities, facilities on college campuses, pipeline compressor stations, and associated equipment. Further, proposed § 1.48–9(e)(9)(i) would provide that WERP does not include any property that has a capacity in excess of 50 MW. Proposed § 1.48–9(e)(9)(ii) would provide that any WERP that is part of a system that is a CHP property is not treated as WERP for purposes of section 48 unless the taxpayer elects to not treat such system as a CHP property for purposes of section 48.

Several commenters requested that specific technologies, including “pressure reduction” equipment or “pressure letdown” equipment, sometimes referred to as “turboexpanders,” which generally allow high pressure gas to expand and produce heat, be added to the examples of WERP that would be provided in proposed § 1.48–9(e)(9)(i). Another commenter requested that “pressure reduction” equipment be included as an example of WERP because pipeline transmissions (regardless of geographic distance) require high pressure, but at pressure letdown stations and within industrial facilities where the pressure is reduced, pressure reduction affords an opportunity for energy collection. A commenter requested that district energy systems paired with WERP be added to the examples of WERP, while another commenter suggested adding carbon dioxide power system technology to the examples of WERP.

In response to these requests, the Treasury Department and the IRS highlight that proposed § 1.48–9(e)(9) would provide non-exhaustive examples of buildings and facilities at which WERP may function rather than examples of technology that may qualify as WERP. This approach provides a function-oriented approach to determine whether a technology is WERP that is broad enough to encompass nascent technologies without rendering the regulations quickly obsolete. Therefore, the final regulations do not adopt the requested revisions to the definition of WERP, and the final regulations adopt this rule as proposed.

4. Energy Storage Technology

Section 48(a)(3)(A)(ix), which was added by the IRA, provides that energy property includes energy storage technology. Section 48(c)(6)(A)(i) defines energy storage technology to mean property (other than property primarily used in the transportation of goods or individuals and not for the production of electricity) that receives, stores, and delivers energy for

conversion to electricity (or, in the case of hydrogen, that stores energy), and has a nameplate capacity of not less than 5 kilowatt-hours (kWh). Section 48(c)(6)(A)(ii) provides that thermal energy storage property is also energy storage technology.

Section 48(c)(6)(B) provides a rule for modifications of energy storage technology. In the case of any property that either was placed in service before August 16, 2022, and would be described in section 48(c)(6)(A)(i), except that such property has a capacity of less than 5 kWh and is modified in a manner that such property (after such modification) has a nameplate capacity of not less than 5 kWh, or is energy storage technology (as described in section 48(c)(6)(A)(i)) and is modified in a manner that such property (after such modification) has an increase in nameplate capacity of not less than 5 kWh, such property is treated as energy storage technology (as described in section 48(c)(6)(A)(i)) except that the basis of any existing property prior to such modification is not taken into account for purposes of the section 48 credit.

Section 48(c)(6)(C) defines thermal energy storage property, for purposes of section 48(c)(6), as property comprising a system that: is directly connected to a heating, ventilation, or air conditioning system; removes heat from, or adds heat to, a storage medium for subsequent use; and provides energy for the heating or cooling of the interior of a residential or commercial building. Section 48(c)(6)(C)(ii) provides that thermal energy storage property does not include a swimming pool, a CHP property, or a building or its structural components.

Commenters requested clarifications regarding the treatment of energy storage technology co-located with, an integral part of, or shared with a facility that is otherwise eligible for certain Federal tax credits. For example, a commenter requested clarification concerning boundaries between energy storage technology eligible for the section 48 credit and qualified clean hydrogen production facilities eligible for the credit under section 45V. Another commenter requested confirmation that energy storage technology, including a hydrogen energy storage property, separately qualifies for the section 48 credit regardless of whether it is part of a facility for which a credit under section 45, 45V, or 48 is or has been allowed. A commenter also requested confirmation that energy storage technology will be treated as separate property for section 48 and other Code

provisions. The Treasury Department and the IRS confirm that energy storage technology is eligible for the section 48 credit if it satisfies the requirements of section 48 even if the energy storage technology is co-located with or shared by a facility that is otherwise eligible for the section 45, 45V, or 48 credits.

a. Hydrogen Energy Storage Property

Proposed § 1.48–9(e)(10)(iv) would provide that hydrogen energy storage property is property (other than property primarily used in the transportation of goods or individuals and not for the production of electricity) that stores hydrogen and has a nameplate capacity of not less than 5 kWh, equivalent to 0.127 kg of hydrogen or 52.7 standard cubic feet (scf) of hydrogen. Proposed § 1.48–9(e)(10)(iv) would also require hydrogen energy storage property to store hydrogen that is solely used for the production of energy and not for other purposes such as for the production of end products such as fertilizer. Proposed § 1.48–9(e)(10)(iv) would also provide a non-exhaustive list of components of hydrogen energy storage property that would include, but would not be limited to, a hydrogen compressor and associated storage tank and an underground storage facility and associated compressors.

In the preamble to the Proposed Regulations, the Treasury Department and the IRS requested comments on alternative approaches to assessing limitations on the use of hydrogen energy storage property, including whether additional clarification is needed regarding the production of energy from hydrogen, and what type of documentation would be needed to demonstrate that a hydrogen energy storage property was used to store hydrogen that is solely used for the production of energy.

A commenter particularly endorsed the approach taken in the Proposed Regulations by providing that the nameplate capacity requirement for hydrogen is 0.127 kilograms for 5 kWh. The commenter suggested this rule be retained in the final regulations.

Generally, commenters disagreed with the requirement that hydrogen energy storage property must store hydrogen that is solely used for the production of energy and not for other purposes, which the commenters referred to as the “end use requirement.” For example, a commenter stated that the final regulations should be revised to align with the statutory language and asserted that the end use requirement is not in accord with legislative intent, would cause delays, is unworkable, and

misaligns with the Biden Administration’s U.S. National Clean Hydrogen Strategy and Roadmap. Some commenters asserted that the end use requirement is simply unworkable due to lack of tracing mechanisms once hydrogen enters the stream of commerce.

Multiple commenters also asserted that imposing an end use requirement on hydrogen energy storage property is unsupported by the statute and would be impossible to administer. Commenters expressed concerns that the end use requirement would render the credit useless, impact markets inappropriately, and lead to confusion. Commenters also asserted that section 48(c)(6)(A)(i) requires only that hydrogen energy storage property “store energy” and does not require that it actually be used for the production of energy. Another commenter noted that because hydrogen is a form of energy, that hydrogen storage is per se energy use.

With respect to administrability, commenters explained the difficulties of both requiring exclusive energy use and obtaining the information to make this determination. For example, a commenter stated that it is too difficult for the storage owner to predict how hydrogen will be used and another asserted that requiring stored hydrogen to be used solely for the production of energy would, in cases of bulk storage, be nearly impossible. Another commenter likewise stated that taxpayers do not have full control of, or even information regarding, the use of hydrogen once it leaves their storage facilities and will be unable to have the certainty needed regarding end use to obtain project financing. This commenter, along with others, also noted the significant burden of documenting the end use of the stored hydrogen. This commenter explained that currently there are no recordkeeping or documentation precedents available for a taxpayer to efficiently demonstrate the end-use of hydrogen, a fungible molecule, stored in a taxpayer’s hydrogen energy storage property. The commenter asserted that because there is no available documentation pathway for tracking hydrogen molecules through to their end use, it would be both impractical and prohibitively costly for a taxpayer to develop and implement such recordkeeping practices. Another commenter requested that the end use requirement conclude with the recapture period.

Lastly, commenters explained how the end use requirement would limit the usefulness of the credit. For example, a

commenter asserted that the end use requirement would render the section 48 credit largely useless as a means of encouraging the development of the large-scale hydrogen storage capability that will be essential to the establishment of a robust hydrogen ecosystem in the United States. Additionally, a commenter stated that an end use requirement would cause several problems, including deterring the provision of hydrogen storage services to a significant portion of the hydrogen market sector (for example, for ammonia production). This commenter also requested clarification regarding the appropriate treatment in a case in which hydrogen is another step removed from ammonia production with electricity production as an interim step. Generally, under the Proposed Regulations, this scenario satisfies the end use requirement.

A commenter noted that the end use requirement would lead to a risk of creating two separate markets for hydrogen: those that are able to use the section 48 credit and those that are not. Emphasizing the same points, another commenter stated that restricting the end-use of the clean hydrogen to “energy” may materially impact the ability of producers to secure offtake agreements and/or restrict the usage of hydrogen storage and transportation networks to only certain types of hydrogen end-uses.

Another commenter noted that energy storage technology neutrality is very important. This commenter stated that it believes that the “energy only” end use requirement would make hydrogen storage a second (or even third) class technology if compared to battery energy storage for purposes of the section 48 credit. The commenter added that one way of reading the positioning of hydrogen and battery storage within the same statutory provision is that this reflects the intent of Congress to not favor one form of energy storage over the other. This commenter further asserts that the absence of an end use requirement imposed on battery storage property indicates that no such requirement should be imposed on hydrogen energy storage property.

While the majority of commenters objected to including the end use requirement, several commenters provided suggestions if the end use requirement is adopted. Several of these commenters suggested the use of an allocation rule similar to the Dual Use Rule under proposed § 1.48–14(b)(2) and discussed in part III.B. of this Summary of Comments and Explanation of Revisions. A commenter suggested revising the Proposed Regulations to

require a reasonable allocation between qualifying energy uses and nonqualifying non-energy uses of stored hydrogen similar to the requirements found in the Dual Use Rule. Another commenter stated that the final regulations should provide flexibility and permit any reasonable method to establish the annual use of the stored hydrogen similar to proposed § 1.48–14(b)(2)(ii). A commenter proposed that the final regulations provide a Dual Use safe harbor for a portion of a hydrogen energy storage property.

Alternatively, several commenters suggested linking the end use requirement to the rules for the credit for production of clean hydrogen under section 45V of the Code. These commenters proposed that hydrogen energy storage be eligible for the section 48 credit regardless of end use, if the hydrogen stored is at least 50 percent qualified clean hydrogen under section 45V(c)(2).

Commenters also requested clarifications regarding what would be considered energy use for purposes of applying the end use requirement. For example, a commenter requested a clarification that the definition of energy use is inclusive of an application in which hydrogen is fully consumed in the manufacturing of a downstream molecule, which is in turn clearly used in an energy application for which hydrogen would be qualified if used directly. Another commenter noted that the examples provided in the preamble to the Proposed Regulations are too narrow and should be expanded to reflect various uses of hydrogen as energy, including ammonia as a feedstock for fuel. A commenter asked for clarification that storage of hydrogen that is solely used as energy includes hydrogen used as energy for mobility purposes. Finally, a commenter requested that the final regulations allow for the storage of hydrogen whose end use is fertilizer for food production, because prohibiting hydrogen storage used in this way may encourage the parallel development of hydrogen storage and transportation infrastructure that could otherwise be shared.

Several commenters also requested clarification regarding substantiation of the end use requirement. A commenter suggested that taxpayers be permitted to rely on the use described in commercial sales contracts without the need to track the ultimate end use of hydrogen by third-party users. Another commenter asked that taxpayers be required only to maintain documentation, such as an agreement between the two parties or a certification, that the immediate purchaser of the stored hydrogen

intends to use it for energy. This commenter stated that tracking use past the point of immediate purchaser to the end use of the molecule is impossible and as a result may make the credit unavailable to a variety of hydrogen storage projects. Another commenter noted that operators of clean hydrogen transport and storage systems will need to know what sort of assurances are needed from off-takers at the limits of their system to satisfy credit eligibility and ensure limited recapture risk.

Several commenters suggested that the final regulations provide a method for a taxpayer to demonstrate that a hydrogen energy storage property was used to store hydrogen solely used for the production of energy. A commenter recommended that taxpayers be able to meet this requirement through (i) an affirmative attestation of intent by the taxpayer that owns the storage property and (ii) a five-year lookback process, with reasonable threshold tests, to determine whether a recapture has occurred and what percentage of the credit should be recaptured. Another commenter recommended that the final regulations create a rebuttable presumption of energy use allowing taxpayers to demonstrate energy end use requirements under the relevant facts and circumstances.

The Proposed Regulations would require that the hydrogen energy storage property store hydrogen solely use for the production of energy and not for other purposes such as for the production of end products such as fertilizer. After consideration of comments received, the Treasury Department and the IRS agree that section 48(c)(6)(A)(i) does not require that hydrogen energy storage property store hydrogen that will be used for the production of energy. The Treasury Department and the IRS also understand commenters' concerns regarding the administrative challenges the end use requirement presents for taxpayers and agree that the final regulations require modification. Accordingly, the final regulations do not adopt the requirement that hydrogen energy storage property store hydrogen that is solely used for the production of energy and not for other purposes such as for the production of end products such as fertilizer.

Some commenters asserted that the preamble to the Proposed Regulations indicated that hydrogen energy storage property is not limited to hydrogen. Since hydrogen may be stored within ammonia or methanol, commenters requested that the final regulations state that hydrogen storage property that stores hydrogen in the form of ammonia,

methanol, or another stable medium qualifies as energy storage technology if such product is produced directly from hydrogen and subject to any use limitation provided in the regulations. Another commenter requested that the final regulations clarify that equipment used to process hydrogen into ammonia, methanol, and other carriers, as well as storage for such hydrogen carriers, is hydrogen energy storage property.

The Treasury Department and the IRS decline to adopt the comments requesting that the final regulations provide that chemical storage, that is, equipment used to store hydrogen carriers (such as ammonia and methanol), is hydrogen energy storage property. Section 48(c)(6)(A)(i) specifically references only hydrogen, not compounds containing hydrogen. While most vessels designed for hydrogen storage (both above and below ground) may be capable of storing other gases, they are usually dedicated to a single gas (and not repurposed) to avoid contamination and mixing of gases.

Many commenters also provided feedback on the non-exhaustive list of components of property that may be considered part of hydrogen energy storage property as would be provided in proposed § 1.48–9(e)(10)(iv). A commenter endorsed the inclusion of “compressor and storage tank” as a component of hydrogen energy storage property. Several commenters requested that additional components of property be added to this list, some by asserting that the components should be eligible under rules for functionally interdependent or integral property. Other commenters requested that the final regulations expand the examples of integral and functionally interdependent equipment to be more inclusive of existing and future hydrogen energy storage property technologies.

Specifically, commenters requested that hydrogen energy storage property include hydrogen liquefaction and related equipment, equipment required to operate underground hydrogen storage property, as well as dedicated hydrogen distribution equipment such as pipelines located on the storage side of custody meters, hydrogen trailers (for example, cryogenic liquid tankers, or cylinders hauled by modules or chassis) and railcars. Another commenter proposed that the final regulations treat hydrogen liquefaction equipment and related equipment in the same manner as power conditioning and transfer equipment may be treated with respect to certain energy property that generates electricity.

The Treasury Department and IRS agree that additional clarity on the definition of hydrogen energy storage property is warranted. The Treasury Department and IRS understand that hydrogen liquefaction equipment may prepare hydrogen for storage in the hydrogen energy storage property, making such property an integral part of hydrogen energy storage property.

Section 48(c)(6)(A)(i) provides that energy storage technology does not include property primarily used in the transportation of goods or individuals and not for the production of electricity. Pipelines, trailers, and railcars are property primarily used in the transportation of goods or individuals not for the production of electricity. However, hydrogen energy storage property may have gathering and distribution lines to transport hydrogen within the hydrogen energy storage property, making such property an integral part of the hydrogen energy storage property. Therefore, the gathering and distribution lines used within a hydrogen energy storage property are not pipelines used to transport hydrogen outside of the hydrogen energy storage property. The final regulations provide that property that is an integral part of hydrogen energy storage property includes, but is not limited to, hydrogen liquefaction equipment and gathering and distribution lines within a hydrogen energy storage property.

Several commenters requested clarification regarding the costs included in hydrogen energy storage property. In the context of salt caverns, a commenter asserted that the final regulations should confirm that eligible costs for a salt cavern include not only the costs to acquire and construct the eligible property but also all direct and indirect costs associated with the development and construction of the salt cavern and referenced rules under section 263A of the Code. Another commenter requested clarification regarding what equipment from an operational storage facility would be includible in basis for purposes of the section 48 credit. A commenter requested that power-to-gas methanation facility qualify as hydrogen energy storage.

As stated for other energy properties, the Treasury Department and the IRS emphasize that the rule for determining what constitutes a unit of energy property is function-based. Because more information is needed to make the determinations requested by the commenters, the final regulations do not adopt these comments.

b. Electrical Energy Storage Property

Proposed § 1.48–9(e)(10)(ii) would provide that electrical energy storage property is property (other than property primarily used in the transportation of goods or individuals and not for the production of electricity) that receives, stores, and delivers energy for conversion to electricity, and has a nameplate capacity of not less than 5 kWh. For example, subject to the exclusion for property primarily used in the transportation of goods or individuals, electrical energy storage property includes, but is not limited to, rechargeable electrochemical batteries of all types (such as lithium ion, vanadium flow, sodium sulfur, and lead-acid); ultracapacitors; physical storage such as pumped storage hydropower, compressed air storage, flywheels; and reversible fuel cells.

Multiple commenters requested clarification concerning specific technologies that may be electrical energy storage property. A commenter requested that the definition be expanded to include compressed fluid storage in addition to compressed air storage so as to include liquid and gas applications. Because these applications generally are used by pipelines, which are property primarily used in the transportation of goods or individuals and not for the production of electricity, the Treasury Department and the IRS decline to adopt these revisions.

Multiple commenters requested that load controllers be described as an integral part of electrical energy storage technology while other commenters requested that bidirectional chargers be eligible as energy storage technology. Another commenter requested that the final regulations explicitly include thermal batteries capable of storing energy for conversion to electricity in its non-exhaustive list of eligible “electrical energy storage property” due to confusion related to thermal energy storage (TES) being a separate category.

As has been noted previously, the Proposed Regulations are intended to provide a function-oriented method to determine whether a technology is energy storage technology that is broad enough to encompass nascent technologies without rendering the regulations quickly obsolete. It is impossible to enumerate every single technology that may be eligible for the section 48 credit given the ever-changing nature of the industry and technological development. Although these regulations do not list all technologies that may qualify for the section 48 credit, the Proposed Regulations provide adequate guidance

and examples to illustrate the application of the rules for taxpayers to analyze a particular technology. The Treasury Department and the IRS, therefore, do not adopt commenters’ requests concerning specific technologies.

Multiple commenters questioned what primarily used in the transportation in section 48(c)(6)(A)(i) means in the case of electrical energy storage property. A commenter explained that pipeline systems can be multi-tasked with a section of the pipe to act as energy storage and requested that the phrase “primarily used in the transportation of goods” specifically exclude equipment that is mobile but include stationary property such as pipelines. Another commenter requested a bright line rule for technologies that are not primarily used in transportation of goods or individuals to qualify for the section 48 credit. This commenter suggested that property, including school buses, that receives, stores, and delivers energy for conversion to electricity and that is used less than 35 percent of the hours in a calendar year for transporting goods or individuals is not primarily used for transportation. In response to these commenters, the Treasury Department and the IRS note that pipelines and school buses are both primarily used in transportation. In addition, there are other IRA tax incentives intended to benefit some technologies for which commenters seek section 48 credit eligibility. For instance, section 45W provides a tax credit for electric school buses. Furthermore, a notice of proposed rulemaking (REG–118269–23) published in the **Federal Register** (89 FR 76759) on September 19, 2024, regarding the section 30C alternative fuel vehicle refueling property credit (30C Proposed Regulations) proposed a definition for property primarily used in the transportation of goods or individuals and not for the production of electricity for purposes of sections 48 and 48E. In particular, proposed § 1.48–9(e)(10)(vi) of the 30C Proposed Regulations would provide that energy storage property is primarily used in the transportation of goods or individuals and not for the production of electricity, and therefore is not energy storage technology eligible for the section 48 credit, if a credit is claimed under section 30C for such property. Accordingly, comments regarding this proposed definition will be addressed when the 30C Proposed Regulations are finalized.

In the context of a pumped storage hydropower facility, a commenter suggested that the scope of eligible

electrical energy storage technology be defined to include all property necessary to receive, store, and deliver energy for conversion to electricity, consistent with the definition in section 48(c)(6)(A)(i), and include all tangible personal property and other tangible property up to and including the step-up transformer at the substation prior to transmission to the grid. This commenter also suggested that an example be included to illustrate these concepts. Another commenter stated that the final regulations should confirm that the term “energy storage technology” includes all the qualified property up to and including the step-up transformer at the substation prior to transmission to the grid, and that this property would include the two reservoirs, the powerhouse (including the generators, turbines, and associated electrical equipment), the piping and pumps, the tunnel, substation equipment, and other integral property.

A definitive response to such comments would require the Treasury Department and the IRS to conduct a complete factual analysis of the property in question, which may include information beyond that which was provided by the commenters. Because more information is needed to make the determinations requested by the commenters, the requested clarifications are not addressed in these final regulations.

c. Thermal Energy Storage Property

Proposed § 1.48–9(e)(10)(iii) would provide that thermal energy storage property is property comprising a system that is directly connected to a heating, ventilation, or air conditioning (HVAC) system; removes heat from, or adds heat to, a storage medium for subsequent use; and provides energy for the heating or cooling of the interior of a residential or commercial building. Thermal energy storage property includes equipment and materials, and parts related to the functioning of such equipment, to store thermal energy for later use to heat or cool, or to provide hot water for use in heating a residential or commercial building. It does not include a swimming pool, CHP property, or a building or its structural components. The Proposed Regulations included a non-exhaustive list of examples of thermal energy storage property.

Commenters requested clarifications on what constitutes thermal energy storage property. A commenter requested clarification that thermal energy storage property includes all air-source heat pumps, electric boilers, and hot water heat pumps, but does not

include fossil-fuel-powered water boilers. The commenter also requested that the final regulations clarify that ground and air source heat pumps qualify as energy storage technology and suggested that thermal energy stored in one medium may be transferred and stored in a second medium for subsequent use. The commenter also requested that the use of the term “subsequent” in the definition of thermal energy storage property under section 48(c)(6)(C)(i)(II) not require a specific interval of time between storage and use for a process to qualify. Another commenter stated that the point at which the scope of thermal energy storage property ends is unclear and requested clarification regarding whether “equipment” extends to the thermal energy source for thermal energy storage property. This commenter also requested clarity on whether the thermal energy source equipment (for example, chiller, heat pump, or furnace) may be used for multiple purposes or if the thermal energy source equipment must be dedicated to the thermal energy storage property. Another commenter asked whether equipment that uses thermal energy to heat or cool a structure is also thermal energy storage property. Some commenters endorsed the proposed examples of thermal energy storage property, while other commenters requested additions, such as including “chilled water” to ice and electric boilers that use electricity to heat water and later use this stored energy to heat a building through the HVAC system.

The Treasury Department and IRS agree that the definition of thermal energy storage property requires clarification. Thermal energy storage property is defined, in part, as a system which “removes heat from, or adds heat to, a storage medium for subsequent use.” The Treasury Department and IRS, in consultation with DOE, understand the phrase “adds heat to” as including equipment that is involved in adding, or transferring, already-existing heat from one medium to the storage medium, but not equipment involved in transforming other forms of energy into heat in the first instance. Equipment that just adds (or removes) heat includes technologies, like heat pumps, that draw heat from the ambient air or other stores of heat, and add that heat to a storage medium. By contrast, equipment that transforms other forms of energy into heat in the first instance, for example through combustion or electric resistance, is not property that “removes heat from, or adds heat to” a storage medium and is therefore not an eligible component of a

thermal energy storage property. For example, a conventional gas boiler with an integrated storage tank would not generally be thermal energy storage property. While the gas boiler elements would not be part of such property, the integrated storage tank, however, may be thermal energy storage property if it otherwise meets the thermal energy storage property definition. Further, an air-to-water heat pump with a thermal storage tank, for example, would generally be thermal energy storage property provided that it otherwise meets the thermal energy storage definition. This could be the case even if the heat pump also serves a purpose in the connected HVAC system’s real-time heating or cooling of a building. In that case, the thermal storage tank would be thermal energy storage property and the heat pump may also qualify as part of that eligible property to the extent the taxpayer’s costs exceed the cost of an HVAC system without thermal storage capacity that would meet the same functional heating or cooling needs as the heat pump system with a storage medium, other than time shifting of heating or cooling.

The Proposed Regulations included an example of electric furnaces that use electricity to heat bricks to high temperatures and later use this stored energy to heat a building through the HVAC system. The Treasury Department and IRS acknowledge that this example needs to be refined to more precisely delineate the scope of eligible thermal energy storage property. Whereas the heated bricks and equipment that adds heat generated by the furnace to those bricks, or removes heat from the bricks, is eligible thermal energy storage property, the electric furnace equipment that transforms energy into the thermal energy in the first instance is not. The final regulations clarify that thermal energy storage property does not include property that transforms other forms of energy into heat in the first instance and this example has been revised accordingly in the final regulations.

With respect to the requirement for subsequent use, the Treasury Department and IRS also agree that additional clarity is warranted. The statute requires that thermal energy storage property must be able to perform certain functions, not simply performing heat transfer. Any heat transfer may take some amount of time and heat does not immediately dissipate even if no effort is made to store it. While some may assert that such heat transfer is subsequent use, the Treasury Department and IRS disagree. A plain reading of the statute indicates that

thermal energy storage property does not include property that simply engages in heat transfer. The thermal energy storage property must be able to *store* the heat. The Treasury Department and IRS, in consultation with DOE, find that a minimum time interval for subsequent use provides certainty for taxpayers and sound tax administration. Accordingly, the final regulations clarify that property that “removes heat from, or adds heat to, a storage medium for subsequent use” is property that is designed with the particular purpose of substantially altering the time profile of when heat added to or removed from the thermal storage medium can be used to heat or cool the interior of a residential or commercial building. The final regulations also provide a safe harbor for thermal energy storage property. If the thermal energy storage property can store energy that is sufficient to provide heating or cooling of the interior of a residential or commercial building for the minimum of one hour, it is deemed to have the purpose of substantially altering the time profile of when heat added to or removed from the thermal storage medium can be used to heat or cool the interior of a residential or commercial building.

The Treasury Department and IRS have revised the definition of thermal energy storage property and the examples in the final regulations to illustrate what constitutes thermal energy storage property. These final regulations also add that thermal energy storage property may store thermal energy in an artificial pit, an aqueous solution, or a solid-liquid phase change material, in addition to the underground tank or a borehole field already included in the proposed regulation, in order to be extracted for later use for heating and/or cooling. The final regulations clarify that a heat pump system that transfers heat into and out of a storage medium is thermal energy storage property. However, consistent with § 1.48–14(d), if thermal energy storage property, such as a heat pump system, includes equipment, such as a heat pump, that also serves a purpose in an HVAC system that is installed in connection with the thermal energy storage property, the taxpayer’s basis in the thermal energy storage property includes the total cost of the thermal energy storage property and HVAC system less the cost of an HVAC system without thermal storage capacity that would meet the same functional heating or cooling needs as the heat pump system with a storage medium, other than time shifting heating or cooling.

Commenters also requested clarifications regarding whether specific components may be part of thermal energy storage. A commenter requested that pipes to distribute stored thermal energy to and within buildings (including for multiple residential or commercial buildings such as through a district heating system) and equipment in building heating and/or cooling systems—such as coils, radiators, and other end-use equipment—necessary to convey stored thermal energy to building space or domestic hot water supply be included in thermal energy storage property.

With respect to the request to include pipes and equipment in building heating and/or cooling systems, the statutory definition of thermal energy storage property provides, in part, that it is directly connected to an HVAC system, not that it is an HVAC system. The Proposed Regulations would provide a function-oriented method to evaluate whether property is a functionally interdependent or an integral part of thermal energy storage property. With respect to the request to include equipment necessary to convey domestic hot water supply, the statutory definition further provides, in part, that thermal energy storage property provides energy for the heating or cooling of the interior of a residential or commercial building. The statute does not provide for stored energy for domestic hot water supply for consumptive use. Therefore, property that provides energy for domestic hot water supply exclusively for consumptive use and not for heating or cooling of the interior of such a building is not eligible under the statute. The final regulations do not adopt these comments.

Another commenter requested clarification that if property that would otherwise qualify as thermal energy storage property is connected to a district heating system that provides energy for the heating or cooling of multiple buildings, it would nonetheless be considered “directly connected to a heating, ventilation, or air conditioning system”. Proposed § 1.48–9(e)(10)(iii) would not preclude thermal energy storage technology property that is directly connected to more than one HVAC system from being a thermal energy storage property. The final regulations do not modify the example.

Commenters also requested modification of the definition of thermal energy storage property in proposed § 1.48–9(e)(10)(iii). A commenter suggested adding “refrigeration” to “is directly connected to a heating,

ventilation, or air conditioning system” because industrial refrigeration systems are considered part of the HVAC system in construction. This commenter also joined another in recommending adding “industrial” to “for use in heating a residential or commercial building” to prevent restricting the use of thermal energy storage in industrial sites and to eliminate confusion regarding commercial and industrial building types. To maintain consistency with the statutory text, the final regulations maintain the wording set forth in section 48(c)(6)(C)(i)(I) and (III) as is.

Commenters also expressed concerns that the language “directly connected to . . .” in proposed § 1.48–9(e)(10)(iii) might exclude thermal energy storage property that directly functions as a heating system itself without connecting to an HVAC system. A commenter suggested providing guidance to clarify that thermal energy storage property that functions as a self-contained heating or cooling system is eligible thermal energy storage property under proposed § 1.48–9(e)(10)(iii). Section 48(c)(6)(C)(i)(I) requires that thermal energy storage property is directly connected to a heating, ventilation, or air conditioning system, but does not include the HVAC system itself as eligible thermal energy storage property. Therefore, these comments are not adopted because they would be inconsistent with the statute. However, elements of such a system could constitute eligible thermal energy storage property.

Additionally, a commenter requested clarification that thermal energy storage property may be considered battery storage technology for the purpose of claiming the credit available to residential customers under section 25D(d)(6) of the Code. The Treasury Department and the IRS decline to address this request because it is outside of the scope of section 48 and, therefore, these final regulations.

d. Modifications of Energy Storage Property

Proposed § 1.48–9(e)(10)(v) would provide that with respect to electrical energy storage property and hydrogen energy storage property placed in service after December 31, 2022, energy storage technology that is modified as set forth in proposed § 1.48–9(e)(10)(v) is treated as electrical energy storage property or hydrogen energy storage property, except that the basis of any existing property prior to such modification is not taken into account for purposes of the section 48 credit. Proposed § 1.48–9(e)(10)(v) applies to any electrical energy storage property

and hydrogen energy storage property that either: (A) was placed in service before August 16, 2022, and would be described in section 48(c)(6)(A)(i), except that such property had a capacity of less than 5 kWh and is modified in a manner that such property (after such modification) has a nameplate capacity (after such modification) of not less than 5 kWh; or (B) is described in section 48(c)(6)(A)(i) and is modified in a manner that such property (after such modification) has an increase in nameplate capacity of not less than 5 kWh.

A commenter asked if the section 48 credit is available for repurposed batteries used to build energy storage systems. Whether a battery is repurposed and eligible for the section 48 credit requires a factual determination that is beyond the scope of these regulations. The 80/20 Rule provides general rules for taxpayers that include some used components when placing in service an energy property.

Another commenter requested that the requirement that any modified energy storage property must increase the nameplate capacity of the energy storage property by 5 kWh or more be removed. Section 48(c)(6)(B) sets forth the 5 kWh requirement for modifications to energy storage property so it cannot be removed. The final regulations do not adopt this comment.

Multiple commenters requested clarification that the minimum 5 kWh capacity increase needed for modifications of energy storage under section 48(c)(6)(B) be the nameplate capacity not actual capacity (which may have decreased due to degradation). The commenters explained that focusing on nameplate capacity will provide greater certainty than measuring actual capacity. Another commenter explained that nameplate capacity should be tested at the time of purchase, rather than on the date of modification, especially due to non-degrading systems and storage augmentation. The commenter noted that if augmentations are implemented, the installed energy storage capacity of the energy storage technology is increased (original installation nameplate capacity plus the augmentation totaling the amount installed), but the nameplate capacity of the property and interconnection agreement remains unchanged.

Section 48(c)(6)(B) provides that, for purposes of the modification rule, nameplate capacity is examined at the time of the modification and must result in a nameplate capacity increase from below 5 kWh to not less than 5 kWh (for energy storage property originally placed in service before enactment of

the IRA) or by at least 5 kWh (for energy storage technology placed in service after the enactment of the IRA that is later modified). Consistent with the statute, the Proposed Regulations would not take into account actual capacity but instead use nameplate capacity. The only instance in which section 48(c)(6)(B) uses the term “capacity” alone, rather than “nameplate capacity”, is nonetheless still a reference to nameplate capacity. Specifically, section 48(c)(6)(B)(i) refers to property that “would be described in subparagraph (A)(i), except that such property has a capacity of less than 5 kilowatt hours”. The referenced section 48(c)(6)(A)(i) text makes clear that the 5 kWh capacity threshold is, in fact, a nameplate capacity threshold. Therefore, for the avoidance of doubt, the final regulations at § 1.48–9(e)(10)(v)(A) clarify that the relevant pre-modification capacity is the nameplate capacity. Therefore, other than the minor clarification noted above, these comments were not adopted in the final regulations.

Additionally, a commenter requested clarification whether capacity must be added within the bounds of an existing electrical storage property enclosure, or whether the enclosure may be expanded or an additional enclosure added to accommodate the increased capacity. Another commenter requested clarification that adding new battery racks to an existing enclosure would be eligible for the section 48 credit if the nameplate capacity of the new battery rack is at least 5 kWh. The Proposed Regulations would provide no limitation on the physical space occupied by an energy storage technology and the final regulations retain this approach.

5. Qualified Biogas Property

Section 48(a)(3)(A)(x) was added by the IRA to provide that energy property includes qualified biogas property. Section 48(c)(7)(A) defines qualified biogas property as property comprising a system that converts biomass (as defined in section 45K(c)(3), as in effect on the date of enactment of section 48(a)(7) (August 16, 2022)) into a gas that consists of not less than 52 percent methane by volume, or is concentrated by such system into a gas that consists of not less than 52 percent methane, and captures such gas for sale or productive use, and not for disposal via combustion. Section 48(c)(7)(B) provides that qualified biogas property includes any property that is part of such system that cleans or conditions such gas.

Proposed § 1.48–9(e)(11) would adopt the statutory definition of qualified biogas property. Proposed § 1.48–9(f)(2)(i) would provide that components of property are considered qualified biogas property if they are functionally interdependent, that is, if the placing in service of each component is dependent upon the placing in service of each of the other components in order to perform the intended function of the qualified biogas property as described in proposed § 1.48–9(e)(11)(i). The Proposed Regulations adopted this approach because it provides a function-oriented method to determine what is considered included in a qualified biogas property and is broad enough to encompass technological changes. Additionally, proposed § 1.48–9(e)(11)(i) would provide examples of functionally interdependent components of a qualified biogas property including, but not limited to, a waste feedstock collection system, a landfill gas collection system, mixing or pumping equipment, and an anaerobic digester.

Proposed § 1.48–9(e)(11)(i) would clarify that upgrading equipment is not a functionally interdependent component of qualified biogas property. The preamble to the Proposed Regulations stated that the upgrading equipment that is necessary to condition biogas into the appropriate mixture for injection into the pipeline is not functionally interdependent with the qualified biogas property that converts biomass into a gas containing not less than 52 percent methane and captures such gas for sale or productive use as specified in the statute. The preamble to the Proposed Regulations also stated that while this upgrading equipment makes the injection of biogas into a pipeline possible, such upgrading equipment is not necessary to satisfy the statutory requirements that the biogas converted from biomass contain not less than 52 percent methane, and that it be captured for sale or productive use.

a. Correction and Cleaning and Conditioning Property

The Correction published on February 22, 2024, stated that a correction was needed to clarify that gas upgrading equipment that is necessary to concentrate the gas from qualified biogas property into the appropriate mixture for injection into a pipeline through removal of other gases such as carbon dioxide, nitrogen, or oxygen, would be energy property if it is an integral part of an energy property as defined in proposed § 1.48–9(f)(3). Accordingly, the Proposed Regulations

were corrected by revising the following sentence: “However, gas upgrading equipment necessary to concentrate the gas into the appropriate mixture for injection into a pipeline through removal of other gases such as carbon dioxide, nitrogen, or oxygen is not included in qualified biogas property.” to read as follows: “However, gas upgrading equipment necessary to concentrate the gas into the appropriate mixture for injection into a pipeline through removal of other gases such as carbon dioxide, nitrogen, or oxygen is not a functionally interdependent component (as defined in paragraph (f)(2)(ii) of this section) of qualified biogas property.”

The Proposed Regulations and Correction requested comments regarding what types of components may be included within the definition of cleaning and conditioning property provided in the definition of qualified biogas property in section 48(c)(7)(B). The Treasury Department and the IRS received numerous comments regarding the components that should be included in qualified biogas property.

Commenters universally supported the inclusion of upgrading equipment in qualified biogas property and some asserted that the Proposed Regulations’ exclusion of upgrading equipment conflicts with analogous provisions in the Proposed Regulations that allow the inclusion of power conditioning and transfer equipment such as that allowed in offshore wind projects. Most commenters asserted that upgrading equipment should be considered functionally interdependent to qualified biogas property and therefore, eligible for the section 48 credit. A commenter requested that biogas energy property include a definition of system for section 48(c)(7)(A) purposes that includes all integrated property.

Commenters also expressed concern that the Proposed Regulations and the Correction unduly limit what would be included as qualified biogas property. For example, a commenter stated that property used to capture, clean, condition, upgrade, and perform “chemical, mechanical, or thermochemical conversion” are all necessary to convert biogas into usable products. Commenters explained that the Proposed Regulations would allow only biogas property with limited utility to qualify and would exclude a majority of costs related to biogas property. For example, a commenter stated that under the Proposed Regulations, property used to produce the raw biogas from the landfill, remove sulfur from the biogas, and remove the volatile organic compounds from the biogas would

appear to qualify for the section 48 credit, whereas property used to remove carbon dioxide, nitrogen, and oxygen from biogas and to otherwise prepare the gas for injection into a natural gas pipeline would not qualify for the section 48 credit. The commenter asserted that the equipment used in these latter processes are essential components of a RNG system and comprise approximately 85 percent of overall capital investment in an RNG project.

A commenter asserted that the Proposed Regulations read the sale or productive use language out of the statute. Another commenter stated that the Proposed Regulations would limit eligibility for the section 48 credit to essentially raw biogas (if it can meet the 52 percent methane threshold). According to the commenter, raw biogas generally cannot be used without some treatment due to the contaminants present in the gas stream and even if the raw biogas can be used, such use is typically through combustion (that is, burned on-site for electricity or as process energy), which is excluded under the statute. The commenter explained that, at best, the Proposed Regulations may allow some medium-BTU gas, which is biogas that received only limited treatment to remove certain contaminants, to be eligible for the section 48 credit. However, medium-BTU gas is not as valuable as RNG and is typically used locally.

Generally, many commenters agreed that the utility of biogas is significantly limited without proper cleaning and conditioning. These commenters stated that, without upgrading, the extracted biogas faces considerable challenges for marketability because its high moisture content and corrosive properties make it difficult to safely store, compress, mix with other gases, transport, inject into the natural gas system, or market. Consequently, the non-upgraded biogas is of limited utility, such as on-site combustion to create process heat, generate electricity, or to be flared into the atmosphere. In contrast, a commenter described the marketable uses of upgraded RNG as including, but not limited to, advanced electricity generation in fuel cells, hydrogen production, advanced liquid fuels for aviation, and RNG for use in trucking, industrial processes, and space heating.

Generally, commenters requested the final regulations correct the treatment of “gas upgrading equipment” in the Proposed Regulations to instead treat it as property that “cleans and conditions” gas, asserting that such treatment is consistent with the plain text of the statute and the intention of Congress. To

support this position, a commenter asserted that the statute and legislative history do not contemplate any limitation on what property “cleans or conditions” gas. Several commenters cited certain congressional statements regarding the Agriculture Environmental Stewardship Act to support their reading of the definition of qualified biogas property added to section 48 by the IRA.

Similarly, many commenters asserted there is a misunderstanding in the Proposed Regulations that the term “upgrading” is interchangeable with the phrase “cleaning and conditioning.” For example, a commenter stated that the exclusion of upgrading equipment appears contradictory to the statute, which expressly includes cleaning and conditioning property. This commenter noted that the Proposed Regulations misunderstand the “upgrading” process, which is an industry verbiage, but is essentially part of the “cleaning and conditioning process” necessary to process biogas to standards that support its productive use or sale. Another commenter stated that the DOE uses these terms interchangeably.

Additionally, a few commenters stated that the Proposed Regulations incorrectly implemented the 52 percent measurement as a ceiling rather than a floor. For example, a commenter pointed to the preamble to the Proposed Regulations as mistakenly interpreting that the statute was enacted to incentivize taxpayers to produce 52 percent methane (and nothing greater). The commenter stated that this is contrary to the statute, to the relevant legislative history, and to an understanding of how the quantities of biogas that can be produced by RNG developers can be used.

Several commenters also pointed to the reference to “such gas” in the statute to evidence that “such gas” refers to biogas not less than 52 percent methane and captured for sale or productive use. A commenter asserted that the reference to “such gas” provides a two-prong test. According to the commenter, first the system must convert the biomass into a gas that is between 52 percent and 100 percent methane by volume and second the system must capture “such gas for sale or productive use, and not for disposal via combustion”; thus, in the commenter’s view, the reference to “such gas” is to gas described in the first prong.

Another commenter stated that the reference to “such gas” includes biogas that is at least 52 percent methane by volume. The commenter concluded therefore, that the statute does not exclude from qualified biogas property

cleaning and conditioning equipment that is used to process biogas that is already 52 percent methane by volume.

Another commenter stated that the statute uniquely and broadly defines the term “cleaning and condition property” not as the Proposed Regulations suggest, which limits its applicability to instances in which an otherwise ineligible property needs cleaning and conditioning to be eligible. Instead, the commenter noted that the Proposed Regulations’ interpretation of section 48(c)(7)(B) ignores the reference to “such gas,” referring to the definition in section 48(c)(7)(A), which clearly states “any property which is part of such system which cleans or conditions such gas.” The commenter asserted that the term “such gas” refers to biogas that is not less than 52 percent methane and captured for sale or productive use, as confirmation that cleaning and conditioning equipment for gas that has already met the conditions set forth in section 48(c)(7)(A), is qualified biogas property.

Commenters also objected to the exclusion of gas upgrading equipment provided in the Proposed Regulations because commenters assert that it could negatively impact investment and financing for biogas projects, especially those on small farms, agricultural projects, and municipal projects. A commenter, who works with smaller scale farms including dairy farms, asserted that the upgrading equipment is integral to the cleaning and conditioning process, and crucial for achieving energy output suitable for productive use or sale, especially for projects in rural and remote communities. The commenter concluded that the limitation on upgrading equipment provided in the Proposed Regulations will prevent projects from moving forward and disproportionately impact small agricultural projects.

Several commenters asserted that the statute supports redefining the components of property that are considered functionally interdependent to a qualified biogas property. A commenter suggested redefining qualified biogas property as property that is placed in service to upgrade biogas for sale or a productive use beyond the point that such gas is typically vented or flared. This commenter explained that this definition properly places the focus on property used to convert an unproductive substance (such as landfill gas) into a productive substance (such as RNG).

Another commenter agreed with the inclusion of the gas upgrading

equipment as integral property but stated that the Correction is limited to technology specific to upgrading for pipeline injection and therefore, is out of line with the technology neutral definition in the statute. The commenter asserted that upgrading, processing, or reforming should be viewed without limitation to specific technology and that many biomass resources may not be close to natural gas pipelines or have other limitations on pipeline injection. The commenter further stated that the focus should be on the components required for property that captures such gas for sale or productive use. Therefore, if additional onsite steps are required to process raw biogas that meets the minimum 52 percent methane content threshold into a usable product, whatever the product may be, then the property necessary to take those steps should be considered qualified biogas property.

The Treasury Department and the IRS agree with the commenters that the proposed rule addressing gas upgrading equipment is too restrictive. As commenters explained, upgrading equipment is used interchangeably with cleaning and conditioning equipment and such equipment may be needed to make the biogas suitable for sale or productive use. The Treasury Department and IRS also agree that specific upgrading equipment should not be identified for injection into a pipeline. Therefore, the final regulations provide more generally that gas upgrading equipment is cleaning and conditioning property.

Commenters requested clarifications regarding what types of equipment are considered qualified biogas property, including as functionally interdependent components or as property integral to the qualified biogas property. For example, a commenter requested that a list of equipment be included as qualifying biogas property in the final regulations including gas removal equipment, pressure and temperature control equipment, moisture removal equipment, compression equipment, thermal oxidizer equipment, gas recycling equipment, and synthetic methane production equipment. Another commenter proposed revisions to the example in proposed § 1.48–9(e)(11)(i) to include as qualified biogas property cleaning and conditioning equipment used to remove toxins or any other impurities from raw biogas or concentrate the gas into the appropriate mixture for sale or productive use through removal of other gases such as carbon dioxide, nitrogen, or oxygen. A commenter requested the inclusion of

landfill municipal solid waste as a renewable resource to produce renewable natural gas as energy property because such a system may implement thermal gasification and other relevant technologies. Another commenter suggested that qualified biogas property should include the pipeline and compression equipment necessary to transport the gas from the production plant to the common carrier pipeline.

Another commenter suggested that the Proposed Regulations be modified to specifically provide that the property comprising a biogas conversion/concentration and capture system, including any property that is part of such system and that cleans and conditions, is a single unit of energy property (collectively referred to as a RNG Production System). This commenter also suggested that the gas upgrading equipment necessary to concentrate the gas into the appropriate mixture for injection into a pipeline through the removal of other gases and impurities is a functionally interdependent component of the RNG Production System. This commenter also described a second type of property, a landfill gas collection system (LFG Collection System), and noted that the LFG Collection System is property that is an integral part of, but not functionally interdependent with, the RNG Production System because the placing in service of an LFG Collection System is not dependent upon placing in service the RNG Production System, but the LFG Collection System is used directly in and essential to the completeness of the intended function of the RNG Production System. While this commenter’s focus was on landfills, the commenter noted the same analysis would apply to other collection systems such as anaerobic digesters operating at farms. Some commenters asserted that anaerobic digesters were functionally interdependent property, while others asserted that anaerobic digesters were integral property.

After consultation with the DOE, the Treasury Department and IRS understand that the methane content of biogas in an anaerobic digester can vary between 44% and 68%. Thus, if biogas processed by an anaerobic digester consists of not less than 52% methane and all other statutory requirements are met, an anaerobic digester would be a unit of energy property. Commenters explained that although biogas exiting an anaerobic digester might not be put to productive use, the statute requires that qualified biogas property capture the gas “for sale or productive use.” To illustrate, if a taxpayer places in service

an anaerobic digester, which generates biogas meeting the not less than 52% methane requirement, and sells the biogas to another taxpayer who in turn places in service cleaning and conditioning property to clean such biogas, each taxpayer has a qualified biogas property and may be eligible for the section 48 tax credit. On the other hand, if the biogas in the anaerobic digester does not meet the not less than 52% methane requirement, then such digester is not, by itself, a qualified biogas property. Nevertheless, the anaerobic digester still may be an integral part of other qualified biogas property, such as a system that cleans and conditions the biogas.

The Treasury Department and the IRS intend that the final regulations provide a function-oriented approach to determining what property is considered energy property, including qualified biogas property. The Proposed Regulations provided examples of types of property that are included as qualified biogas property, which were intended to be illustrative but not exclusive. Therefore, the final regulations do not include additional examples of property that is included as qualified biogas property but do clarify that property that is an integral part of qualified biogas property includes, but is not limited to, a waste feedstock collection system, landfill gas collection system, and mixing and pumping equipment.

b. Flaring Allowance

The preamble to the Proposed Regulations explained that a commenter to Notice 2022–49 stated that some properties that produce electricity from gas using a combustion process may flare waste or tail gas, including during commissioning or maintenance periods. This commenter recommended a de minimis exception. In response to this concern, the Proposed Regulations requested comments regarding whether such an exception is necessary and what should be considered de minimis for this purpose.

All comments received in response to this request were in favor of an exception. Some comments pointed to the overarching purpose of the qualified biogas property and noted that nominal leakage should not prevent property from qualifying. For example, a commenter asserted that if the overarching purpose of the biogas is for sale or productive use, then the combustion of a de minimis portion should not prevent a property that produced such gas from being a qualified biogas property. Similarly, a commenter recommended allowing a de

minimis exception for flare waste or tail gas so that otherwise eligible biomass systems will not be disqualified from the credit due to small amounts of leakage arising from normal business operations.

Another commenter pointed to the benefit of hazard reduction associated with nominal flaring. This commenter stated that flaring in appropriate circumstances should not disqualify a facility, because “flares are often required as a safety and emissions hazard reducer to be used in case of emergency, accidental release, start-up and shut-down procedures, and other rare occurrences.”

The Treasury Department and the IRS understand commenters’ concerns regarding whether flaring performed for commissioning, maintenance, safety, or other reasons may impact eligibility for the section 48 tax credit. Qualified biogas property is defined, in part, as capturing biogas “for sale or productive use, and not for disposal via combustion.” The Treasury Department and the IRS interpret this statutory requirement to not impact a qualified biogas property that combusts, or flares, some biogas under standard operating conditions, provided the primary purpose of the qualified biogas property is sale or productive use of biogas and any flaring complies with all relevant Federal, State, regional Tribal, and local laws and regulations. After consulting the DOE, the Treasury Department and the IRS understand that flare permits are specific to a given biogas facility design. Determining the amount of flaring appropriate for safety purposes is specific to each qualified biogas property and enforcing that limit is best left to relevant Federal, State, regional, local, and/or Tribal regulators. Flaring performed in accordance with applicable permits from relevant Federal, State, regional, local, and/or Tribal regulators should not jeopardize a qualified biogas property’s eligibility for the section 48 credit. Accordingly, the final regulations at § 1.48–9(e)(11) provide that while a qualified biogas property generally may not capture biogas for disposal via combustion, combustion in the form of flaring will not disqualify a qualified biogas property, provided the primary purpose of the qualified biogas property is sale or productive use of biogas and any flaring complies with all relevant Federal, State, regional, Tribal, and local laws and regulations.

c. Point of Measurement

Proposed § 1.48–9(e)(11)(ii) would provide that the methane content requirement described in section

48(c)(7)(A)(i) and in the Proposed Regulations is measured at the point at which gas exits the biogas production system, which may include an anaerobic digester, landfill gas collection system, or thermal gasification equipment. This measurement point was described in the Proposed Regulations as the point at which a taxpayer generally must determine whether it will convert the biogas to fuel for sale or use it directly to generate heat or to fuel an electricity generation unit.

Several commenters requested clarification regarding the point of measurement for the methane content requirement. A commenter specifically requested clarification regarding the point at which the gas exits the biogas production system. Several commenters noted that the point of measurement provided in the Proposed Regulations was incorrect because it is too early in the process. These comments responded to the Proposed Regulations as well as the Correction. This sentiment generally is consistent with the commenters’ view that biogas upgrading equipment should be considered eligible biogas property.

One commenter stated that the Correction does not address the measurement point for the methane content requirement for purposes of determining whether the definition of “qualified biogas property” is met. The commenter asserted that the final rule must clarify that the 52 percent methane content requirement is measured at the point at which the biogas is going to be sold or put to productive use, which would be after the biogas has been passed through the cleaning and conditioning and/or gas upgrading equipment. The commenter suggested that a change should be made regardless of whether gas upgrading equipment is considered “integral” or “functionally interdependent.” The commenter submitted another comment after the Correction was issued urging that the methane content of 52 percent should be measured at the point at which the gas is ready for sale or applicable productive use, that is, at the end of the cleaning and conditioning process. Several commenters supported these comments and incorporated them into their own comments.

Another commenter similarly stated that the methane content should be measured at the end of the cleaning and conditioning process, which would be the point at which the biogas is going to be sold or put to a productive use, to ensure it consists of at least 52 percent methane. Many commenters have asserted that the 52 percent measurement is a floor (not a

ceiling). Therefore, even if the measurement point were to occur earlier, taxpayers that later upgrade the biogas could still satisfy the 52 percent requirement.

The Treasury Department and the IRS agree that the point of measurement in the Proposed Regulations was too early in the biogas production process, which could potentially frustrate compliance with the “sale or productive use” requirement. Therefore, the final regulations adopt at § 1.48–9(e)(11)(ii) the rule that the methane content requirement described in section 48(c)(7)(A)(i) and in the Proposed Regulations is measured at the point at which the biogas exits the qualified biogas property.

6. Microgrid Controllers

Section 48(a)(3)(A)(xi) provides that energy property includes microgrid controllers. Section 48(c)(8)(A) defines a microgrid controller as equipment that is part of a qualified microgrid and designed and used to monitor and control the energy resources and loads on such microgrid. Section 48(c)(8)(B) defines a qualified microgrid as an electrical system that includes equipment that is capable of generating not less than 4 kW and not greater than 20 MW of electricity; is capable of operating in connection with the electrical grid and as a single controllable entity with respect to such electrical grid, and independently (and disconnected) from such electrical grid; and is not part of a bulk-power system (as defined in section 215 of the Federal Power Act (16 U.S.C. 824o)).

Proposed § 1.48–9(e)(12)(i) would provide generally that a microgrid controller is equipment that is part of a qualified microgrid and is designed and used to monitor and control the energy resources and loads on such microgrid. A qualified microgrid is an electrical system that includes equipment that is capable of generating not less than 4 kW and not greater than 20 MW of electricity; is capable of operating in connection with the electrical grid and as a single controllable entity with respect to such electrical grid, and independently (and disconnected) from such electrical grid; and is not part of a bulk-power system (as defined in section 215 of the Federal Power Act (16 U.S.C. 824o)). Proposed § 1.48–9(e)(12)(ii) would provide that for purposes of proposed § 1.48–9(e)(12), a qualified microgrid includes an electrical system that is capable of operating in connection with the larger electrical grid, regardless of whether a connection to the larger electrical grid exists.

The preamble to the Proposed Regulations requested comments on whether the rules for functionally interdependent property as would be provided in proposed § 1.48–9(f)(2)(ii) would be sufficient to determine the components that should be included as part of a microgrid controller, or whether another test is needed due to the specific role of microgrid controllers and their components. A few commenters advocated for the application of the functional interdependence standard to microgrid controllers. For example, one commenter stated that the functional interdependence standard is thoughtful, provides direct language applicable to the definition of microgrid controllers, and creates an easy and thorough way to identify the multi-faceted infrastructure that goes into microgrid controllers to generate and store energy.

However, several commenters requested that particular components of property be listed specifically in the definition of microgrid controllers: optimization software, communications software, communications equipment, incoming service, cables, wiring, ethernet switches, computer hardware, load controllers, programmable logic controllers, meters and relays, building management systems, local human management interface screens, protective relays, breakers, routers, and other hardware necessary to monitor and control the energy resources and loads on a qualified microgrid.

Additionally, two commenters specifically requested the inclusion of switchgear in the definition of microgrid controllers. One of the commenters explained that switchgear is the true backbone of the microgrid controls system. However, the commenter also pointed out that switchgear is an essential part of any building’s electrical operations with or without a microgrid. This commenter also noted that because switchgear is a critical piece of a building’s infrastructure, it is usually also owned by the building owner. The commenters generally suggested that if switchgear is owned by the building owner but paid for by the taxpayer that owns the microgrid controller, then the cost of the switchgear should be included in the basis of the taxpayer’s section 48 credit for the microgrid controller similar to the inclusion of interconnection property costs in the credit basis of certain lower-output energy properties.

The two commenters also suggested that if switchgear is part of an existing building, and a microgrid controller is added in a case in which a taxpayer is applying the 80/20 Rule, then the

switchgear should not be taken into account for purposes of the 80/20 Rule. For example, one of the commenters explained that switchgear in an existing building may be sufficient for connecting microgrid controls with relevant distributed energy resources and load resources either as is or with some additional pieces of equipment and because all microgrid control components will connect through the switchgear, it is critical that the integrated but standalone microgrid control equipment is not considered as retrofitting of the switchgear in existing buildings under the 80/20 Rule. The other commenter likewise recommended that equipment integrated into switchgear to enable the installation of a microgrid controller should not be considered retrofitted equipment but a separate purchase of functionally interdependent energy property.

The Treasury Department and the IRS consulted with the DOE and confirmed that while switchgear may be a necessary part of a microgrid, switchgear is neither functionally interdependent nor integral to a microgrid controller. Switchgear plays a vital role in ensuring the reliability and safety of microgrids by managing power distribution, providing protection, and maintaining system integrity. However, the microgrid controller is responsible for the overall management and optimization of a microgrid’s energy resources and its interaction with the main grid. For example, in the building context, technically a fuse or circuit breaker could be considered a switchgear, in which case they would exist in buildings with or without microgrid control. As a result, switchgear is not part of the energy property defined as a “microgrid controller” and is not taken into account for purposes of the 80/20 Rule. For further discussion of the 80/20 Rule see part III.A. of this Summary of Comments and Explanation of Revisions.

After considering comments requesting that the final regulations add more examples of specific components eligible as part of a microgrid controller, the Treasury Department and the IRS decline to do so. The Treasury Department and the IRS have further considered the unit of energy property as applied to microgrid controllers and conclude that the proposed rule is clear.

Commenters also requested clarification concerning what is included as a “microgrid” for purposes of section 48. Two commenters requested the adoption of language clarifying that an eligible microgrid includes an electrical system that is

capable of operating in connection with the larger electrical grid regardless of whether the microgrid is physically connected to the electrical grid. Another commenter noted that until it is clarified that single-family homes with systems greater than 4 kW are eligible “microgrids,” tax equity investors likely will be reluctant to finance the installation of load controllers associated with rooftop solar, storage, and residential microgrid installations. Similarly, another commenter asserted that the term “qualified microgrid” applies both to microgrids as they are conventionally known, which could involve many households or businesses, and to “nanogrids,” which usually involve a single household. Regarding the request for clarification about a microgrid needing to be physically connected to the electrical grid, proposed § 1.48–9(e)(12)(ii) already provides that a qualified microgrid includes an electrical system that is capable of operating in connection with the larger electrical grid, regardless of whether a connection to the larger electrical grid exists. Regarding the other comments, proposed § 1.48–9(e)(12)(i) adopts the statutory definition of a qualified microgrid as an electrical system that includes equipment that is capable of generating not less than 4 kW and not greater than 20 MW of electricity. This definition encompasses a wide range of technologies. To the extent that such “nanogrids” used in single family homes meet the definition under the statute and proposed § 1.48–9(e)(12)(i), it is unnecessary to change the definition to identify this certain technology. The proposed rule is adopted without change.

C. Definition of Energy Property and Scope of Included Components

Since shortly after the enactment of section 48, energy property eligible for the section 48 credit has been interpreted by the Treasury Department and the IRS to include, in addition to energy generation property, costs related to components such as power conditioning equipment, transfer equipment, and parts related to the functioning of that equipment.

On November 9, 1978, the Energy Tax Act of 1978, amended section 48 by adding a new subsection (then section 48(l)) to define “energy property.” Public Law 95–816, 92 Stat. 2174. On January 23, 1981, the Treasury Department and the IRS promulgated T.D. 7765, 46 FR 7287–01, to provide additional guidance regarding the definition of energy property. The preamble to T.D. 7765 states that “[i]n

response to comments, the definition of solar energy property was expanded to make it clear that it includes storage devices, power conditioning equipment, transfer equipment, and property solely related to the functioning of those items. However, such equipment does not include transmission equipment.”

The preamble to T.D. 7765 also states that “[a] number of comments cited specific legislative history to the effect that wind energy property includes ‘transfer equipment.’” T.D. 7765 defines “transfer equipment” as including equipment that permits the aggregation of electricity generated by several windmills and equipment that alters voltage in order to permit transfer to a transmission line. T.D. 7765 adds transfer equipment, but not transmission lines, to the definition of wind energy property.

Former § 1.48–9(d)(3) defines “solar energy property” as equipment that uses solar energy to generate electricity, and includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. This provision also provides that solar energy property used to generate electricity includes only equipment up to (but not including) the stage that transmits or uses electricity.

Former § 1.48–9(e) defines “wind energy property” as consisting of a windmill, wind-driven generator, storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. Section 48(a)(3) no longer includes wind energy property as a type of energy property. However, qualified wind facilities (including qualified offshore wind facilities) may be qualified investment credit facilities that a taxpayer may elect to treat as energy property if they meet all the requirements provided in section 48(a)(5).

While not specifically addressed in section 48, guidance published in the Internal Revenue Bulletin interpreting section 48 has provided that functionally interdependent components are considered components of energy property eligible for the section 48 credit. In Notice 2018–59, 2018–28 I.R.B. 196, the Treasury Department and the IRS clarified components that are considered part of an energy property. Section 7.01(1) of Notice 2018–59 states that an energy property generally includes all components of property that are functionally interdependent (unless such equipment is an addition or modification to an energy property). Notice 2018–59 also provides that

components of property are functionally interdependent if the placing in service of each component is dependent upon the placing in service of each of the other components in order to generate electricity. Further, Notice 2018–59 cites Revenue Ruling 94–31, 1994–1 C.B. 16, in stating that functionally interdependent components of property that can be operated and metered together and can begin producing electricity separately from other components of property within a larger energy project will be considered an energy property.

In the context of defining “section 38 property,” § 1.48–1(d)(4) provides that “section 38 property” is “used as an integral part of one of the specified activities [for which section 38 property may function] if it is used directly in the activity and is essential to the completeness of the activity.” Section 1.48–1(d)(4) also provides that “[p]roperty shall be considered used as an integral part of one of the specified activities if so used either by the owner of the property or by the lessee of the property.” Notice 2018–59 incorporates the concept of integral property from § 1.48–1(d) to provide that certain property that is an integral part of an energy property is included in energy property for purposes of the section 48 credit.

Notice 2018–59 also explains that property that is “functionally interdependent” to the generation of electricity is treated as a unit of energy property. Further, Notice 2018–59 provides that certain other property integral to the production of electricity is included in determining what costs to include in the basis of energy property and the date on which construction of the energy property began. Section 7.02(1) of Notice 2018–59 includes an example illustrating that, while a transmission tower located at a site where energy property is located is not energy property because transmission is not an integral part of the activity performed by the energy property, a custom-designed transformer that steps up the voltage of electricity produced at an energy property to the voltage needed for transmission is power conditioning equipment, which is an integral part of the activity performed. In addition, section 7.02(2) of Notice 2018–59 explains that onsite roads used to operate and maintain the energy property are integral to the production of electricity, but not roads used primarily to access the site or primarily for employee or visitor vehicles. Similarly, section 7.02(3) and (4) of Notice 2018–59 explain that fences are not integral to the production of

electricity nor are buildings, unless the building is essentially an item of machinery or equipment, or a structure that houses property that is integral to the activity of an energy property if the use of the structure is so closely related to the use of the housed energy property that the structure clearly can be expected to be replaced if the energy property it initially houses is replaced.

One challenge in defining components that are included in energy property is determining the components that are common to all energy property, without limiting or constraining future technological advances. To avoid limiting future energy technologies, the Treasury Department and the IRS consulted with the DOE and determined that the best option is to adopt a function-oriented approach to describe the types of components that are considered energy property. Accordingly, proposed § 1.48–9(f) would adopt the concepts of functional interdependence and property that is an integral part of an energy property as provided in guidance published in the Internal Revenue Bulletin issued previously by the Treasury Department and the IRS.

Further, consistent with prior guidance, proposed § 1.48–9(f)(1) would provide the general rule that an energy property includes a unit of energy property that meets the requirements for energy property, is not excluded from energy property, and is of a type of energy property included in section 48(a)(3). Property owned by the taxpayer that is an integral part of an energy property is treated as energy property. Energy property does not include any electrical transmission equipment, such as transmission lines and towers, or any equipment beyond the electrical transmission stage. With the exception of the modification of energy storage technology (as provided in proposed § 1.48–9(e)(10)(iii)) and the application of the 80/20 Rule (as provided in proposed § 1.48–14(a)(1)), energy property does not include equipment that is an addition or modification to an existing energy property.

1. Unit of Energy Property

Proposed § 1.48–9(f)(2)(i) would provide, in part, that the term unit of energy property means all functionally interdependent components of property (as defined in proposed § 1.48–9(f)(2)(ii)) owned by the taxpayer that are operated together and that can operate apart from other energy properties within a larger energy project (as defined in proposed § 1.48–13(d)). For rooftop solar energy property, all

components of property that are installed on a single rooftop would also be considered a single unit of energy property under the Proposed Regulations.

A commenter requested additional examples regarding the “unit of energy property” with respect to electrical energy storage and other energy property. For example, the commenter requested an example illustrating that an individual battery capable of operating on its own or with other batteries is a “unit of energy property.” The commenter asserted that this should be the clear result if such a battery can “operate apart from other energy properties,” including, for example, a single storage container with multiple battery packs. The commenter noted that this is also consistent with prior guidance published in the Internal Revenue Bulletin regarding wind farms. The commenter asserted that if under this prior guidance, the addition of a new wind turbine is treated as the addition of a new unit of energy property, then the same rule should apply to batteries. A definitive response to such comments would require the Treasury Department and the IRS to conduct a complete factual analysis of the property in question, which may include information beyond that which was provided by the commenters. Because more information is needed to make the determinations requested by the commenters, the requested clarifications are not addressed in these final regulations.

With respect to solar energy property, some commenters suggested that the Proposed Regulations did not clearly draw the line between the unit of energy property and property integral to the unit of energy property. For example, a commenter stated that the final regulations need to clarify that a unit of solar energy property includes all solar panels, racks, wires, cables, and equipment connected through a single inverter (rather than all property through the transformer). This commenter referred to *Example 1* in proposed § 1.48–9(f)(5)(i) and recommended adding an example (or modifying the existing example) to clarify the components in the unit of solar energy property. This commenter explained that this is necessary to comport with the definition of a unit of energy property as all functionally interdependent components, since each group of components connected through an inverter may be operated independently. Similarly, a commenter requested that the final regulations clarify that a solar project may have multiple units of energy property

connected through a single inverter. Another commenter also requested a new or revised example to illustrate that for a larger-scale ground-mounted solar array, a “unit of energy property” is a single string or block of panels connected to each other and through a common inverter.

As highlighted by commenters, solar energy property may be configured in different ways. The Treasury Department and IRS agree with commenters that clarity on how the definition of a unit of energy property is applied to solar energy property is warranted. Under the Proposed Regulations, a unit of energy property means all functionally interdependent components of property (as defined in proposed § 1.48–9(f)(2)(ii)) owned by the taxpayer that are operated together and that can operate apart from other energy properties within a larger energy project (as defined in proposed § 1.48–13(d)). In applying this definition to a solar energy property, the Treasury Department and IRS view the unit of energy property as all the solar panels that are connected to a common inverter, which would be considered an integral part of the energy property, or connected to a common electrical load, if a common inverter does not exist. Accordingly, a large, ground-mounted solar energy property may be comprised of one or more units of energy property depending upon the number of inverters. The example in the final regulations is updated to reflect this. The final regulations adopt the definition of unit of energy property as proposed.

For rooftop solar energy property, all components of property that are installed on a single rooftop would also be considered a single unit of energy property under the Proposed Regulations. The final regulations adopt this rule as proposed.

2. Functional Interdependence

Proposed § 1.48–9(f)(2)(ii)(A) would provide that except as provided in proposed § 1.48–9(f)(2)(ii)(B), with respect to components of a unit of energy property, the term functionally interdependent means that the placing in service of each component is dependent upon the placing in service of each of the other components in order to generate or store electricity, thermal energy, or hydrogen as provided by section 48(c) and as described in proposed § 1.48–9(e).

Proposed § 1.48–9(f)(2)(ii)(B) would provide that in the case of solar process heat equipment, fiber-optic solar energy property, electrochromic glass property, GHP property, qualified biogas property,

and microgrid controllers, with respect to components of such property, the term functionally interdependent means that the placing in service of each component is dependent upon the placing in service of each of the other components in order to perform the intended function of the energy property as provided by section 48(c) and as described in proposed § 1.48–9(e).

Many commenters requested that taxpayers be permitted to claim a credit for a functionally interdependent piece of property without owning the entire unit of energy property. These comments addressing ownership are discussed in part III.D. of this Summary of Comments and Explanation of Revisions.

Other commenters asserted that the statute does not require ownership of a unit of energy property; instead, the taxpayer must only own something that fits the relevant definition of “energy property.” These commenters stated that the proposed definitions of the unit of energy property based on “functional interdependence” and integral property have no basis in section 48. A commenter stated that section 48 does not require or permit the Treasury Department or the IRS to discriminate between types of energy property, whether based on functionality, ownership, or otherwise. This commenter referred to the flush language at section 48(a)(3)(D): “[energy property] shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.” The commenter said this language clearly signals that Congress recognizes that property may be part of a facility, but that the term “property” represents something less than a facility. The commenter also referred to Technical Advice Memorandum 8528001 (January 8, 1985) for the principle that components of property that may function together can also retain their separate identity for tax purposes. Lastly, the commenter stated that section 48 is focused on capitalized expenditures on items of property that are tangible personal property for Federal income tax purposes that are used in a trade or business. As a result, the commenter asserted that to define the types of property that qualify for the section 48 credit, taxpayers should focus on items of property that are integral to a process that Congress has chosen to incentivize, for example, the production of energy using certain inputs. This commenter requested the removal of the functional interdependence standard at proposed

§ 1.48–9(f) and asserted that while this standard is needed for section 45 to determine a qualified facility and for beginning of construction purposes, this standard is not needed for purposes of section 48.

Another commenter stated that the Proposed Regulations contradict the language and intent of the IRA by distinguishing between “functionally interdependent” components and “integral parts” of energy property to determine the owner or owners of energy property who may claim the section 48 credit. The commenter noted that this distinction contravenes the plain text of section 48, which permits the section 48 credit to be claimed by the owner of energy property if the original use of that energy property began with such owner.

The concept of a unit of energy property also is intertwined with the discussion of the 80/20 Rule in part III.A. of this Summary of Comments and Explanation of Revisions. In the context of the 80/20 Rule, a few commenters also did not agree with this concept. For example, a commenter highlighted the statutory language and pointed out that certain definitions of energy property use the word “equipment” as opposed to “system.” A commenter explained that some energy properties are defined as equipment that serves a function, such as solar energy property defined in section 48(a)(3)(A)(i) and GHP property defined in section 48(a)(3)(A)(vii). This commenter contrasted those definitions with statutory definitions of other types of energy property as comprising a system, such as the definition of CHP property in section 48(c)(3), thermal energy storage property as defined in section 48(c)(6)(C)(i), and qualified biogas property as defined in section 48(c)(7). The commenter concluded that the “unit of energy property” concept as provided in proposed § 1.48–9(f)(2)(i) is appropriate for energy properties defined as systems, but it should not be applied to energy properties defined as equipment.

Another commenter made a similar point about misalignment of the “unit of energy property” concept by focusing specifically on its application to geothermal energy property. The commenter stated that despite the statute defining “energy property” at the equipment level, “equipment used to produce, distribute, or use energy derived from a geothermal deposit,” the Proposed Regulations use the term “unit of energy property,” a term defined more expansively, such that it could be interpreted to be equivalent to an entire facility in the case of geothermal energy property. By using the term “unit of

energy property,” the commenter asserted that the Proposed Regulations give a misleading appearance that the rules comport with the statutory text of section 48 but define that term so that it is functionally equivalent to the term “facility” as applied in section 45.

In the context of microgrid controllers, some commenters agreed with the application of the functional interdependence standard. A commenter stated that microgrids are highly customizable, and the functional interdependence standard as proposed would allow accommodation of the different engineering requirements of qualified microgrids to future-proof the definition and allow for technological advances. This commenter agreed that the functional interdependence standard is sufficiently flexible for microgrid controllers.

The statute supports the Proposed Regulations’ definition and use of the terms “functionally interdependent” and “unit of energy property.” Additionally, these concepts have been adopted in previous guidance published in the Internal Revenue Bulletin under section 48, particularly Notice 2018–59, which provides guidance regarding the beginning of construction rules for the section 48 credit.

There are three key reasons for requiring an energy property to include all functionally interdependent components that are part of a unit of energy property. First, the statutory definition of each type of energy property as provided in section 48(a)(3) and (c) is included at proposed § 1.48–9(e). The unit of energy property definition at § 1.48–9(e)(2) aligns with these statutory definitions by encompassing the property required to generate electricity or perform the required function as described in the statute. If a taxpayer owns merely a component of property within a larger unit of energy property and is not required to place in service the entire unit of energy property, then in some cases there would be no certainty that the generation of electricity or other statutorily required function would be satisfied when the taxpayer claims the credit.

Some commenters suggested that this uncertainty could be eliminated or reduced by a coordinated operating plan among separate taxpayers. However, section 48 provides a credit only if a taxpayer places in service “energy property” as defined by statute. It does not provide a credit for placing in service a mere component of energy property, regardless of whether it is subject to an operating plan. In addition, taxpayers claim the section 48 credit by

filing Form 3468, *Investment Credit*, with their Federal income tax return. The IRS has no authority to compel taxpayers to coordinate tax credit claims or share tax return information with other taxpayers. Any taxpayer claiming a section 48 credit must satisfy the statutory requirements, as described by Congress, for each type of energy property, and the functional interdependence standard provided in the Proposed Regulations would ensure that the statutory requirements are met.

Second, focusing on the statutory language in section 48(a)(1), which provides that “the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year,” the definition of the unit of energy property using a functional interdependence standard is consistent with how the term “placed in service” has been interpreted by the courts and developed in various forms of guidance. Proposed § 1.48–9(b)(5) largely incorporates the general rules provided by § 1.46–3(d)(1) for determining when a taxpayer has placed a property in service for the section 48 credit. An energy property is considered “placed in service” in the earlier of the taxable year in which, under the taxpayer’s depreciation practice, the depreciation of such energy property begins or the taxable year in which the property is “placed in a condition or state of readiness and availability for a specifically assigned function.” See §§ 1.46–3(d)(1) and 1.167(a)–11(e)(1)(i).

To determine the taxable year in which depreciation begins, it is the energy property described in section 48(a)(3)(A) that must be depreciable. See section 48(a)(3)(C). As stated earlier, this energy property cannot be a mere component that would be depreciated in isolation from the rest of the components that would make up a unit of energy property. Treating individual components within a unit of energy property as an energy property would make it practically impossible to determine the taxable year in which the depreciation of components that comprise an energy property begins.

The Tax Court has said that “when an individual component that is designed to operate as a part of a larger system is incapable of contributing to the system in isolation, it is not regarded as placed in service until the entire system reaches a condition of readiness and availability for its specifically assigned function.” *Green Gas Del. Statutory Tr. v. Commissioner*, 147 T.C. 1, 52 (2016), *aff’d*, 903 F.3d 138 (D.C. Cir. 2018). The Tax Court further explained that components “are not to be considered

placed in service separately from the system of which they are an essential part.” *Olsen v. Commissioner*, T.C. Memo 2021–41, *aff’d* 52 F.4th 889 (10th Cir. 2022). See also *Sealy Power, Ltd. v. Commissioner*, 46 F.3d 382, 390 (5th Cir. 1995), *aff’g in part, rev’g in part on other grounds* T.C. Memo. 1992–168; see *Pub. Serv. Co. v. United States*, 431 F.2d 980, 984 (10th Cir. 1970) (holding that individual components of a power plant could not be considered separately because no component “would serve any useful purpose” on its own). As demonstrated by these rulings, courts have long interpreted the placed in service requirement to apply to all of the functionally interdependent components of a unit of property that must be placed in service collectively.

Lastly, in amending section 48 for taxable years after the enactment of the IRA, Congress did not contradict or displace these concepts, which had already been established in guidance published in the Internal Revenue Bulletin. In Notice 2018–59, the Treasury Department and the IRS clarified what components are considered part of an energy property. Section 7.01(1) of Notice 2018–59 states that an energy property generally includes all components of property that are functionally interdependent (unless such equipment is an addition or modification to an energy property). Further, Notice 2018–59 provides that components of property are functionally interdependent if the placing in service of each component is dependent upon the placing in service of each of the other components to generate electricity. Notice 2018–59 relies upon the rationale provided in Revenue Ruling 94–31, 1994–1 C.B. 16, that functionally interdependent components of property that can be operated and metered together and can begin producing electricity separately from other components of property within a larger energy project will be considered an energy property.

3. Integral Part of an Energy Property

Proposed § 1.48–9(f)(3)(i) would provide that for purposes of the section 48 credit, property owned by a taxpayer is an integral part of an energy property owned by the same taxpayer if it is used directly in the intended function of the energy property as provided by section 48(c) and as described in proposed § 1.48–9(e) and is essential to the completeness of the intended function. Property that is an integral part of an energy property is energy property. A taxpayer may not claim the section 48 credit for any property not owned by the taxpayer that is an integral part of the

taxpayer’s energy property. Multiple energy properties (whether owned by one or more taxpayers) may include shared property that may be considered an integral part of each energy property so long as the cost basis for the shared property is properly allocated to each energy property. The total cost basis of such shared property divided among the energy properties may not exceed 100 percent of the cost of such shared property. In addition, property that is an integral part of an energy property that is also shared by a qualified facility (as defined in section 45(d)) will not be considered property that is not energy property under proposed § 1.48–9(d). This means that property that is also used by a qualified facility (as defined in section 45(d)) may still be energy property.

Proposed § 1.48–9(f)(3)(ii) would provide that property that is an integral part of energy property includes power conditioning equipment and transfer equipment used to perform the intended function of the energy property as provided by section 48(c) and as described in proposed § 1.48–9(e). Power conditioning equipment includes, but is not limited to, transformers, inverters, and converters, which modify the characteristics of electricity or thermal energy into a form suitable for use or transmission or distribution. Parts related to the functioning or protection of power conditioning equipment are also treated as power conditioning equipment and include, but are not limited to, switches, circuit breakers, arrestors, and hardware and software used to monitor, operate, and protect power conditioning equipment.

Transfer equipment includes equipment that permits the aggregation of energy generated by components of energy properties and equipment that alters voltage to permit transfer to a transmission or distribution line. Transfer equipment does not include transmission or distribution lines. Examples of transfer equipment include, but are not limited to, wires, cables, and combiner boxes that conduct electricity. Parts related to the functioning or protection of transfer equipment are also treated as transfer equipment and may include items such as current transformers used for metering, electrical interrupters (such as circuit breakers, fuses, and other switches), and hardware and software used to monitor, operate, and protect transfer equipment.

Power conditioning equipment and transfer equipment that are integral to an energy property may be integral to another energy property or used by a qualified facility (as defined in section

45(d)), so long as the total cost basis of the integral property is not exceeded for purposes of the section 48 credit claimed with respect to any energy property or qualified facility that share such property.

Proposed § 1.48–9(f)(3)(iii) would provide that roads that are an integral part of an energy property are integral to the activity performed by the energy property such as onsite roads that are used for equipment to operate and maintain the energy property. Roads primarily for access to the site, or roads used primarily for employee or visitor vehicles, are not integral to the activity performed by an energy property.

Proposed § 1.48–9(f)(3)(iv) would provide that fencing is not an integral part of an energy property because it is not integral to the activity performed by the energy property. A commenter disagreed that fencing is not integral and asserted that concerns of national security dictate the fences, along with security systems and monitoring devices, be treated as integral to electricity generation. Fencing is not considered property integral to an energy property because it is not essential to the completeness of the intended function of an energy property, whether electricity generation or another specific function of energy property. This rule originally was provided in Notice 2018–59 and was included in the Proposed Regulations. The proposed rule is adopted without change.

For the various section 48 energy properties, commenters requested confirmation that certain property is an integral part of an energy property. A commenter requested clarification that an HVDC (high-voltage direct current) power system is either a “unit of energy property” or a “functionally interdependent component” of an offshore wind facility. If the HVDC power system is used directly in the intended function of the energy property and is essential to the completeness of the intended function, then the HVDC power system would be an integral part to an energy property, and thus, treated as part of that energy property. However, because the generation or storage of electricity or thermal energy is not dependent upon the placing in service of an HVDC power system, it is not a functionally interdependent component of an energy property and not a separate “unit of energy property.” Further, the Proposed Regulations included an offshore wind example, retained in these final regulations, that illustrates the application of the energy property rules

and addresses this commenter’s concern.

Another commenter requested that the final regulations clarify that software that operates, monitors, or protects the project applies more broadly than power conditioning and transfer equipment and may be considered property integral to an energy property. The commenter asserted that certain types of software used as a part of energy management systems, battery management systems, and microgrid controllers should be considered property integral to an energy property. This commenter also requested that software that optimizes and automates integral parts also be eligible. Finally, this commenter believed that the final regulations should clarify that a taxpayer who owns an energy property can include software costs in the basis of the energy property to compute the section 48 credit. Another commenter stated that the definition of power conditioning equipment expressly includes software used to “monitor, operate, and protect” such equipment and requested this definition be modestly expanded. As discussed in this part I.B.6. of the Summary of Comments and Explanation of Revisions, software may be integral to different types of energy property, including microgrid controllers. Therefore, software that optimizes and automates may be integral if it meets the integral property rule in § 1.48–9(f)(3). To the extent the commenter is asking whether software costs may be capitalized, that issue is beyond the scope of these regulations. The proposed rules are adopted without change.

In the context of qualified biogas property, commenters requested additional examples of what components may be integral property. Specifically, a commenter asked for clarification that mobile trailers or containers used to transfer biogas are integral to biogas energy property. The final regulations do not adopt these comments, as these regulations are meant to apply to all energy properties and do not provide an exclusive list of components of property that may be included in energy property. The final regulations do provide certain examples of property that is an integral part of qualified biogas property including, but not limited to, a waste feedstock collection system, a landfill gas collection system, and mixing or pumping equipment.

Additionally, a few commenters requested clarification regarding the determination of when construction begins in cases in which two or more energy properties share integral

property. The commenters proposed that the beginning of construction on one energy property does not determine when construction begins on another energy property, even if they share property integral to both energy properties. The Treasury Department and the IRS have addressed the beginning of construction rules in several pieces of Internal Revenue Bulletin guidance. The Proposed Regulations do not address these rules and they are beyond the scope of the final regulations.

In the context of solar energy property, a commenter requested that the Treasury Department and the IRS confirm that power conditioning equipment, including transformers, is not considered a component of a unit of energy property; rather, power conditioning equipment is an “integral part” of energy property. This commenter noted that the example included in proposed § 1.48–9(f)(5)(i) says this, but requested that the Treasury Department and the IRS clarify that the language in this example, “[a]ll components of the Property, up to and including the transformer are either functionally interdependent components of the Property or are integral parts of the Property,” means it is the transformer that is the “integral part” and the other solar components that are the functionally interdependent components of the property. This same commenter also requested that gen-tie lines be clarified as integral property. The final regulations, at § 1.48–9(f)(3)(ii), provide that power conditioning and transfer equipment is considered an integral part of an energy property and provide a nonexclusive list of types of property that are considered power conditioning equipment, including transformers, and transfer equipment.

Another commenter requested confirmation that offshore generating assets and components of island-based hydropower facilities qualify for the section 48 credit. This commenter also requested that similar rules and examples as those provided in the Proposed Regulations for offshore wind facilities apply to marine and hydrokinetic energy property. As discussed in more detail in part III.F. of this Summary of Comments and Explanation of Revisions, offshore wind facilities and qualified hydropower facilities are both qualified facilities under section 45(d) for which a taxpayer may make an election to claim the section 48 credit in lieu of the section 45 credit. Whether certain assets are included in an offshore wind facility or qualified hydropower facility as defined

in section 45(d) is beyond the scope of these final regulations.

4. Property Excluded From Energy Property

Proposed § 1.48–9(d)(2) would provide that energy property does not include power purchase agreements, goodwill, going concern value, or renewable energy certificates. A commenter requested additional clarification and examples of the potential bifurcation of tax basis between renewable energy certificates and an associated energy property. A definitive response to this comment would require the Treasury Department and the IRS to conduct a complete factual analysis of the renewable energy certificates and associated energy property, which may include information beyond that which was provided by the commenters. Because more information is needed to provide the clarification requested by the commenters, the requested clarification is not addressed in these final regulations. The final regulations adopt the rule as proposed.

II. Rules Relating to the Increased Credit Amount for Satisfying Certain Prevailing Wage and Apprenticeship Requirements and the Energy Project Rule

Section 48(a)(9) provides for an increased credit amount for energy projects for taxpayers who satisfy certain requirements. Section 48(a)(9)(A)(i) provides a general rule that in the case of any energy project that satisfies the requirements of section 48(a)(9)(B), the amount of the credit determined under section 48(a) (determined after the application of section 48(a)(1) through (8) and (15), and without regard to section 48(a)(9)(A)(i)) is equal to such amount multiplied by 5.

Section 48(a)(9)(A)(ii) provides that for purposes of section 48(a), the term “energy project” means a project consisting of one or more energy properties that are part of a single project.

Section 48(a)(9)(B) provides that a project meets the requirements of section 48(a)(9)(B) if it is one of the following: (i) a project with a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy (One Megawatt Exception); (ii) a project the construction of which begins before the date that is 60 days after the Secretary publishes guidance with respect to the requirements of section 48(a)(10)(A) and (11) (BOC Exception); and (iii) a project that satisfies the requirements of section

48(a)(10)(A) and (11) (PWA requirements).

Section 48(a)(10) provides rules with respect to the prevailing wage requirements (Prevailing Wage Requirements) under section 48, including the special recapture provision under section 48(a)(10)(C). Section 48(a)(10)(B) provides that rules similar to the correction and penalty procedures for a failure to satisfy the Prevailing Wage Requirements under section 45(b)(7)(B) apply, and those rules generally apply prior to a recapture event under section 48(a)(10)(C). Section 48(a)(11) provides that rules similar to the rules of section 45(b)(8) apply with respect to the apprenticeship requirements (Apprenticeship Requirements).

Under the BOC Exception in section 48(a)(9)(B)(ii), taxpayers may claim the amount of the increased credit without satisfying the PWA requirements if construction “begins before the date that is 60 days after the Secretary publishes guidance with respect to the [PWA requirements].” The Treasury Department and the IRS published Notice 2022–61, 2022–52 I.R.B. 560, on November 30, 2022, providing initial guidance with respect to the PWA requirements and starting the 60-day period described in those sections. To qualify for the BOC Exception, a taxpayer must begin construction of a section 48 energy project before January 29, 2023. Unless the One Megawatt Exception applies, taxpayers who do not meet the BOC Exception under section 48 would need to satisfy the applicable PWA requirements to claim the increased amount of credit.

A. PWA Requirements

Comments on the general PWA requirements (including comments that referenced section 48 but addressed the PWA requirements more generally) were addressed in the PWA Final Regulations. Comments received regarding the specific PWA requirements under section 48, the One Megawatt Exception under section 48, and the recapture rules contained in section 48(a)(10)(C) were not addressed in the PWA Final Regulations and are addressed in this Summary of Comments and Explanation of Revisions.

To the extent consistent with this Summary of Comments and Explanation of Revisions section of these final regulations, the Summary of Comments and Explanation of Revisions section of the PWA Final Regulations is incorporated in these final regulations. Therefore, general comments addressed in the preamble to the PWA Final

Regulations are not addressed again in this Summary of Comments and Explanation of Revisions.

The PWA Final Regulations provide generally applicable rules on the PWA requirements. These final regulations generally adopt by cross-reference those rules in the PWA Final Regulations promulgated under section 45(b)(7) and (8); specifically, in § 1.45–7 (Prevailing Wage Requirements), § 1.45–8 (Apprenticeship Requirements), and § 1.45–12 (recordkeeping and reporting). Consistent with the PWA Final Regulations, the PWA requirements under section 48 apply with respect to the creditable portion of an energy project within the meaning of section 48(a)(9)(A) and these final regulations.

As stated in the preamble to the PWA Final Regulations, the Treasury Department and the IRS have determined that given the complexity of the PWA requirements, the uncertainty regarding the potential retroactive effects of the PWA requirements, and the benefits to tax administration gained with consistency across the various Code sections containing PWA requirements, a transition rule is appropriate. The PWA Final Regulations provide that any work performed before January 29, 2023 (that is, the date that is 60 days after the publication of Notice 2022–61) is not subject to the PWA requirements, regardless of whether there is an applicable BOC Exception. This transition rule also applies for taxpayers that may initially satisfy the BOC Exception, but later fail to meet the BOC Exception (for example, by failing to meet certain continuity requirements). These taxpayers must satisfy the PWA requirements for construction, alteration, or repair (as applicable) that occurs on or after January 29, 2023, but do not need to meet the PWA requirements for work that occurred prior to that date. For those reasons described in the preamble to the PWA Final Regulations, this transition rule also applies to the PWA requirements under section 48 and is adopted by reference into §§ 1.45–7 and 1.45–8 in these final regulations.

The PWA Final Regulations also provide a limited transition waiver for the penalty payment with respect to the correction and penalty procedures described in section 45(b)(7)(B) for a failure to satisfy the Prevailing Wage Requirements. The PWA Final Regulations provide that the penalty payment is waived with respect to a laborer or mechanic who performed work in the construction, alteration, or repair of a qualified facility on or after January 29, 2023, and prior to June 25, 2024, if the taxpayer relied upon Notice

2022–61 or the PWA Proposed Regulations for determining when the obligation to pay prevailing wages began, provided the taxpayer makes the appropriate correction payments to the impacted workers within 180 days of June 25, 2024. These final regulations clarify that this limited transition waiver applies to section 48 provided the taxpayer makes the appropriate correction payments to the impacted workers within 180 days of the publication of these final regulations.

Similarly, these final regulations also allow taxpayers to use Notice 2022–61 for determining when construction begins for purposes of the applicable percentage of labor hours performed by qualified apprentices required under section 48(a)(11) (by reference to section 45(b)(8)) in satisfying the Labor Hours Requirement described in § 1.45–8. These transition rules are explained further in the preamble to the PWA Final Regulations.

The PWA Final Regulations provide special rules applicable to Indian Tribal governments. These final regulations also adopt by cross-reference the special rules with respect to Indian Tribal governments under § 1.45–7 for purposes of the Prevailing Wage Requirements.

B. Section 48(a)(10)(C) Recapture Rules

Section 48(a)(10)(C) authorizes the Secretary, by regulations or other guidance, to provide for recapturing the benefit of any increase in the credit allowed under section 48(a) by reason of section 48(a)(10) with respect to any project that does not satisfy the requirements under section 48(a)(10)(A) (after application of section 48(a)(10)(B)) for the period described in section 48(a)(10)(A)(ii) but that does not cease to be investment credit property within the meaning of section 50(a). The period and percentage of such recapture is to be determined under rules similar to the rules of section 50(a).

Proposed § 1.48–13(c)(9) provides a rule to coordinate the recapture of an increase credit amount in a prior taxable year with recapture under section 50(a) in a current taxable year. These final regulations do not adopt proposed § 1.48–13(c)(9) because the proposed rule may have resulted in an inaccurate calculation of the amount of the “aggregate decrease in credit allowed” calculated under section 50(a). Section 50(a) and §§ 1.47–1, 1.47–2, and 1.50–1 provide rules governing recapture of the investment credit, including the section 48 credit.

Proposed § 1.48–13(c)(3)(i) would provide generally that the increased credit amount under proposed § 1.48–

13(b)(3) is subject to recapture for any project that does not satisfy the Prevailing Wage Requirements in § 1.45–7(b) through (d) and proposed § 1.48–13(c)(1) for any period with respect to an alteration or repair of such project during the five-year period beginning on the date such project is originally placed in service (five-year recapture period) (but that does not cease to be investment credit property within the meaning of section 50(a)). Further, proposed § 1.48–13(c)(7) would provide that, in addition to the general reporting requirements described in § 1.45–12, a taxpayer that has claimed an increased credit amount under proposed § 1.48–13(b)(3) or transferred a specified credit portion under section 6418 that includes an increased credit amount under proposed § 1.48–13(b)(3) is required to provide to the IRS, information on the payment of prevailing wages with respect to any alteration or repair of the project during the five-year recapture period at the time and in the form and manner prescribed in IRS forms or instructions or in publications or guidance published in the Internal Revenue Bulletin.

Commenters requested more detail on the “annual prevailing wage compliance report” because the Proposed Regulations do not specify what information is required to be reported to the IRS. A commenter noted that the Proposed Regulations do not provide any applicable procedures if the IRS should disagree with the completeness of the information or provide detail on the scope of prevailing wages for an alteration or repair. The commenter further asserted that the guidance should avoid imposing any additional burdens on the taxpayer and creating any further uncertainty with respect to the already substantial compliance obligations created by the PWA Proposed Regulations.

The details requested by these commenters were addressed in the PWA Final Regulations. The PWA Final Regulations provided definitions of terms, including what constitutes an alteration or repair, and detail on the required recordkeeping and reporting for the purposes of the PWA requirements. Further, as provided in the Proposed Regulations, information on the payment of prevailing wages with respect to any alteration or repair of the project during the five-year recapture period is to be provided in the form and manner as described in IRS instructions or in publications or guidance published in the Internal Revenue Bulletin. Accordingly, these comments are not addressed again in

this Summary of Comments and Explanation of Revisions. These final regulations do clarify that if there is no alteration or repair that occurs during the relevant year during the five-year recapture period, then the taxpayer is deemed to satisfy the Prevailing Wage Requirements for that year.

Proposed § 1.6418–5(f) would provide rules addressing the notification requirements and the impact of recapture under section 48(a)(10)(C). The final regulations update the rules in proposed § 1.6418–5(f) because the 6418 Final Regulations, which included updated recapture rules in § 1.6418–5, were published after publication of proposed § 1.6418–5(f). Thus, it is necessary to update § 1.6418–5(f), which was reserved in the 6418 Final Regulations, in these final regulations to ensure consistency with the updated recapture rules in the 6418 Final Regulations.

C. Definition of Energy Project

Section 48(a)(9)(A)(ii) defines the term “energy project” as a project consisting of one or more energy properties that are part of a single project. Proposed § 1.48–13(d)(1) would provide that, for purposes of the increased credit amount under section 48(a)(9) and proposed § 1.48–13(b) and (c), the domestic content bonus credit amount under section 48(a)(12), and the increase in credit rate for energy communities provided in section 48(a)(14), the term “energy project” means one or more energy properties (multiple energy properties) that are operated as part of a single energy project. Proposed § 1.48–13(d)(1) would provide that multiple energy properties will be treated as one energy project if, at any point during the construction of the multiple energy properties, they are owned by a single taxpayer (subject to the related taxpayer rule provided in proposed § 1.48–13(d)(2)) and any two or more of the following factors are present:

- (i) The energy properties are constructed on contiguous pieces of land;
- (ii) The energy properties are described in a common power purchase, thermal energy, or other off-take agreement or agreements;
- (iii) The energy properties have a common intertie;
- (iv) The energy properties share a common substation, or thermal energy off-take point;
- (v) The energy properties are described in one or more common environmental or other regulatory permits;

(vi) The energy properties are constructed pursuant to a single master construction contract; or

(vii) The construction of the energy properties is financed pursuant to the same loan agreement.

Proposed § 1.48–13(d)(2) would define the term “related taxpayers” and provide a related taxpayer rule. Proposed § 1.48–13(d)(3) would require consistent treatment as an energy project.

1. Challenges for Project Structures

The Treasury Department and the IRS received several comments regarding the energy project definition, and commenters raised concerns regarding the single project rule. Emblematic of commenters’ views, a commenter summarized its concerns that the Proposed Regulations would expand the definition of a “project” by potentially grouping energy properties that would not commonly be considered as a single energy project if those energy properties were paid for under the same construction contract or financing agreement, even if the properties were operated separately. The commenter explained that the problems caused by the grouping of multiple energy properties as a single project are particularly acute for behind the meter solar facilities in different locations that are typically sized to provide power for their respective dedicated sites. This commenter described several concerns including geographic and time disparity, the impact on small bidders, the ability to plan around the proposed definition’s factors, and the impact on domestic content bonus credit amount requirements. Another commenter stated that the single project rule in the Proposed Regulations would capture energy properties located on contiguous parcels that are owned by the same tax equity partnership (which is overinclusive and does not take into account projects for which the owner of each project is a disregarded special purpose entity), yet the energy properties are subject to separate permits, separate power purchase agreements, separate substations and gen-tie lines, separate construction contracts, and separate construction loans and permanent debt, and ownership of the underlying real estate is separate.

A commenter explained that typically, each project partnership will have a separate engineering, procurement, and construction (EPC) agreement. If, for example, project partnerships A, B, C, and D hold four separate energy properties and four separate EPC agreements are entered

into on four separate dates, that would create four distinct prevailing wage rates that need to be tracked for prevailing wage purposes. If all four energy properties owned by the four project partnerships are deemed to be a single energy project, then each project partnership would still have to determine separately whether it met the PWA requirements due to the differing prevailing wage rates from the various dates the EPC contracts were signed. The commenter suggested that if any one of the four energy properties comprising the single energy project does not meet the PWA requirements, then none would be treated as meeting the requirements.

Another commenter explained that the single project rule would make thousands of separate residential rooftop systems one “energy project,” because two of the factors (common construction and loan agreements) always will be met. This commenter explained that these systems generally are constructed under the same EPC contract and financed via the same debt facility purely as a matter of convenience and not because the systems are intended to be operated together as a single project. Therefore, the commenter explained that all rooftop photovoltaic (PV) solar systems installed by any individual EPC contractor (even if installed years apart and in separate States) potentially could be treated as one energy project under the Proposed Regulations. This commenter also raised concerns that this approach creates uncertainty and is thus administratively unworkable with regard to the timing of credit claims.

Several commenters had concerns and requested clarification regarding the application of the single project rule to co-located energy property and energy storage technology (such as solar energy property and battery storage). A commenter explained that battery storage co-located within the solar array would meet the criteria that the projects be contiguous to one another (indeed integrated), and other criteria could apply as well, for example, that both types of energy property are part of the same construction contract and subject to the same permits. This commenter explained that the listed criteria in the Proposed Regulations appear to be focused on traditional energy generating projects, which makes sense if there are multiple energy properties that should be treated as a single energy project but could inadvertently bring energy storage technology under the umbrella of a section 45 credit solar project. Additionally, several commenters requested that if the single project rule

is adopted in final regulations, such regulations should confirm that “[s]ection 45 qualified facilities that are co-located with section 48 energy property will not be considered part of an energy project (unless they elect under section 48(a)(5) to be treated as energy property),” as stated in the preamble to the Proposed Regulations.

Another commenter provided an example of a project in a school district (District) for which potentially varying PWA requirements must be met. The District installs solar energy properties on a school, district offices, and a supply warehouse located across separate non-contiguous locations within the District boundaries. The District issues a single series of tax-exempt bonds to finance construction costs at all properties. After a single request for proposal, the District selects a single contractor to construct the energy properties at each location. Even if the District were to send out requests for proposals for each separate property, the same contractor may be selected for all sites. In addition, although the District could issue separate series of bonds for each site, those bonds may be considered a single issue under § 1.150–1. Under the Proposed Regulations, the various solar energy properties would be considered a single energy project even though the energy properties are distinct and located miles apart.

Many commenters proposed alternatives to the Proposed Regulations’ definition of energy project. Several commenters recommended re-instituting the facts and circumstances single project test from Notice 2018–59. A commenter also suggested allowing taxpayers an option, but not a requirement, to elect to have multiple energy properties be “treated as one energy project” if they meet the single project rule with two factors and common ownership found in the Proposed Regulations. This commenter stated that if the Proposed Regulations’ definition of energy project is retained, the rule should change the timing for analyzing common ownership from “at any point during the construction” to “when the energy property is placed in service.” This commenter also suggested removing the related taxpayer rule and instead providing an option to elect to be treated as one taxpayer. Another commenter proposed that the final regulations could instead create a rebuttable presumption under which taxpayers can avoid having multiple energy properties treated as a single energy project by demonstrating that the project covers multiple technologies, taxpayers, taxable years, or interconnection agreements.

A commenter proposed that to the extent that the Treasury Department and the IRS are concerned with the potential for abuse, the final regulations could require meeting three or four factors before mandating single project treatment. Alternatively, consistent with the approach taken in regulations under section 48(e) (T.D. 9979, 88 FR 55506 (Aug. 15, 2023), *corrected in* 88 FR 59446 (Aug. 29, 2023), *corrected in* 88 FR 87903 (Dec. 20, 2023)), these final regulations could limit the application of the facts and circumstances determination to smaller projects (that is, under five megawatts). Another commenter offered as an alternative that the final regulations add a requirement for satisfaction of an additional factor or factors (that is, more than two) and provide that aggregation will only occur if the projects are clearly operated together. Another commenter similarly suggested that three factors should be met.

Additionally, one commenter suggested that, if the rule were retained, further clarification is needed regarding what qualifies as a loan agreement and whether the definition of “energy project” applies to projects of any size. This commenter requested that the final regulations clarify that the definition does not include tax equity positions. This commenter also recommended that the final regulations align the effective date of the new energy project definition with the construction of an energy property or an energy project beginning on or after January 29, 2023, to eliminate any confusion regarding the new definition and to mitigate additional risk to taxpayers.

A commenter supported the Proposed Regulations’ definition of energy project in a comment submitted in response to the PWA Proposed Regulations stated that the Treasury Department and the IRS should make clear that a taxpayer seeking the increased credit rate for satisfying the PWA requirements cannot subdivide projects and construction contracts to evade the PWA requirements. The commenter stated that certain factors, including ownership and proximity, should determine whether multiple qualified facilities or units of equipment constitute one single qualified facility for purposes of determining whether the One Megawatt Exception applies. For example, with respect to solar projects, the commenter suggested that multiple energy properties should be treated as one single project if they are owned by a single legal entity, or the energy properties are constructed and/or installed in the same general geographic location or on adjacent or contiguous

pieces of land. The same general geographic location may include more than one State, provided that the multiple energy properties are on adjacent or contiguous pieces of land.

Overall, commenters expressed a view that the single project rule as drafted in the Proposed Regulations would apply to an overly broad range of energy properties and lead to illogical groupings and practical difficulties in complying with various bonus credit amounts and increased credit rates under section 48. Based on the concerns raised in these comments, the Treasury Department and the IRS acknowledge that additional flexibility is warranted. See part II.C. 4 of this Summary of Comments and Explanation of Revisions.

2. Facts and Circumstances Approach

Commenters asserted that a facts and circumstances approach should be applied to the definition of energy project. Several commenters raised concerns about inconsistency with prior guidance published in the Internal Revenue Bulletin with regard to the beginning of construction rules applicable to section 48. Commenters also stated that the Proposed Regulations would implement the energy project definition differently than a similar rule provided in the beginning of construction guidance and Notice 2022–61 (which addresses the application of PWA requirements), by mandating single-project treatment if common ownership and any two factors are met, rather than applying a facts and circumstances test. Similarly, commenters stated that regulations under section 48(e) for the Low-Income Communities Bonus Credit Program provide a single project definition that uses a facts and circumstances test.

The Treasury Department and the IRS confirm that the definition of energy project in the Proposed Regulations adopts a different approach than the facts and circumstances test used in other tax guidance. These comments requesting alternatives to the Proposed Regulations’ definition of energy project are not adopted because the increased credit rate for satisfying the PWA requirements, the domestic content bonus credit amount, and the increase in the credit rate for energy communities under section 48 require a greater degree of certainty for taxpayers and the IRS. Further, the Low-Income Communities Credit Program is a competitive, allocated credit program which requires an application; the section 48 credit does not. This difference in the process for claiming the section 48 tax credit supports the

need for a more specific approach for the credit. Accordingly, the definition of energy project in these final regulations provides particular and specific requirements rather than a facts and circumstances approach.

3. Interaction With Domestic Content Bonus Credit Amounts

Several commenters asserted that the definition of “energy project” in proposed § 1.48–13(d) is inconsistent with the initial domestic content guidance set forth in Notice 2023–38, 2023–22 I.R.B. 872. A few commenters stated that the application of the single project rule in the Proposed Regulations may cause any co-located energy properties to be aggregated for domestic content bonus credit amount purposes. The commenters suggested that this aggregation of different classes or categories of energy property as a single project is inappropriate and may create significant issues in qualifying for the domestic content bonus credit amount, including potentially distorting the domestic content calculation by overinclusion of costs for energy storage technology.

Commenters provided specific examples with domestic content bonus credit amount implications. In one such example, a taxpayer places a solar array in service in 2023 and then places a battery energy storage system (BESS) associated with the array in service in 2026. Construction of the BESS began, for example, by clearing and grading at the site of the BESS in 2023. The solar array and the BESS are on contiguous parcels and share a common substation. Under the proposed rule, the array and the BESS would be treated as a single energy project. The array would qualify for the domestic content bonus credit amount, but the addition of the BESS would put the energy project below the applicable percentage calculation for domestic content purposes, despite the “project” involving different technologies and different tax years. The taxpayer may be unable to avoid this result for projects with limited access to substations or if required upgrades would exceed the value of the domestic content bonus credit amounts, and thus may choose not to add new BESS to the grid, in clear contravention of Congressional intent. However, assuming no other factors under the single project rule are present, the taxpayer could avoid this result simply by placing the BESS on a non-contiguous parcel, a result that is likely to be technically inefficient, and more importantly, is inconsistent with the intent of the domestic content bonus

credit as set forth by Congress in the IRA.

Another commenter provided additional feedback on domestic content issues arising from placing different types of energy property in service in different taxable years. This commenter explained that if multiple energy properties were treated as a single project for purposes of the domestic content bonus credit amount, then the energy properties would be tested on a combined basis for the steel, iron, and manufactured components requirements. This could affect situations in which different types of energy properties are co-located, and the domestic content bonus credit amount could be pursued for one type of energy property but not for the other type of energy property. According to the commenter, the result likely would be that foreign products would be sourced for both types of energy property. Further, the commenter noted that combined testing would raise questions regarding the impact to energy properties that are placed in service years apart. For example, the commenter noted that if an earlier phase of an energy project did not qualify for the domestic content bonus credit amount, then it would likely be impossible for a later phase of the project to qualify if tested on a combined basis. Alternatively, the commenter noted that if an earlier phase of an energy project qualified for the domestic content bonus credit amount, then it could later become ineligible for the domestic content bonus credit amount if a later phase of that energy project caused the project to fail to meet the domestic content requirements.

Another commenter stated that the Proposed Regulations' definition of energy project would deter many taxpayers from attempting to satisfy the domestic content bonus credit amount requirements and disqualify otherwise qualifying energy properties. This commenter explained that, increasingly, procurement decisions are made earlier in the project life cycle due to long lead times. Therefore, the commenter noted that a developer might be able to secure enough domestic equipment or steel to allow one energy property to satisfy the domestic content bonus credit amount requirements but not enough for additional energy properties. However, the commenter stated that if these multiple energy properties were aggregated and treated as a single energy project, that energy project likely would not qualify for the domestic content bonus credit amount since the combined domestic cost percentage would be unlikely to satisfy the adjusted

percentage rule as defined in Notice 2023–38.

Some commenters asserted that the Proposed Regulations' definition of energy project should apply only to energy properties that are within the same category for purposes of section 48. These commenters also requested clarification that energy storage technology such as a BESS is treated as an "energy project" separate from solar energy property and other categories of energy property for purposes of the domestic content bonus credit amount. For example, a commenter highlighted the concern that "energy project" may be read broadly to apply to all energy properties that are owned by the same taxpayer and co-located, even if the energy properties are of different classes or categories and have separate pathways to eligibility. This commenter requested that the final regulations clarify the "energy project" definition by providing that the reference to "one or more energy properties" in section 48(a)(9)(A)(ii) should be properly interpreted to refer only to the same class or category of energy property. The commenter concluded that a better approach to the definition of "energy project" would be to treat specific types of energy property, such as solar, wind, and other categories, as separate from energy storage technology property even if co-located, owned by the same taxpayer, and sharing common facilities and infrastructure.

Section 48 applies the domestic content bonus credit amounts to an entire energy project defined as one or more energy properties that are part of a single project. As a result, all types of energy property, including energy storage technologies that meet the criteria as would be provided in proposed § 1.48–13(d) are included within an energy project for purposes of the domestic content bonus credit amount. As noted earlier, the Treasury Department and the IRS recognize that additional flexibility is warranted with respect to the definition of energy project. The final regulations revise the definition of energy project to allow the taxpayer to choose when to assess the factors of an energy project, either at any point during construction or during the taxable year energy properties are placed in service. However, multiple types of energy property may be appropriately treated as a single energy project in certain situations. Accordingly, the final regulations do not adopt comments requesting that an energy project must be limited to energy properties of the same type.

4. Revisions to Definition of Energy Project

The Treasury Department and the IRS agree with commenters that the Proposed Regulations' definition of energy project, described as ownership plus two factors, is too rigid and could have unintended impacts, such as preventing small rooftop solar installations from being eligible for the One Megawatt Exception and treating multiple energy properties that are located in different States as a single energy project. Further, the Treasury Department and the IRS understand that the "at any point during construction" language in the Proposed Regulations may be problematic for taxpayers, potentially grouping energy properties that will be placed in service in different taxable years.

In response to the concerns raised by commenters, the definition of energy project is modified in the final regulations. The Proposed Regulations would have required two or more factors to be present. In the case of multiple energy properties owned by a taxpayer, the final regulations require that four or more factors be present and that the factors may be assessed, at the taxpayer's choice, either at any point during construction or during the taxable year the energy properties are placed in service. The Treasury Department and the IRS understand that taxpayers require flexibility given the varied landscape of energy property development and financing structures. However, the Treasury Department and the IRS disagree that a facts and circumstances analysis should be applied to the definition of energy project. Energy project is the statutory term for the unit of property to which the PWA requirements, the domestic content bonus credit amount, and the increase in credit rate for energy communities are applied. In addition, in promulgating these final regulations pursuant to the express delegation of authority in section 48(a)(16), the Treasury Department and the IRS determined that using particular and specific factors in the definition of energy project will increase certainty for taxpayers and the IRS. That increased certainty will promote sound tax administration and help to carry out the purposes of section 48(a).

Separately, a commenter requested confirmation that an energy project will be deemed placed in service when the final energy property within the energy project is placed in service. Section 48(a)(9)(A)(ii) defines an "energy project" as a project consisting of one or more energy properties that are part of

a single project. Because the PWA requirements, the domestic content bonus credit amount, and the increase in credit rate for energy communities are each applied at the energy project level, the determination of whether an energy project meets any of these requirements cannot be made before the last of the multiple energy properties within such energy project are placed in service. Accordingly, the final regulations clarify the definition of energy project consistent with this comment.

Further, the final regulations do not adopt proposed § 1.48–13(d)(3). The Proposed Regulations would have provided that, if multiple energy properties are treated as a single energy project for beginning of construction purposes with respect to the section 48 credit, then the multiple energy properties also will be treated as a single energy project for purposes of the PWA requirements, the domestic content bonus credit amount, and the increase in credit rate for energy communities. The Treasury Department and the IRS recognize that this proposed rule may conflict with existing BOC guidance and the definition of “energy project” that is being adopted in these final regulations. Accordingly, the final regulations do not adopt this proposed rule.

D. One Megawatt Exception

1. Nonapplication to Certain Energy Properties

Proposed § 1.48–13(e) would provide rules for nameplate capacity for purposes of the One Megawatt Exception. Proposed § 1.48–13(e) would provide that for purposes of proposed § 1.48–13(b)(1), the determination of whether an energy project has a maximum net output of less than one MW of electrical (as measured in alternating current) or thermal energy is determined based on the nameplate capacity. Proposed § 1.48–13(e) would provide that if applicable, taxpayers should use the International Standard Organization (ISO) conditions to measure the maximum electrical generating output or usable energy capacity of an energy project. Lastly, proposed § 1.48–13(e) would provide that because electrochromic glass property (as defined in proposed § 1.48–9(e)(2)(ii)), fiber-optic solar energy property (as defined in proposed § 1.48–9(e)(2)(i)), and microgrid controllers (as defined in proposed § 1.48–9(e)(12)) do not generate electricity or thermal energy, these energy properties are not eligible for the One Megawatt Exception.

Two commenters supported the rule as proposed, including disallowing the exception for certain properties. One of the commenters stated that the proposed rules for the One Megawatt Exception will provide certainty with respect to the applicability of labor standards and prevent fraud. Both commenters requested the Treasury Department and the IRS to retain the nameplate capacity rule for maximum net output in the final regulations.

One commenter asserted that the One Megawatt Exception, as proposed, is too broad, undermining the PWA requirements, and should not apply to any energy properties that do not generate or produce electrical or thermal energy. This commenter disagreed with the alternatives provided for some types of energy property and requested clarity that others also should not be eligible, including GHP property, energy storage technology, clean hydrogen production facilities, and qualified biogas property.

Conversely, most commenters asserted that the One Megawatt Exception should be available for non-energy generating property. Some commenters suggested that the final regulations provide a de minimis threshold to the One Megawatt Exception. A commenter suggested consideration of a basis dollar threshold with respect to prevailing wage exemptions for types of energy property that do not generate electricity, namely electrochromic glass, fiber-optic solar energy property, and microgrid controllers.

Another commenter stated that these excluded types of energy property should be included if part of an “energy project.” Commenters explained that the One Megawatt Exception in section 48(a)(9)(B)(i) applies to “energy projects” and therefore, can apply to microgrid controllers, fiber-optic solar energy property, or electrochromic glass that are combined with other types of energy property (for example, solar energy property) as part of an “energy project.”

Several commenters made the same point specifically regarding microgrid controllers. For example, a commenter stated that the final regulations should include microgrid controllers within the One Megawatt Exception. This commenter said that a strict statutory interpretation would mean that if the sum capacity of all energy properties within an energy project is below one MW, then the One Megawatt Exception is satisfied. The commenter asserted that this statutory interpretation is simple, straightforward, and accurately reflects the IRA. Similarly, a commenter suggested that to ensure small microgrid

projects can take advantage of the One Megawatt Exception, the rule should allow microgrid controllers used in a microgrid for which the cumulative nameplate capacity value of the electrical generating distributed energy resources is less than one MW to be eligible for the One Megawatt Exception.

Another commenter noted that the ineligibility of microgrid controllers for the One Megawatt Exception contradicts the definition of a qualified microgrid, which requires that a qualified microgrid includes equipment capable of generating not less than 4 kW and not greater than 20 MW of electricity. This commenter asserted that if the aggregate of the nameplate capacity of the assets managed by a qualified microgrid is under one MW, or if there are other physical limitations built into the microgrid that limit generation to one MW, then the microgrid controller should qualify for the One Megawatt Exception.

Another commenter stated that because microgrid controllers do not generate energy, they should be considered to generate under one MW and thus should qualify for the One Megawatt Exception. This commenter asserted that because Congress did not specifically exclude energy properties with a maximum net output of less than one MW of electrical energy (and could have)—even if that output is zero—microgrid controllers should qualify under the plain language of the statute. A similar suggestion was raised by several commenters in the context of electrochromic glass. One commenter stated that nothing in section 48(a)(9)(B)(i) suggests that the One Megawatt Exception is limited to generating property; the statute simply looks to the output of the project, if any. This commenter concluded that the simplest and clearest reading of section 48(a)(9)(B)(i) is that an energy property that does not generate electricity is eligible for the One Megawatt Exception.

Similarly, another commenter stated that section 48(a)(9)(B)(i)’s focus on an energy project’s energy output capability indicates that properties not producing any output could be considered for the One Megawatt Exception. This commenter asserted that the essence of the law was not to create a hierarchy favoring energy producers over non-producers but to encourage a broad spectrum of energy efficiency and conservation measures.

Another commenter stated that the Proposed Regulations’ interpretation of the One Megawatt Exception is highly counterintuitive as it runs contrary to

obvious mathematical logic. This commenter stated that the One Megawatt Exception should be considered in light of the clear legislative intent behind it, which is that PWA requirements are disproportionately burdensome for smaller projects. This commenter alleged that, most troublingly, the interpretation is not merely prospective, from the date of publication of either the Proposed Regulations or the final regulations, but also retroactive, and that applying this interpretation retroactively will harm market actors who made good faith, logical decisions in the absence of any IRS guidance. This commenter requested that, at a minimum, the Treasury Department and the IRS apply rules regarding the One Megawatt Exception on a prospective basis.

In addition to these comments, commenters also provided feedback on methods to measure the maximum net output of microgrid controllers to allow them to qualify for the One Megawatt Exception. One commenter proposed that a measurement of the maximum net generation that a microgrid controller can provide via interconnection to the grid be used to determine whether a microgrid controller is eligible for the One Megawatt Exception, and that the maximum net output be calculated as the nameplate capacity of the microgrid generation less the minimum historical microgrid load.

Commenters also provided methods for electrochromic glass to qualify for the One Megawatt Exception. Two commenters suggested using anticipated energy savings for a building on which electrochromic windows are installed. For example, a commenter suggested that a taxpayer should be able to measure the amount of energy expected to be saved by use of the electrochromic glass property and compare that amount to one MW. The commenter noted that this approach is similar to the approach used to determine whether energy efficient investments in a commercial building qualify for a deduction under section 179D of the Code; this commenter recommended that final regulations provide that the DOE program “Energy Plus” model be used to determine the amount of anticipated energy savings. Two commenters also proposed a safe harbor that would deem any electrochromic glass property installed in any building to meet the One Megawatt Exception if no more than 60,000 square feet of electrochromic glass is installed in the building. Another commenter highlighted administrative concerns with the non-application of the One

Megawatt Exception to electrochromic glass. The commenter explained that electrochromic glass is one of many structural components installed in a building, and laborers who are involved in the construction, alteration or repair of electrochromic glass may also be involved in the construction, alteration or repair of other building components that are not qualified energy property, creating an additional recordkeeping burden for taxpayers.

The Treasury Department and the IRS have considered these comments on the One Megawatt Exception. The Treasury Department and the IRS appreciate the suggestions made by commenters in response to the request for comments in the Proposed Regulations regarding whether other methods of measurement may allow electrochromic glass property, fiber-optic solar energy property, and microgrid controllers to be eligible for the One Megawatt Exception. However, after considering the statute further as well as the intent of the rules in the context of the PWA requirements, the Treasury Department and the IRS have determined that the One Megawatt Exception applies only to the generation of electricity or thermal energy. The statutory language in section 48(a)(9)(B)(i) providing the increased credit amount for a project with a maximum net output of less than one MW of electrical (as measured in alternating current) or thermal energy, means that there must be output, and that output must be under one MW. The proposed conversion formulas for certain types of energy property, such as GHP property and energy storage property, do not undermine the PWA requirements. Rather, the proposed formulas provide clarity across various energy properties that generate output. Because electrochromic glass property, fiber-optic solar energy property, and microgrid controllers do not generate electrical or thermal energy, these types of energy property are not eligible for the One Megawatt Exception. These final regulations adopt this proposed rule without change.

2. Determination of Nameplate Capacity

As explained in the preamble to the Proposed Regulations, the DOE has advised the Treasury Department and the IRS that for energy projects that generate electrical or thermal energy, the determination of an energy project’s nameplate capacity will provide the necessary guidance to determine the maximum electrical generating output in megawatts of electrical (as measured in alternating current) or thermal energy that the unit is capable of producing on a steady state basis and during

continuous operation under standard conditions. Accordingly, proposed § 1.48–13(e) would provide that the determination of whether an energy project has a maximum net output of less than 1 MW of electrical (as measured in alternating current) or thermal energy is based on nameplate capacity. Proposed § 1.48–13(e)(1) would provide that in the case of an electrical generating energy property, the nameplate capacity is the maximum electrical generating output in MW that the unit of energy property is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202.

Proposed § 1.48–13(e)(2) would provide that in the case of electrical energy storage property (as defined in proposed § 1.48–9(e)(10)(ii)), the nameplate capacity is the storage device’s maximum net output.

Proposed § 1.48–13(e)(3) would provide that in the case of thermal energy storage property (as defined in proposed § 1.48–9(e)(10)(iii)) and other energy property that generates thermal energy for productive use (for example, direct geothermal use, GHP property, solar process heating), a taxpayer must use the equivalent of 3.4 million British Thermal Units per hour (mmBtu/hour) for heating and 284 tons for cooling (Btu per hour/3,412,140 = MW) to determine if the thermal energy storage property satisfies the One Megawatt Exception. For projects delivering thermal energy to a building or buildings, this determination can be made with respect to either the aggregate maximum thermal output of all individual heating or cooling elements within the building or buildings, or as the maximum thermal output that the entire project is capable of delivering to a building or buildings at any given moment.

Proposed § 1.48–13(e)(4) would provide that a hydrogen energy storage property (as defined in proposed § 1.48–9(e)(10)(iv)) or a specified clean hydrogen production facility (as defined in section 48(a)(15)(C)) must have a maximum net output of less than 3.4 mmBtu/hour of hydrogen or equivalently 10,500 scf per hour of hydrogen to satisfy the One Megawatt Exception.

Proposed § 1.48–13(e)(5) would provide that in the case of qualified biogas property, 3.4 mmBtu/hour can be used as equivalent to the One Megawatt Exception. Taxpayers may convert the maximum net output of 3.4 mmBtu/hour into an equivalent maximum net volume flow in scf per hour using the

appropriate high heat value conversion factors found in the Environmental Protection Agency (EPA) Greenhouse Gas Reporting Rule (GHGRR) at table C–1 to subpart C of part 98 (40 CFR part 98). Otherwise, taxpayers may calculate their own equivalent volumetric flow if the heat content of the gas is known.

Commenters provided feedback on the proposed conversion factors specific to certain types of property. For example, a commenter recommended that for thermal energy storage property and other property generating thermal energy, the conversion from mmBtu/hr to tons for cooling should be 3–5 times higher than proposed § 1.48–13(e)(3), which refers to 284 tons for cooling to determine if thermal energy property meets the One Megawatt Exception. This commenter said that the conversion factor provided by the Proposed Regulations is too low at a quarter of the conversion factor for electrical generating property, and instead the final regulations should use an electrical equivalent. This commenter stated that for buildings cooled by chilled-water systems, it is widely accepted that the electrical power (in kW) required to generate cooling (in ton) by chillers is approximately 0.6–0.7 kW/ton for water-cooled chillers, and 1.1–1.2 kW/ton for air-cooled chillers, and cited a few sources. This commenter proposed replacing the conversion factor with 1,550 tons for water-cooled systems or 870 tons for air-cooled systems.

Similarly, for qualified biogas property, a commenter stated that the proposed conversion factor of 3.4 mmBtu/hr in proposed § 1.48–13(e)(5) for the One Megawatt Exception should be increased. The commenter stated that this conversion factor for qualified biogas property is theoretical and not based in practical applications. The commenter also noted that any biogas plant producing onsite power typically does not produce more than 10 mmBtu/hr, and that a plant of this size would be very small and likely face economic constraints even with the section 48 credit.

In consultation with the DOE, the Treasury Department and the IRS have determined that the conversion formulas in the Proposed Regulations provide a direct and accurate conversion and that no changes are needed to the conversion factors for thermal energy property, thermal energy storage property, and other energy property that generates thermal energy for productive use, or for qualified biogas property. By providing a broadly-applicable rule, these conversion formulas should provide accurate

results for a broad set of applications and technologies. The commenters' requests for specific formulas applicable to specific technologies conflict with the approach of these regulations to provide general rather than narrow rules. Therefore, the final regulations adopt these rules as proposed.

Other commenters stated general concerns regarding lack of clarity with the measurement methods included in the Proposed Regulations. These commenters focused their concerns on thermal energy storage property and property generating thermal energy. For example, a commenter stated that it is unclear whether the One Megawatt Exception applies with respect to the thermal energy generated from the thermal energy source for the thermal energy storage (TES) (for example, a chiller or heat pump), or to the nameplate capacity of the TES property itself (for example, peak discharge rate from TES). The commenter then asked what conditions govern the discharge rate of TES if the One Megawatt Exception refers to the nameplate capacity of the TES property itself. This commenter suggested that, alternatively, perhaps either could be used.

The Treasury Department and the IRS recognize that demonstrating the nameplate capacity of thermal energy storage property may be technically impractical for some types of thermal energy storage property such as commercial heat pump storage systems. The Treasury Department and the IRS, following consultation with the DOE, revise the rule in the final regulations to provide an option when nameplate capacity for the thermal energy storage property is not available, to use the nameplate capacity of the equipment that delivers thermal energy. For example, the nameplate capacity of the heat pump to a thermal energy storage property would be converted to megawatts based on the conversion factors set forth in § 1.48–13(e). For thermal energy storage property, as well as for other energy property that generates or distributes thermal energy for productive use, the final regulations clarify that the maximum thermal output that the entire system is capable of delivering is calculated as the greater of the maximum instantaneous rate of cooling or the rate of heating of the aggregate of all the equipment distributing energy for productive use, which for thermal energy storage is distributing the thermal energy from the thermal energy storage to the building or buildings. Alternatively, for purposes of thermal energy storage property only, when the nameplate capacity for the thermal energy storage property is

unavailable, the maximum thermal output may be considered to be the greater of the rate of cooling or the rate of heating of the aggregate of the nameplate capacity of all the equipment delivering energy to the thermal energy storage property. Based on the comments, the Treasury Department and the IRS conclude that the revised rule will provide a clear, administrable standard of measurement.

Several commenters had similar concerns regarding the measurement standard for geothermal energy property. A commenter explained that by design, a distributed GHP property's maximum net output is always less than the total nameplate capacity. These commenters asserted that, for equipment generating thermal energy, it is not clear how nameplate capacity is defined. Commenters recommended that nameplate capacity be defined as either the published rating data on the Air Conditioning, Heating, and Refrigeration Institute (AHRI) Certification Directory or project specific selections at design temperatures. Commenters also stated that many buildings require redundant equipment to ensure consistent operating conditions within the building if a piece of equipment fails, but that because the redundant equipment is not used during normal operation it should be excluded from the calculation of the one-MW threshold. These commenters also suggested the final regulations provide an example illustrating the method of assessment based on the use of thermal output from a full year.

As previously explained, the final regulations provide that the discharge rate of a thermal energy source is based on the nameplate capacity of the equipment, which would be converted to megawatts based on the conversion factors set forth in § 1.48–13(e). Therefore, taxpayers must use the nameplate capacity of the equipment. Commenters' concerns for geothermal energy property appear to be more focused on how to determine that nameplate capacity if not all equipment will be used or will only be used to a specific temperature. Proposed § 1.48–13(e)(3) would provide that, for projects delivering thermal energy to a building or buildings, the measurement can be assessed as either the aggregate maximum thermal output of all individual heating or cooling elements within the building or buildings, or as the maximum thermal output that the entire project is capable of delivering to a building or buildings at any given moment. The Treasury Department and the IRS consulted with the DOE, and the

final regulations clarify that the maximum thermal output an entire project is capable of delivering at any given moment does not take into account the capacity of redundant equipment if such equipment is not operated when the system is at maximum output during normal operation. The determination of maximum thermal output is intended to reflect normal operating conditions for the energy project.

Another commenter requested clarification regarding the measurement method for electrical energy storage property. The commenter asserted that it is unclear at what stage to determine maximum electrical generating output for the One Megawatt Exception, and that the definition of “nameplate capacity” is ambiguous because it turns on the phrase “maximum electrical generating output” but does not provide a method for determining such output. The commenter stated that for inverter-based resources, like solar and energy storage technologies, “maximum electrical generating output” could be determined at different stages. It could be measured as the initial output from PV modules (as measured in direct current), the subsequent output from associated storage (usually measured in direct current), or the final output after the inverter (measured in alternating current).

In response to these comments, the Treasury Department and the IRS consulted with the DOE to provide a method of measuring nameplate capacity for an energy property that generates electricity in direct current. The final regulations provide a rule limited to energy properties that generate electricity in direct current. Under this rule, a taxpayer may choose to determine the maximum net output of each energy property that is part of the energy project (in alternating current) by using the lesser of (i) the sum of the nameplate generating capacities within the unit of energy property in direct current, which is deemed the nameplate generating capacity of the unit of energy property in alternating current; or (ii) the nameplate capacity of the first component of property that inverts the direct current electricity generated into alternating current. This rule provides flexibility for taxpayers while ensuring that the maximum net output (in alternating current) can be determined in an administrable and reasonably accurate manner for energy properties that generate electricity in direct current.

III. Rules Applicable to Energy Property

A. Retrofitted Energy Property (80/20 Rule)

Proposed § 1.48–14(a)(1) would provide generally that for purposes of section 48(a)(3)(B)(ii), (5)(D)(iv), and (8)(B)(iii), a retrofitted energy property may be originally placed in service even though it contains some used components of the unit of energy property only if the fair market value of the used components of the unit of energy property is not more than 20 percent of the total value of the unit of energy property taking into account the cost of the new components of property plus the value of the used components of the unit of energy property (80/20 Rule). Only expenditures paid or incurred that relate to the new components of the unit of energy property are taken into account for purposes of computing the section 48 credit with respect to the unit of energy property. The cost of new components of the unit of energy property includes all costs properly included in the depreciable basis of the new components. If the taxpayer satisfies the 80/20 Rule with regard to the unit of energy property and the taxpayer pays or incurs new costs for property that is an integral part of the energy property, then the taxpayer may include the new costs paid or incurred for property that is an integral part of the energy property in the basis of the energy property for purpose of the section 48 credit. Further, in the case of an energy project, the 80/20 Rule is applied to each unit of energy property comprising an energy project.

Proposed § 1.48–14(a)(2) would provide that costs incurred for new components of property added to used components of a unit of energy property may not be taken into account for purposes of the section 48 credit unless the taxpayer satisfies the 80/20 Rule by placing in service a unit of energy property for which the fair market value of the used components of property is not more than 20 percent of the total value of the unit of energy property taking into account the cost of the new components of property plus the value of the used components of property. Proposed § 1.48–14(a)(3) would provide examples illustrating the 80/20 Rule.

1. General Comments Regarding the 80/20 Rule

Several commenters provided comments regarding the 80/20 Rule. Some commenters favored retaining the 80/20 Rule for application in limited circumstances. Generally, commenters

that opposed the use of the 80/20 Rule expressed similar concerns regarding the ownership rules in the context of certain types of energy property.

Commenters that opposed the 80/20 Rule asserted that it is inconsistent with previous Internal Revenue Bulletin guidance. Multiple commenters asserted that under current law, capital improvements to energy property are eligible for the section 48 credit without regard to the 80/20 Rule. These commenters pointed to existing § 1.48–2(b)(7) and the examples in existing § 1.48–2(c) to support this assertion. Existing § 1.48–2(b)(7) provides, in relevant part: “The term ‘original use’ means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.” A commenter noted that the examples in existing § 1.48–2(c) illustrate the difference between a reconditioned or rebuilt unit of energy property previously in service and the addition of “some used parts,” on the one hand, and the addition of new property or capital improvements, on the other. Additionally, the commenter asserted that Example 5 in existing § 1.48–2(c) establishes that capitalized costs are included in computing the section 48 credit. Importantly, existing regulations under § 1.48–2 do not reflect the current version of section 48 and are not informative to the extent those regulations do not take into account subsequent amendments to section 48, such as amendments made by the IRA.

Commenters also asserted that the purpose of the 80/20 Rule was to address the “original use requirement” or to achieve a new “original placed in service date” in the context of the production tax credit under section 45. These commenters explained that the 80/20 Rule was concerned with ensuring that taxpayers do not qualify for the entirety of the section 45 credit over a new ten-year credit period by making modest investments in an existing facility. Commenters explained this issue does not exist in the section 48 credit context, because the section 48 credit is available only for new property and not for any used components of property. A commenter noted that the 80/20 Rule only really matters if one is focused on the totality of the property that is used to produce energy in a manner incentivized by the Code. This is different for section 48, for which the proper focus is on specific items of energy property, not assemblages of energy property under common ownership. Commenters asserted that, by applying the 80/20 Rule to energy property under section 48 and excluding the cost of otherwise eligible

new equipment or property that does not satisfy the 80/20 Rule, the Proposed Regulations fundamentally misconstrue the 80/20 Rule's purpose and are inconsistent with current law.

While commenters correctly noted that the purpose of the 80/20 Rule was to address the "original use requirement" or achieve a new "originally placed in service" date, the 80/20 Rule remains relevant in the context of the section 48 credit. Section 48 requires the credit to be determined on the basis of energy property placed in service during the taxable year. In situations in which energy property has already been placed in service, existing units of energy property cannot qualify for the credit without the 80/20 Rule (with the exception of the modification of energy storage technology as provided in proposed § 1.48–9(e)(10)(iii)).

Supporters of retaining the 80/20 Rule noted that it should apply for purposes of the section 48 credit only in limited circumstances. First, the 80/20 Rule should apply to the acquisition of retrofitted energy property by a taxpayer for purposes of obtaining an original placed in service date for such retrofitted property (which commenters noted is the traditional application of the 80/20 Rule). Second, the 80/20 Rule should apply if it is necessary for a qualified facility (otherwise eligible for the section 45 credit) to obtain a new original placed in service date, such as a retrofitted qualified facility for which the taxpayer elects to claim the section 48 credit in lieu of the section 45 credit.

While many commenters suggested dropping the 80/20 Rule altogether, other commenters suggested a range of possible alternatives. For example, a commenter suggested excepting from the 80/20 Rule property that is no longer functional for its intended energy purpose such as a property that has fallen into disuse and has been sitting idle for years and that would require extensive renovations to return to use for its intended purpose; property that is no longer in a "condition or state of readiness and availability for a specifically assigned function"; and property that has been idle for a certain period of time prior to rehabilitation and reuse such as property located in opportunity zones and property for which no tax credit has previously been claimed. This commenter also proposed requiring a reduced percentage threshold to meet the policy objectives of the 80/20 Rule and referred to the Dual Use percentage rules as more favorable than the 80/20 Rule.

Multiple commenters suggested that, if the 80/20 Rule is retained, then the

section 48 credit should apply to capital improvements without regard to the 80/20 Rule. However, these commenters noted that the 80/20 Rule could continue to apply to individual components placed in service by the taxpayer. Commenters asserted that the application of the 80/20 Rule to capital improvements would lead to uneconomic decisions or waste, such as favoring demolition and rebuilding instead of investments to modify an existing energy property or encouraging many existing waste processing sites to continue to vent or flare methane. Commenters also expressed concerns regarding the prohibition on claiming the section 48 credit in respect of new property that is installed after other items of energy property have been placed in service in cases in which the 80/20 Rule is not met. A commenter explained that such interpretation would disincentivize asset owners from upgrading their existing solar plants to maximize energy generation. This concern was shared by other commenters in the context of maintenance and upgrades performed on certain types of energy property such as GHP property.

Commenters also stated that networks of GHP properties grow over time by design, adding additional customer buildings and ground loop capacity as needed. Therefore, commenters asserted that application of the 80/20 Rule would hinder the adoption of networked GHP property as additional users may be reluctant to link into an existing shared ground loop due to the unavailability of the section 48 credit. Another commenter requested reconsideration of the 80/20 Rule, comparing the rule for modification of an energy storage technology (which is allowed) with "equipment that may make trash or biomass energy properties more efficient" (which is not allowed). This commenter also requested consideration of the 80/20 Rule in light of various factors such as planned versus unplanned improvements.

In the context of a qualified biogas property, a commenter stated that the final regulations should clarify and explicitly state that any new cost paid or incurred by the taxpayer for property that is an integral part of the energy property may be included in the basis of the energy property for purposes of the section 48 credit, without regard to the application of the 80/20 Rule at the integral property level and regardless of whether the new costs paid or incurred would generally be eligible for the section 48 credit. As an example, the commenter noted that this approach would allow the section 48 credit for a

landfill gas collection system that primarily serves a purpose unrelated to the qualified biogas property (that is, storage of municipal solid waste).

Commenters also raised concerns regarding the use of the 80/20 Rule in the context of an energy project. Commenters generally asserted that the application of the 80/20 Rule disincentivizes new projects. A commenter requested that the final regulations clarify and explicitly state that the 80/20 Rule is applied separately with respect to each unit of energy property within an energy project and does not take into account any of the used property retained and used as an integral part of an energy project irrespective of whether these energy properties together are determined to satisfy any two or more of the factors described in proposed § 1.48–13(d)(1)(i) through (vii). Another commenter explained the commenter's understanding that if a section 48 credit is claimed on an energy project, then the 80/20 Rule would be applied to the entire project rather than to each component separately. The commenter asserted that this interpretation conflicts with the historical understanding of the 80/20 Rule as it applies to the section 48 credit, which is based on each component of the unit of energy property. Another commenter noted that the final rule should make clear that any application of the 80/20 Rule does not apply to the entire energy project. If deemed applicable, it should be limited to the individual energy properties being put into operation by the claiming taxpayer and should not include new or expanded energy projects that are added to existing operations. The Proposed Regulations already would provide that in the case of an energy project, the 80/20 Rule is applied to each unit of energy property comprising an energy project and a taxpayer that satisfies the 80/20 Rule with respect to an individual unit of energy property that is part of a larger energy project may be eligible for the section 48 credit. Additional clarification to ensure that the 80/20 Rule is not applied at the energy project level is unnecessary.

The Treasury Department and the IRS have considered the comments summarized earlier but decline to modify or abandon the 80/20 Rule as requested. The section 48 credit is available for "each energy property placed in service" during a taxable year. See section 48(a)(1). The 80/20 Rule is designed to broaden the availability of the section 48 credit to provide a new original placed in service date for an energy property that includes some components of property that have

already been placed in service, rather than requiring the entire unit of energy property to be composed of only new property. The 80/20 Rule also encourages retrofitting of existing energy property provided there is sufficient new investment.

As discussed, in part III.D. of this Summary of Comments and Explanation of Revisions, the ownership rules would provide that the section 48 credit is available for an entire unit of energy property and not for individual components of property. The 80/20 Rule is consistent with the ownership rules because it ensures that an energy property that is retrofitted to a sufficient extent is considered a new energy property, whereas the addition of mere components is not eligible for the section 48 credit.

The lone express rule for modification of existing energy property in section 48 is found in section 48(c)(6)(B). This special rule is limited to modifications of existing energy storage technology. In the Proposed Regulations, the Treasury Department and the IRS noted the significance of Congress providing specifically for modifications to energy storage technology because the inclusion of this specific provision suggests that, otherwise, modifications of existing energy properties are ineligible for the section 48 credit. In light of this modification rule for energy storage technology, the structure of section 48 indicates that other modifications to existing energy property do not qualify for the credit.

However, providing the 80/20 Rule is appropriate and consistent with its previous adoption for the section 48 credit in Internal Revenue Bulletin guidance. As explained in the preamble to the Proposed Regulations, Notice 2018–59 addresses the application of the 80/20 Rule to retrofitted energy property for purposes of applying the beginning of construction rules for the section 48 credit. Section 7.05(1) of Notice 2018–59 provides that retrofitted energy property may qualify as originally placed in service even though it contains some used components of property, provided it satisfies the 80/20 Rule. Consistent with the 80/20 Rule provided in Notice 2018–59, the 80/20 Rule provided in these final regulations requires a taxpayer to own a unit of energy property to claim the section 48 credit. Additionally, § 1.48–14(a) specifically provides that if a taxpayer satisfies the 80/20 Rule, then the taxpayer may include the new costs paid or incurred for property that is an integral part of the energy property in the basis of the energy property for purposes of the section 48 credit. By

allowing an existing energy property to be retrofitted and afterwards to be treated as a new energy property, the 80/20 Rule is consistent with the ownership rules and is supported by the same rationale. Moreover, because modifications other than those described in section 48(c)(6)(B) (for existing energy storage technology) generally do not qualify for the section 48 credit, the provision of the 80/20 Rule is favorable to taxpayers and encourages substantial additional investment in existing energy property.

2. Application to Specific Technologies

Commenters raised concerns regarding the application of the 80/20 Rule to certain types of energy property. Several commenters had concerns about the application of the 80/20 Rule to qualified biogas property, battery energy storage, and qualified hydropower facilities. These issues were largely intertwined with concerns raised regarding the ownership requirement as it applies to these types of energy property.

a. Qualified Biogas Property

Many commenters shared concerns about the application of the 80/20 Rule stating that the rule would prevent the development of most qualified biogas property and other RNG projects. As described in the discussion of qualified biogas property in part I.B.5. of this Summary of Comments and Explanation of Revisions, commenters explained that unlike many other types of energy property incentivized under section 48, components of qualified biogas property (as described in the Proposed Regulations) are likely to have been placed in service prior to the enactment of the IRA. Commenters also expressed concerns regarding the definition of “qualified biogas property,” the ownership provisions, and the 80/20 Rule, asserting that the combined impact of these rules provided in the Proposed Regulations would limit eligibility for qualified biogas property.

According to a commenter, the 80/20 Rule should be aligned with the “original use” requirement. To illustrate this point, the commenter provided an example, asserting that if a taxpayer is building a new unit of energy property that is functionally interdependent with a pre-existing and previously placed in service unit of energy property (qualified or otherwise) that is owned by a separate taxpayer, the application of the 80/20 Rule is unnecessary. The commenter stated that for qualified biogas property, it is common for the entire system to be comprised of components of property owned by two

different taxpayers and for the original use of these various components of property (that is, landfill gas collection components and cleaning and conditioning components, both compromising a qualified biogas property or “system”) to be with different taxpayers at potentially different points in time.

Several commenters expressed concerns that the 80/20 Rule would not work for the qualified biogas projects that Congress intended to incentivize. Representative of that view, a commenter stated that the 80/20 Rule is potentially problematic for RNG projects located at pre-existing landfills. The commenter proposed that the application of the 80/20 Rule be limited to the individual units put into operation by the claiming taxpayer and should not exclude new or expanded projects that are added to existing operations.

Commenters’ concerns stem from the ownership issues described in part III.D. of this Summary of Comments and Explanation of Revisions. As described in part III.D., the final regulations clarify the definition of what is included in qualified biogas property in a manner that is responsive to the ownership structures used by the biogas industry and allow for new property to be added to pre-existing landfills. Therefore, these final regulations do not adopt commenters’ specific comments concerning the application of the 80/20 Rule to qualified biogas property.

b. Second Life Batteries

The preamble to the Proposed Regulations explained that “a commenter requested that re-used or ‘second life’ batteries should be considered ‘new energy property.’” Generally, used property cannot be considered “new property” for purposes of the 80/20 Rule, which is described earlier in part III.A. of this Summary of Comments and Explanation of Revisions. The preamble to the Proposed Regulations requested comments on whether “second life” batteries should be considered new components for purposes of the 80/20 Rule.

Commenters proposed considering second-life batteries that are disassembled substantially to the electric vehicle module level to be new energy property for purposes of the 80/20 Rule. These commenters reasoned that such batteries go through a substantial transformation process including disassembling and restructuring, which is a manufacturing process that meets the modification rule. A commenter suggested that, for

purposes of the 80/20 Rule, second life batteries be considered new energy property if documentation is provided supporting the fact that the batteries were remanufactured. Another commenter asserted that “second life” batteries may be considered within the 80 percent portion (as new property) of the 80/20 Rule if applied to energy storage technology and believed this is especially applicable in contexts in which the batteries were originally used for a fundamentally different purpose, or if in their previous iteration the batteries were ineligible for the section 48 credit.

The 80/20 Rule recognizes that a retrofitted energy property that contains only a relatively minimal amount of used components is essentially a new energy property. While “second-life” battery components may be used to modify an energy storage technology as provided in section 48(c)(6)(B) and addressed in part I.B.4.d. of this Summary of Comments and Explanation of Revisions, allowing primarily used components to be considered new property for purposes of applying the 80/20 Rule would be contrary to the basis of the 80/20 Rule. Accordingly, the Treasury Department and the IRS do not adopt these comments.

c. Hydropower Facilities

Section 48(a)(3) provides and proposed § 1.48–9(d)(1) would provide that for purposes of the section 48 credit, an energy property does not include any property that is part of a qualified facility the production from which is allowed a section 45 credit for the taxable year or any prior taxable year. Some commenters requested that the final regulations clarify the interplay of the 80/20 Rule under section 48 in the case of a property that was previously part of a qualified facility under section 45. These commenters requested specific confirmation that the 80/20 Rule may be applied to a retrofitted pumped storage hydropower property for which the section 45 credit had previously been claimed to allow a section 48 credit to be claimed. Although the 80/20 Rule permits a retrofitted energy property to be treated as originally placed in service and qualify for the section 48 credit even though it contains some used components, the 80/20 Rule must be applied by giving effect to the statutory language in section 48(a)(3) that prohibits a section 48 credit on any property that is part of a facility the production from which is allowed as a section 45 credit for the taxable year or any prior taxable year. However, in the case of a retrofitted qualified facility for

which a section 45 credit was not allowed, the 80/20 Rule could be used to obtain a new original use and placed in service date in order to claim a section 48 credit if an election under section 48(a)(5) is made. After consideration of the comments, an example of the application of the 80/20 Rule to a qualified hydropower production facility has been added to the final regulations.

B. Dual Use Rule

Former § 1.48–9 includes a Dual Use Rule, which provides that a solar energy property, wind energy property, or geothermal equipment is eligible for the section 48 credit to the extent of the energy property’s basis or cost allocable to its annual use of energy from a qualified source if the use of energy from “non-qualifying” sources does not exceed 25 percent of the total energy input of the energy property during an annual measuring period. This version of the Dual Use Rule is referred to as the “75-percent Cliff.”

Proposed § 1.48–14(b)(1) would provide that for purposes of section 48, the term dual use property means property that uses energy derived from both a qualifying source (that is, from an energy property including a qualified facility for which an election has been made) and from a non-qualifying source (that is, sources other than an energy property including a qualified facility for which an election has been made).

Proposed § 1.48–14(b)(2)(i) would provide that, in general, dual use property will qualify as energy property if its use of energy from non-qualifying sources does not exceed 50 percent of its total energy input during an annual measuring period. If the energy used from qualifying sources is between 50 percent and 100 percent, only a proportionate amount of the basis of the energy property will be taken into account in computing the amount of the section 48 credit (for example, if 80 percent of the energy used by a dual use property is from qualifying sources, 80 percent of the basis of the dual use property will be taken into account in computing the amount of the section 48 credit).

1. Dual Use Rule and Energy Storage Technology

The preamble to the Proposed Regulations explained that the Treasury Department and the IRS recognize that the Dual Use Rule is no longer relevant to determining the eligibility of energy storage technology placed in service after December 31, 2022, because the IRA added energy storage technology as an energy property effective for property

placed in service after December 31, 2022. However, the Dual Use Rule may still have other applications under section 48. The Proposed Regulations requested comments on the application of the Dual Use Rule to section 48 after its amendment by the IRA.

A commenter suggested that the final regulations should eliminate the application of the Dual Use Rule for all energy storage, including energy storage property placed in service before January 1, 2023. In the alternative, the commenter suggested reducing the requirement for energy storage property placed in service prior to 2023 to 50 percent charging from qualifying energy sources. This commenter also requested that final regulations eliminate any penalties or recapture for energy storage systems that charge less from qualifying energy sources than they did during a previous annual measuring period. Finally, the commenter recommended that the final regulations allow for exceptions to charging restrictions during actual or anticipated emergency days, particularly when there are severe weather conditions, which are periods during which storage resources are badly needed. The commenter explained that the charging limitations disqualify energy storage property placed in service before January 1, 2023, that is charged by grid rather than by solar, wind, or other qualifying property from the section 48 credit eligibility. The commenter noted that it would be difficult to ensure that the charge comes from qualifying sources during severe weather conditions. Because these final regulations apply only to property placed in service after December 31, 2022, these comments are outside the scope of the regulations.

Section 13102(q)(2) of the IRA provides that amendments to section 48 regarding energy storage technology apply to properties placed in service after December 31, 2022. Accordingly, proposed § 1.48–14(i) would limit application of proposed § 1.48–14 “to property placed in service after December 31, 2022, and during a taxable year beginning after the date of publication of the final rule.” Therefore, the prior version of the Dual Use Rule referred to as the 75-percent Cliff continues to apply to energy properties placed in service prior to January 1, 2023. These final regulations do not adopt the requested change to the applicability date provided in the Proposed Regulations for these provisions.

2. Aggregation of Energy Inputs

Proposed § 1.48–14(b)(2)(ii) would provide that the measurement of energy

use required for purposes of proposed § 1.48–14(b)(2)(i) is made by comparing, on the basis of Btus, energy input to dual use property from all qualifying sources with energy input from all non-qualifying sources. The Proposed Regulations further would provide that the Commissioner may also accept any other method that accurately establishes the relative annual use of energy derived from all qualifying sources and of energy input from all non-qualifying sources by dual use property.

A commenter requested clarification regarding the appropriate means of demonstrating annual energy consumption for an energy property, especially for solar water heating systems. The commenter noted that solar thermal systems have accepted Federal sizing guidelines for accurately estimating energy consumption by source, whether from solar, electric, gas, or other applicable technologies, and because of this, not all solar thermal systems may include heat meters or other specialized monitoring equipment that may be needed to determine the annual energy consumption by source requirements and, thus, requiring such measurement could add undue and unnecessary costs to comply with this rule. This commenter recommended that the final regulations specify types of monitoring in general, or in lieu of or in addition to monitoring, provide guidance on appropriate or acceptable energy consumption modeling that might otherwise meet this requirement. For example, the commenter noted system performance modeling that may be used to determine annual energy production for a given system that is situated in a specific climate and used in the ENERGY STAR Residential Water Heater Certification Program. This commenter also noted that clarification regarding the costs that can be included in the basis of an energy property would also be useful in other Dual Use contexts, such as for solar carports.

The Treasury Department and the IRS decline to adopt additional measurements to determine energy input from qualifying and nonqualifying sources. The Proposed Regulations state that the Commissioner may accept any other method that accurately establishes the relative annual use of energy derived from all qualifying sources and of energy input from all non-qualifying sources by dual use property. The final regulations will continue to allow the Commissioner to accept any other method that accurately establishes the qualifying sources and energy inputs to an energy property during the annual measuring period. Additionally, the final regulations do not provide

clarification regarding what costs may be included in the basis of energy property. See part I.B of this Summary of Comments and Explanation of Revisions for a discussion of the definitions of types of energy property.

3. Dual Use Property and Microgrid Controllers

The preamble to the Proposed Regulations states that certain equipment is necessary for a microgrid controller to perform its functions. However, such equipment may also have been required to be installed without the presence of a microgrid. An example is a communications system (for example, a local ethernet network or a commercial wireless network). Because a microgrid controller must be connected to a communications system to operate properly, such a communications system could be considered part of the microgrid controller itself. The communications system could also be used for other purposes and may not be dedicated to the microgrid system. The Treasury Department and the IRS consider the Dual Use Rule inapplicable to this scenario because it does not involve the use of energy derived from both qualifying and non-qualifying sources.

A commenter asserted that it is necessary to create a Dual Use Rule for microgrid controllers because requiring specific equipment to be dedicated to the microgrid controller that could otherwise be used for multiple purposes is an inefficient use of resources. The commenter also noted that given the complexity and unique nature of microgrids, it is impossible to specify all conditions under which a Dual Use might arise. This commenter suggested that any component of property that is tied into the microgrid system (whether hardware-based or software-based) becomes a necessary component of either the operation of the microgrid or the monitoring/maintenance of the operation of the microgrid. The commenter noted that existing equipment would not be included in the basis of the microgrid controller for purposes of the credit, but if new equipment is needed or if existing equipment needs to be replaced to accommodate the operations of the microgrid, such equipment should be included in the basis of the microgrid controller for purposes of the section 48 credit even if such equipment is partially used for other purposes that are not eligible for the section 48 credit. This comment poses the issue of whether the cost of components of property is included in an energy property's basis even though such

components can be used for purposes not intended for energy property. That issue is addressed in the discussion of the functional interdependence and integral property rules described in part I.C.2 and 3 of this Summary of Comments and Explanation of Revisions.

C. Incremental Cost

Former § 1.48–9(k) defines incremental cost as the excess of the total cost of equipment over the amount that would have been expended for the equipment if the equipment were not used for a qualifying purpose related to the section 48 credit. Proposed § 1.48–14(d)(1) would adopt a similar definition and allow only the incremental cost of energy property to be included in basis for purposes of determining the section 48 credit.

Proposed § 1.48–14(d)(2) would provide as an example, a scenario in which the incremental cost of a reflective roof for the purpose of installing a solar energy property is \$5,000, the difference between the costs of a reflective roof and a standard roof. A commenter suggested expanding this example to include other roof upgrades that enable the operation of energy property.

The amount of incremental cost is determined on a case-by-case basis and the example is only intended to illustrate the general application of the incremental cost rule. Accordingly, this comment is not adopted.

D. Ownership Rules

Proposed § 1.48–14(e)(1) would provide that for purposes of section 48, a taxpayer that owns an energy property is eligible for the section 48 credit only to the extent of the taxpayer's basis in the energy property. Further, proposed § 1.48–14(e)(1) would provide that in the case of multiple taxpayers holding direct ownership in an energy property, each taxpayer determines its basis based on its fractional ownership interest in the energy property.

Proposed § 1.48–14(e)(2) would provide that a taxpayer must directly own at least a fractional interest in the entire unit of energy property for a section 48 credit to be determined with respect to such taxpayer's interest. Further, proposed § 1.48–14(e)(2) would provide that no section 48 credit may be determined with respect to a taxpayer's ownership of one or more separate components of an energy property if the components do not constitute a unit of energy property. However, proposed § 1.48–14(e)(2) would also provide that the use of property owned by one taxpayer that is an integral part of an

energy property owned by a second taxpayer will not prevent a section 48 credit from being determined with respect to the second taxpayer's energy property.

Proposed § 1.48–14(e)(3)(i) would provide that the term “related taxpayers” means members of a group of trades or businesses that are under common control (as defined in Treasury Regulations § 1.52–1(b)). Proposed § 1.48–14(e)(3)(ii) would provide that related taxpayers are treated as one taxpayer in determining whether a taxpayer has made an investment in an energy property with respect to which a section 48 credit may be determined.

Many commenters disagreed with the application of the ownership rules. Several commenters raised general arguments focused on prior interpretations of section 48, while others voiced disagreement regarding the application of the ownership rules to qualified biogas property, GHP property, and offshore wind facilities (eligible for the section 48 credit through an election under section 48(a)(5)).

1. Prior Interpretations of the Ownership Rules

Some commenters raised interpretations of the ownership rules and the definition of an “energy property” in caselaw and guidance. These commenters assert that these sources demonstrate that ownership of individual components of energy property, and not of an entire unit of energy property, is sufficient to claim the section 48 credit.

Several commenters pointed to *Cooper v. Commissioner*, 88 T.C. 84 (1987), which was decided under prior versions of sections 46 and 48 and the regulations thereunder. In *Cooper*, the taxpayer asserted that owning specific components of solar water heating system was sufficient to claim the section 48 credit for solar energy property. While the Tax Court agreed that the taxpayer did not own the entire working solar water heating system, the Court held that the definition of a solar energy property provided in former section 48(l)(4) was sufficiently broad to provide a credit for component parts of a solar water heating system. *Id.* at 116–117.

The Tax Court subsequently clarified the holding in *Cooper*, explaining that “the property in *Cooper* consisted of integrated water-heating systems that were ready for installation to discharge their designated function”; they just had not been installed yet. *Olsen*, T.C. Memo 2021–41 at *14. Conversely, in the *Olsen* case, the Tax Court found that

“[p]etitioners’ lenses were mere components of a system . . .” and not a complete system and therefore unable to be placed in service as a system. *Id.* Stated otherwise, while commenters cite to *Cooper* to support the assertion that the section 48 credit is available for separate components of property within an energy property, the Tax Court clarified in *Olsen* that components that “operate as part of a complicated . . . system and were incapable of performing any useful function in isolation” were not placed in service. *Id.* at 13. Additionally, *Cooper* was decided under former section 48(l)(4) and not under the current version of section 48, which is substantially different.

Commenters also cited *Samis v. Commissioner*, 76 T.C. 609 (1981), for the proposition that ownership of an entire energy property is not required to claim the section 48 credit. However, *Samis* stands only for the proposition that property connected to a building is a part of the building regardless of ownership. In *Samis*, although the taxpayers owned a “total energy plant” that provided hot water and heating/cooling for a residential apartment complex not owned by the taxpayers, the total energy plant was held to be a structural component of the apartment complex and therefore not “tangible personal property” or “other tangible property” qualifying for the investment credit. The Tax Court explained in a footnote that the ownership of the plant was irrelevant because the total energy plant is not eligible for the section 48 credit. Therefore, in *Samis* it was clear only that the taxpayer could not separate ownership of the heating and cooling system from the apartment complex to sidestep rules that the property must not be part of a building.

Commenters also pointed to Revenue Ruling 78–268, 1978–2 C.B. 10, to support the premise that components of an energy property may be owned by different taxpayers. However, in Revenue Ruling 78–268, the taxpayers did not own just a component of one energy property—they owned a fractional interest in the entire facility. In Revenue Ruling 78–268, four parties, two of which were tax-exempt, owned an electric generating facility through a tenancy in common. Revenue Ruling 78–268 held that the presence of the tax-exempt owners did not disqualify the other owners from claiming a credit because the fractional interests in the tenancy in common were treated as separate assets. The Treasury Department and the IRS disagree with commenters that the holding of Revenue Ruling 78–268 conflicts with the ownership rules in the Proposed

Regulations. Instead, Revenue Ruling 78–268 illustrates that a fractional interest in the entire energy property is sufficient for a taxpayer to claim a section 48 credit, which is the very rule in proposed § 1.48–14(e)(2).

Commenters also cited PLR 201536017 (PLR) to support the premise that ownership of an entire energy property is not required to claim the section 48 credit. However, private letter rulings are not precedential and cannot be relied upon by a taxpayer other than the taxpayer addressed in the PLR (see section 6110(k)(3) of the Code). Furthermore, the PLR does not involve the section 48 credit but instead section 25D of the Code. Regardless, similar to Revenue Ruling 78–268, the PLR involves credit eligibility through fractional ownership of an entire energy property, not ownership of just certain components. The PLR addresses a factual scenario in which a taxpayer purchased solar PV panels in an offsite array (that also contains other solar PV panels owned by other individuals) as well as a partial ownership in racking equipment, inverter equipment, and wiring and other equipment and installation services required for the integration of the panels in the array and the interconnection of the array to a local utility's electric distribution system. The PLR concludes that as a result, the taxpayer has made a “qualified solar electric property expenditure” under section 25D(d)(2) and the taxpayer is eligible to claim a section 25D credit. To the extent this PLR provides any helpful analysis regarding the section 48 credit, it involves partial ownership in *all* the other equipment necessary to integrate the panels into the array and interconnect the array to a local utility's electric distribution system, and not just certain components.

Finally, commenters pointed to FAQs 34 and 35 of guidance from the Treasury Department regarding payments under section 1603 of the American Recovery and Reinvestment Act of 2009¹ (Section 1603 Grant Program) to support the premise that ownership of an entire energy property is not required to claim the section 48 credit. FAQ 34 addressed grant eligibility for a factual scenario involving an open-loop biomass facility owned by one taxpayer that uses off-site feedstock conversion equipment owned by another taxpayer. The FAQ provided that the conversion equipment may be considered part of the open-loop

¹ Payments for Specified Energy Property in Lieu of Tax Credits Under the American Recovery and Reinvestment Act of 2009, Frequently Asked Questions and Answers.

biomass facility eligible for the grant if the conversion equipment is integrated into the open-loop biomass facility. Evidence that the conversion facility is integrated into the open-loop biomass facility includes factors such as whether they are placed in service simultaneously, the extent to which the conversion facility's output is dedicated to the facility (for example, under an exclusive long-term supply contract), and the dependence of the open-loop biomass facility on the output of the conversion equipment (at least 75 percent).

Additionally, FAQ 35 addressed the procedural requirements of the 1603 Grant Program as applied to the facts presented in FAQ 34, by providing that the taxpayer that owns the conversion equipment and taxpayer that owns the open-loop biomass facility must each submit an application filed jointly in order to receive Section 1603 grant payments. While the 1603 Grant Program did adopt concepts from sections 45 and 48, the Section 1603 Grant Program is not based on any income tax provisions and thus is not a relevant precedent for purposes of the section 48 credit.

The Proposed Regulations' approach to ownership eligibility is further supported by the IRA's amendments to section 48 and administrability considerations. The IRA amended section 48 to provide for an increased credit amount for energy projects satisfying the PWA requirements (section 48(a)(9) through (11)), a bonus credit amount for energy projects satisfying domestic content requirements (section 48(a)(12)), and an increase in credit rate for energy projects in energy communities (section 48(a)(14)). Additionally, the IRA amended section 48(a)(8) to allow the cost of qualified interconnection property to be included in the basis of certain lower-output energy properties. This statutory framework indicates that special rules enacted by the IRA amendments apply to either an energy property or an energy project, which is further defined as a project consisting of one or more energy properties that are part of a single project. This statutory scheme requires that the section 48 credit is available only if an entire energy property (or energy project) is placed in service. Under the alternative ownership rules requested by commenters, a taxpayer's eligibility for the IRA's bonuses could depend, in many cases, on whether unrelated parties met the requirements for the various bonus credits provided by the IRA. This uncertainty would create severe challenges for tax administration.

While the Treasury Department and the IRS understand the concerns raised by commenters, the statutory language and administrability concerns arising from the overall statutory scheme effected by the IRA's recent amendments both support a requirement that the taxpayer own all or a fraction of an entire energy property or energy project. Therefore, the final regulations do not adopt the changes to the ownership rules requested by the commenters. The rule is adopted as proposed.

2. Application to Qualified Biogas Property

Commenters presented practical reasons for disagreeing with the ownership rules, particularly in the context of the section 48 credit for qualified biogas property placed in service at dairy farms and landfills. Commenters provided reasons that the owner of biogas upgrading equipment cannot be the same owner of the functionally interdependent qualified biogas property, which is described in proposed § 1.48–9(e)(11)(i) as including, but not limited to, a waste feedstock collection system, a landfill gas collection system, mixing or pumping equipment, and an anaerobic digester. Commenters also explained that biogas upgrading equipment is often added to dairy farms and landfills, and those that engage in biogas upgrading are not the same owners of the underlying farms and landfills.

A commenter explained that different types of qualified biogas property located at a site are almost always owned by different taxpayers as a result of regulatory constraints, financial capability, or other business considerations. Another commenter explained that because qualified biogas property is prohibitively expensive, farmers and ranchers often work with cooperatives or other organizations to facilitate shared ownership of such equipment, and the ownership rules, as proposed, would have an exclusionary effect on American agriculture and specifically on farmer-owned cooperatives. Emphasizing these same concerns, another commenter stated that often farmers and ranchers are not interested in an outside entity owning the anaerobic digester that, in addition to biogas, produces nutrients and water used within the farming operation and are therefore crucial for the farmers and ranchers to own and control.

Commenters note that similar issues arise in the context of landfills. For example, a commenter (whose comments were endorsed by many others) explained that landfill owners

often use collection equipment for compliance with regulatory requirements and view methane gas capture as a core operation. As a result, landfill gas collection systems are almost always owned and operated by the landfill operator, which may be a municipality, while the biogas upgrading equipment is owned by another taxpayer. This makes common ownership of both the functionally interdependent qualified biogas property as described in the proposed § 1.48–9(e)(11) and the biogas upgrading equipment difficult to achieve.

Moreover, those engaged in biogas upgrading at a landfill may not legally be allowed to own the landfill biogas equipment. For example, a commenter stated that the proposed treatment of a landfill gas collection system property as a functionally interdependent part of the qualified biogas property is problematic because it is very common for RNG production systems to be developed by a taxpayer at a landfill owned by a different taxpayer. In this type of arrangement, it is important for the owner of the landfill to retain ownership and control of the landfill gas collection property to comply with existing regulatory and permitting requirements for operation of the landfill. Additionally, this commenter noted that it is common for such landfill gas collection system property to have already been placed in service before biogas collected from the system is captured and integrated into a new RNG production system.

Another commenter emphasized both timing issues and legal restrictions created by the ownership rules, stating that the ownership rules fail to recognize that most landfills have already installed gas capture and control systems (GCCS System). These systems are generally required under existing regulations, and the landfills typically insist on maintaining total control and ownership of the GCCS System to ensure they remain within regulatory requirements. This commenter explained that RNG developers provide additional equipment to further refine captured landfill gases into beneficial end use products, but that additional equipment may not benefit from section 48 credits under proposed § 1.48–9(e)(11), which requires the split ownership of the GCCS System and gas upgrading equipment.

The final regulations address the commenters' concerns through other revisions to the final regulations. The Treasury Department and the IRS expect that these revisions will alleviate the concerns raised by the biogas industry without requiring changes to the

ownership rules. For discussion of these revisions to the definition of qualified biogas property see part I.B.5. of this Summary of Comments and Explanation of Revisions.

3. Application to GHP Property and Geothermal Energy Property

Commenters also provided feedback on the effect of the ownership rules in the context of GHP property and geothermal energy property. Many commenters asserted that the Proposed Regulations could cause significant potential harm to development of geothermal projects. These commenters stated that it is important that the Treasury Department and the IRS provide a method for split ownership of GHP property and geothermal energy property to qualify for the section 48 credit. In support of these requests, commenters pointed to congressional correspondence urging support for the geothermal industry and requesting guidance to allow for viable third-party ownership business models, including clarifying that GHP property and geothermal energy property are exempt from the “limited use property” doctrine.

Commenters also explained that there are dozens of networked geothermal projects currently planned or deployed across the country. Commenters stated that networked GHP property and geothermal energy systems almost always involve multiple owners by design, and that GHP property networks can serve a diverse array of customer buildings while those customers own and maintain their own GHP property. Commenters stated that the ground loop and the heating and cooling units are functionally interdependent yet distinct components of the GHP property that are often owned by utilities. The commenters also noted that in many instances, utilities are prohibited by regulators from owning their customers’ heating and cooling equipment. These commenters suggest that the delineation between outdoor and indoor equipment is sufficient to allow for clear allocation of the credit between taxpayers.

Several other commenters made similar points about GHP property and the ownership rules. Some commenters emphasized the need for an exception for geothermal property and others focused on the reasoning for separate ownership. For example, a commenter highlighted the commonality of separate ownership arrangements because utilities are often prohibited from owning a customer’s heating and cooling equipment. Another commenter provided a detailed discussion on separate ownership of geothermal

property and highlighted the business necessity for this structure. This commenter explained that the barrier to geothermal energy use is the high cost and expertise required for the overall underground system. This commenter said it makes perfect sense for the underground system to be owned by a specialized company with both the technical skills and a long-range investment strategy. This commenter explained that in other cases, it will be independent companies that contract to supply geothermal energy to the edge of a facility. The commenter noted that in both cases, the facility or building owner would then connect to the system to make use of the geothermal energy, and that the energy user is required neither to make the investment in the geothermal system, nor to have expertise in developing the system.

This same commenter also explained that the Proposed Regulations ignore historical precedent that virtually all geothermal energy development was split ownership. This commenter asserted that since the 1980s and into the future, split ownership remains an important model for geothermal energy development and use. The commenter gave several examples illustrating the split ownership model across the United States.

Commenters generally recommended that split ownership be allowed for geothermal property, including GHP property. One commenter (whose comments were endorsed by many others) suggested drawing the line at indoor/outdoor ownership. Another commenter asserted that property within a home or building should be considered an entire unit of energy property while another taxpayer owns the equipment underground as a separate unit of energy property. This commenter noted that the final regulations should define the scope of energy property to allow the taxpayer a section 48 credit based on the taxpayer’s basis in energy property it owns.

Commenters also noted the use of “equipment” in section 48(a)(3)(A)(iii) and (vii) (for example) to refer to geothermal energy property is different from the use of “system” used in other places to refer to energy property (for example, section 48(c)(1)(C), which defines a fuel cell power plant). These commenters noted that if the equipment is viewed individually as is suggested by the differing definitions in section 48, then individual owners should be allowed to qualify in contravention of the coils/heat pump example included in the proposed rules. Commenters also made this point regarding use of the

term “equipment” with reference to solar energy property.

The statutory language does not support providing a special ownership rule for GHP property (or geothermal energy property) as requested by the commenters. In the case of GHP property, both the coils in the ground and the heat pump equipment are necessary for GHP property to satisfy the definition in section 48(a)(3)(A)(vii). Because both the coils and heat pump are necessary to perform the function of the GHP property, ownership of only the coils or only the heat pump is not ownership of the entire unit of energy property and therefore, is not ownership of GHP property, as statutorily defined.

This analysis is consistent with the definition of “geothermal energy property” under section 48(a)(3)(A)(iii), which includes as energy property equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage. That is, this definition encompasses production and disposition or use up to but not including electrical transmission. Because both the equipment that produces electricity from a geothermal deposit and equipment needed to either distribute or use such energy are necessary to perform the energy function of the geothermal energy property, ownership of only components of that equipment is not ownership of the entire unit of energy property and therefore, is not ownership of geothermal energy property, as statutorily defined.

In response to these comments, the Treasury Department and the IRS have provided an example of GHP property in the final regulations to clarify that ownership of every heat pump that is connected to coils in the ground owned by the same taxpayer is not required to qualify, but that ownership of both coils and at least one heat pump is required. Additionally, other taxpayers may purchase heat pumps that attach to existing coil systems. While ownership of those heat pumps alone will not satisfy section 48, it is possible that the taxpayer may be eligible for a credit under section 25D.

Commenters also requested an exemption for GHP property from the “limited use property” doctrine. Property that is not commercially usable by anyone other than the lessee at the end of the lease term is considered “limited use.” Section 5.02 of Revenue Procedure 2001–28, 2001–1 C.B. 1156, provides an example of a leased

smokestack attached to a warehouse owned by the lessee and concludes that the smokestack is limited-use property because it would not be commercially feasible to disassemble the smokestack at the end of the lease term and reconstruct it at a new location. Commenters expressed concern because, in one typical third-party ownership arrangement, a third-party owned ground loop is installed for the benefit of a building and leased to the building owner, with the building owner owning the heat pump.

Under a longstanding body of case law and IRS guidance, if property is leased for substantially its entire useful life, then the transaction is treated more properly as a sale of the property for Federal income tax purposes than a lease, because the party designated as the lessee obtains the benefits and burdens of ownership of the property under the purported lease agreement. *Grodt & McKay Realty, Inc. v. Commissioner*, 77 T.C. 1221 (1981) (listing factors for determining whether the benefits and burdens of ownership of property have passed and a sale occurred); Rev. Rul. 55-541, 1955-2 C.B. 19 (property determined to be leased for substantially its entire useful life and therefore results in a transfer of equitable ownership). A purported lease of limited-use property, therefore, may be treated as a sale for Federal income tax purposes because the lessee is considered to have acquired the benefits and burdens of ownership of the property for substantially its entire useful life. See *Estate of Starr v. Commissioner*, 274 F.2d 294 (9th Cir. 1959) (purported lease of a fire sprinkler system); *Mt. Mansfield Television v. United States*, 239 F.Supp. 539 (D. Vermont 1964) aff'd 342 F.2d 994 (2d Cir. 1965) (purported lease of microwave equipment installed in a television station).

Under this analysis, a third-party ownership arrangement involving a lease of a ground loop that cannot be removed at the end of the lease and used somewhere else may be characterized more properly for Federal income tax purposes as a sale (rather than a lease) of the ground loop to the building owner at the inception of the lease because the lessor must re-lease or sell the property to the lessee at the end of the lease term.

To claim the section 48 credit, the taxpayer must own the energy property when it is placed in service. Consequently, the lessor of the ground loop in the lease financing transaction above may not be eligible for the section 48 credit for the cost of the ground loop insofar as it is treated as having

transferred ownership of the ground loop to the purported lessee for Federal income tax purposes at the inception of the lease. This would be the case even if the proposed regulations were modified to permit separate ownership of components of an energy property, or in the absence of such a modification, even if the nominal owner of the ground loop owned a fractional ownership interest in the other components of the GHP property, which taken together constitutes an energy property. Because of the “limited use property” doctrine, the lessor of the ground loop may not be regarded as the tax owner of the ground loop when it is placed in service and, therefore, would not be eligible for the section 48 credit for its basis in the ground loop.

Commenters presume that it is within the Treasury Department and the IRS’s regulatory authority to revise the “limited use property” doctrine provided in Revenue Procedure 2001-28, 2002-1 C.B. 1156, to provide an exception for GHP property. However, Revenue Procedure 2001-28 (and its predecessors, which date back to Revenue Procedure 75-21, 1975-1 C.B. 715) merely provides guidelines for advance rulings on leveraged lease transactions, and notes that these guidelines “do not define, as a matter of law, whether a transaction is or is not a lease for [F]ederal income tax purposes and are not intended to be used for audit purposes.” Rather, the “limited use property” doctrine reflects the broader Federal income tax principle that the characterization of a leasing transaction for Federal income tax purposes is determined by its substance and not its form. *Helvering v. F. & R. Lazarus & Co.*, 308 U.S. 252 (1939); *Frank Lyon Co. v. United States*, 435 U.S. 561 (1978). Consequently, explicit statutory authorization would be needed to exempt leases of GHP property from the “limited use property” doctrine. The final regulations, therefore, do not exempt GHP property from the “limited use property” doctrine.

4. Application to Solar Energy Property and Offshore Wind Facilities

Commenters also provided feedback on the effect of the ownership rules in the context of solar energy properties and offshore wind facilities. A commenter asserted that requiring a taxpayer to own a direct interest in each component of a unit of solar energy property is unreasonable. This commenter provided an example of a taxpayer that constructs and places in service a solar facility that has 1,000 components and qualifies for the section

48 credit. If the taxpayer owns 999 components of the solar facility and another taxpayer owns the remaining one component, then the same solar facility that qualified for the section 48 credit because the taxpayer owned all components will no longer be energy property under the Proposed Regulations. This commenter said there does not seem to be any justification for this rule. This commenter highlighted that the facility is serving the same purpose and would be eligible for the same amount of section 48 credit. The commenter also asserted that introducing and defining the term “unit of energy property” in a way that does not allow its components to be owned by more than a single taxpayer leads to an unreasonable result.

This commenter requested that the Treasury Department and the IRS issue a rule enabling taxpayers to claim the section 48 credit for separate components of energy property. Alternatively, the commenter requested that the Treasury Department and the IRS issue a rule to limit the definition of unit of energy property with respect to a particular taxpayer to those components owned by that taxpayer. As has been discussed previously in part III.D.1 of this Summary of Comments and Explanation of Revisions, the statute requires the taxpayer to own an interest in an energy property to claim a section 48 credit.

Some commenters were particularly concerned about the rule in the Proposed Regulations that a taxpayer is eligible to claim the credit for integral property only if that same taxpayer owns the unit of energy property. These commenters were specifically concerned about the ability of owners of power conditioning and transfer equipment to claim the section 48 in both the solar and offshore wind context. In general, the commenters disagreed that an integral property that would otherwise qualify if owned by the same taxpayer that owns the unit of energy property would not qualify if owned by another taxpayer. For example, a commenter asserted in the case of a single energy property in which energy property and integral parts are constructed together but owned by separate taxpayers, both taxpayers should be able to claim separate credits on the bases of their respectively owned portions. Similarly, the commenter noted that if a unit of energy property is constructed and placed in service by a taxpayer, and later another taxpayer constructs and places in service integral property, both taxpayers should be able to claim credits.

A commenter made a similar point specifically about offshore wind facilities. This commenter noted that if the power conditioning equipment is owned by a taxpayer that has no ownership in the offshore wind facility, the power conditioning equipment would not qualify for the section 48 credit without changing its operation, character, or function but would have qualified had that taxpayer had an ownership interest in the offshore wind facility. The commenter stated that the power conditioning equipment continues to serve the same purpose, is used directly in the intended function of the offshore wind facility and is essential to the completeness of its intended function. This commenter pointed out that offshore wind facilities (such as those along the Atlantic coast) will involve multiple States, and it is unlikely that the same entity will own both the offshore wind facility and the integral supporting infrastructure, but both should be eligible for the credit.

Another commenter made a similar point stating that power conditioning and transfer equipment has been established by the Proposed Regulations as an integral part of the production of electricity from an offshore wind facility, and that in accordance with precedent, the Treasury Department and the IRS should establish in the final regulations that the separate owner of this integral equipment may qualify for the section 48 credit. This commenter stated that this is essential to enabling the necessary flexibility for offshore wind developers to structure financially viable projects, and ultimately achieve the Administration's goal of deploying 30 gigawatts (GW) of offshore wind capacity by 2030. Another commenter noted that the distinction in the Proposed Regulations between functionally interdependent property (needed for generation of electricity) and other "integral" property for purposes of section 48 is arbitrary, illogical, and unnecessary for offshore wind properties involving multiple owners and there is no need for an owner of an offshore wind delivery system to have an artificial requirement to own some portion of the turbines. This commenter noted that permitting multiple owners to share the section 48 credit would not lead to overuse or "double counting" of the section 48 credit.

Other commenters noted that allowing third party ownership of power conditioning and transfer equipment would significantly decrease the financial burden on developers and ratepayers, as well as diversify investment in the industry. Commenters

also stressed the benefits of separate ownership as a more cost effective model of ownership, including efficiencies that provide lower overall costs to consumers; reduced environmental impacts (for example, fewer cables traversing sensitive marine ecosystems); efficient use of constrained cable corridors; fewer disruptions to communities than if each offshore wind facility develops its own offshore wind power conditioning and transfer equipment; and incentivizing competitive solicitation of such equipment.

Generally, these commenters requested that integral property, specifically power conditioning equipment, be treated as a separate unit of energy property that may claim the section 48 credit. However, section 48 provides a credit only for property that satisfies the definitions of "energy property" provided at section 48(a)(3) and (c), and owners of only integral property do not own "energy property" as defined in section 48(a)(3) or (c). For example, power conditioning and transfer equipment does not alone generate electricity or satisfy an intended function provided by the statute. As a result, costs associated with integral property owned by a taxpayer that owns the related energy property may be included in basis of the energy property owned by the same taxpayer as provided in these final regulations because integral property is necessary for the intended use for an energy property, but integral property alone cannot qualify for the section 48 credit.

E. Calculation of Basis

Proposed § 1.48–14(e)(1) would provide that for purposes of the section 48 credit, a taxpayer that owns an energy property is eligible for the credit only to the extent of the taxpayer's basis in the energy property. In the case of multiple taxpayers holding direct ownership in an energy property, each taxpayer determines its basis based on its fractional ownership interest in the energy property. A commenter supported the fractional ownership rule for determining a taxpayer's basis and requested the extension of those rules to the credits under sections 30C and 45W of the Code.

Other commenters, while opposing the ownership rules, also requested clarification of how to determine basis if the fractional ownership rule is retained. A commenter requested examples of the application of these ownership rules in the context of an animal waste-to-RNG qualified biogas property in which the property

comprising the qualified biogas property is owned by multiple taxpayers.

Another commenter requested clarification regarding the allocation of a section 48 credit if taxpayers own different fractional ownership interests in the unit of energy property and related integral property. A commenter requested that the final regulations apply similar allocation rules provided in proposed § 1.48–9(f)(3)(i) and (ii) to shared integral property in the context of a qualified investment credit facility under section 48(a)(5).

Other commenters, while opposed to the ownership rules, suggested alternative ways to determine basis if there are multiple owners. Two commenters suggested that energy property that is integral to multiple energy projects (for example, as part of a "shared collector system" configuration) should be eligible for the section 48 credit based on the energy property's capacity allocable to each taxpayer's energy project. Another commenter supported the creation of a rule that can be used to determine if the primary use of a transmission line is for renewable energy generation and, if so, to allow it to qualify as a split ownership component of the qualifying renewable energy development (whether wind, solar, or geothermal). This commenter pointed to the use of the Open Access Transmission Tariff as a model for such test. This commenter also noted that the initial dedicated renewable connection capacity is likely to be oversized and so the IRS should be able to develop partial section 48 credit qualification over time if deemed necessary.

Proposed § 1.48–14(e)(1) would provide that a taxpayer determines its basis based on the taxpayer's fractional ownership in the energy property. Proposed § 1.48–14(e)(4)(iii), Example 3, would provide an example in which integral property has two owners that each own one-half of the integral property with each owner including one-half of the basis of that property to determine their basis for section 48 credit purposes. The example does not look to whether the use of the integral property for qualifying uses corresponded to the one-half split in ownership.

Proposed § 1.48–9(f)(3) would provide that multiple energy properties (whether owned by one or more taxpayers) may include shared property that may be considered an integral part of each energy property so long as the cost basis for the shared property is properly allocated to each energy property. In that scenario, the total cost basis of such shared property divided among the

energy properties may not exceed 100 percent of the cost of such shared property, but there is no requirement that the proportion of a taxpayer's ownership of the integral property must correspond with the proportion of the taxpayer's fractional ownership of the energy property.

Because the fractional ownership rules applicable to multiple owners of integral property must comport with the general ownership rules, the Treasury Department and the IRS decline to adopt commenters' alternative suggestions on calculating the credit for integral property. Section 48 requires that the taxpayer own property that satisfies the statutory definition of an energy property, and therefore the determination cannot be tied to an alternative measure such as capacity. In response to the comment on transmission lines, proposed § 1.48–9(f)(3)(ii), which is adopted in these final regulations, makes clear that energy property does not include any electrical transmission equipment, such as transmission lines and towers, or any equipment beyond the electrical transmission stage. Finally, in response to comments requesting clarifications with respect to the application of section 30C or 45W, such clarifications are more appropriately addressed in guidance under those provisions.

Commenters also submitted questions concerning the specific costs that are capitalized and included in basis (for example, consultant labor and expenses associated with project/construction management, planning, design, engineering, and environmental services, contractor costs, legal services and permitting services). Issues concerning what costs may be capitalized and included in the basis of an energy property are similarly beyond the scope of these final regulations.

F. Election To Treat Qualified Facilities as Energy Property

Section 48(a)(5) generally provides an election to treat a “qualified investment credit facility” as energy property for purposes of the section 48 credit. Section 48(a)(5)(B) provides that no section 45 credit is allowed for any taxable year with respect to any qualified investment credit facility. Section 48(a)(5)(C) provides, in part, that the term “qualified investment credit facility” means any qualified facility (within the meaning of section 45(d)(1) through (4), (6), (7), (9), or (11)) with respect to which no section 45 credit has been allowed and for which the taxpayer makes an irrevocable election under section 48(a)(5). Accordingly, proposed § 1.48–9(d)

would exclude from energy property any property that is part of a qualified facility with respect to which a section 45 credit is allowed for any taxable year, including any prior taxable year.

Proposed § 1.48–14(f) would provide rules applicable to the election under section 48(a)(5)(C) to treat certain facilities as energy property eligible for a section 48 credit in lieu of a renewable electricity production credit under section 45. Proposed § 1.48–14(f)(1) would provide that if a taxpayer makes an election under section 48(a)(5)(C) to treat qualified property that is part of a qualified investment credit facility as energy property with respect to which a section 48 credit may be determined, such property will be treated as energy property for purposes of section 48. Proposed § 1.48–14(f)(1) would also provide that no section 45 credit may be determined with respect to any such qualified investment credit facility and that the requirements of section 45 are not imposed on a qualified investment credit facility. Additionally, proposed § 1.48–14(f)(1) would provide that no credit under section 45Q or 45V may be determined with respect to either any carbon capture equipment included in a qualified investment credit facility or any specified clean hydrogen production facility.

Proposed § 1.48–14(f)(2) would define the term “qualified property” for purposes of proposed § 1.48–14(f). Proposed § 1.48–14(f)(3) would provide definitions related to requirements for qualified property. Proposed § 1.48–14(f)(4) would define the term “qualified investment credit facility.” Proposed § 1.48–14(f)(5) would provide that intangible property is excluded from the definition of qualified property for purposes of the election under section 48(a)(5).

Several commenters asked whether a taxpayer may claim a section 48 credit for energy storage technology co-located with a qualified facility for which a taxpayer claims the section 45 credit if the energy storage technology is an integral part of the qualified facility. As described in the preamble to the Proposed Regulations, the Treasury Department and the IRS understand that energy storage technologies eligible for the section 48 credit are often co-located with qualified facilities eligible for the section 45 credit and may share power conditioning and transfer equipment.

In consideration of this practice, proposed § 1.48–9(f)(3)(ii) would provide that power conditioning and transfer equipment that is shared by a qualified facility (as defined in section 45(d)) and an energy property may be treated as an integral part of the section

48 energy property. Proposed § 1.48–9(d) would also clarify that such shared property is not considered part of a qualified facility and, therefore, the sharing of such property will not impact the ability of a taxpayer to claim the section 48 credit for an energy property or the section 45 credit for a qualified facility.

In the preamble to the Proposed Regulations, the Treasury Department and the IRS requested comments regarding whether additional guidance is needed on this issue. After considering the comments received, the Treasury Department and the IRS confirm that even though shared power conditioning and transfer equipment is integral to a qualified facility for which the section 45 credit is claimed, co-located energy storage technology remains a separate energy property under section 48. Therefore, a section 48 credit may be claimed for energy storage technology that is co-located with a qualified facility and shares power conditioning and transfer equipment with the qualified facility for which a section 45 credit is claimed.

In the context of the section 48(a)(5) election, commenters requested that the final regulations confirm that components of property within a qualified hydropower facility (for which a section 48(a)(5) election is made) are eligible for the section 48 credit. A commenter asked that regulations provide guidance regarding the scope of a “qualified investment credit facility” and “qualified property,” including examples specific to a qualified hydropower facility.

Another commenter requested that the final regulations confirm that the section 48 credit for energy storage technology is available regardless of whether the energy storage technology is part of a qualified hydropower facility for which a section 45 credit is allowed. This commenter requested that final regulations confirm that any new investment in property with respect to pumped storage hydropower qualifies for the section 48 credit (as an energy storage technology) regardless of whether the property is shared with a qualified hydropower facility that claims or has claimed the section 45 credit. A section 48 credit may be claimed for energy storage technology that is co-located with a qualified facility and shares power conditioning and transfer equipment with the qualified facility for which a section 45 credit is claimed. These final regulations provide rules of general applicability that taxpayers can use to determine whether they are eligible for a section 48 credit. The Treasury

Department and the IRS are not in a position to determine credit eligibility in specific fact scenarios in this final regulation. Thus, the final regulations do not provide the requested clarifications.

Commenters also requested clarification concerning property that is included in offshore wind facilities. A commenter requested clarification that qualified property in a marshaling or operation and maintenance port that is an integral part of offshore wind energy facility should qualify as energy property for the purposes of the section 48 credit. The Proposed Regulations would provide a rule for location of energy property that addresses this comment. Under proposed § 1.48–9(f)(4), any property that meets the requirements of proposed § 1.48–9(f)(2) (unit of energy property rules) and proposed § 1.48–9(f)(3) (integral part rules) is a part of an energy property regardless of where such property is located. The final regulations adopt this rule as proposed. However, these final regulations have revised proposed § 1.48–14(f) to address only the election to treat qualified facilities as energy property, and several of the provisions in § 1.48–14(f) have been rearranged under that subsection in the final regulations. Additionally, the coordination rule for the sections 42 and 48 credits has been moved from proposed § 1.48–14(f)(5) to § 1.48–14(g) in the final regulations.

Additionally, the final regulations remove the references to “software” from proposed § 1.48–14(f)(3)(iii)(B) because section 48(a)(5) limits “qualified property” to tangible property. Software generally is not tangible property.

G. Lower-Output Energy Properties and Qualified Interconnection Costs

1. Qualified Interconnection Property

Section 48(a)(8)(A) provides generally that for purposes of determining the credit under section 48(a), energy property includes amounts paid or incurred by the taxpayer for qualified interconnection property in connection with the installation of energy property that has a maximum net output of not greater than five MW (as measured in alternating current), to provide for the transmission or distribution of the electricity produced or stored by such property, and that are properly chargeable to the capital account of the taxpayer (qualified interconnection costs).

Section 48(a)(8)(B) provides that the term “qualified interconnection property” means, with respect to an

energy project that is not a microgrid controller, any tangible property (1) that is part of an addition, modification, or upgrade to a transmission or distribution system that is required at or beyond the point at which the energy project interconnects to such transmission or distribution system in order to accommodate such interconnection, (2) that is either (i) constructed, reconstructed, or erected by the taxpayer, or (ii) for which the cost with respect to the construction, reconstruction, or erection of such property is paid or incurred by such taxpayer, and (3) the original use of which, pursuant to an interconnection agreement, commences with a utility.

Section 48(a)(8)(C) and (D) provide additional definitions for purpose of this rule. Section 48(a)(8)(C) provides that the term “interconnection agreement” means an agreement with a utility for the purposes of interconnecting the energy property owned by such taxpayer to the transmission or distribution system of such utility. Section 48(a)(8)(D) provides that for purposes of section 48(a)(8), the term “utility” means the owner or operator of an electrical transmission or distribution system that is subject to the regulatory authority of a State or political subdivision thereof, any agency or instrumentality of the United States, a public service or public utility commission or other similar body of any State or political subdivision thereof, or the governing or ratemaking body of an electric cooperative. Section 48(a)(8)(E) provides that in the case of costs paid or incurred for interconnection property, amounts otherwise chargeable to capital account with respect to such costs must be reduced under rules similar to the rules of section 50(c).

Proposed § 1.48–14(g)(1) would generally provide that for purposes of determining the section 48 credit, energy property includes amounts paid or incurred by the taxpayer for qualified interconnection property, in connection with the installation of energy property that has a maximum net output of not greater than five MW (as measured in alternating current). The qualified interconnection property must provide for the transmission or distribution of the electricity produced or stored by such energy property and must be properly chargeable to the capital account of the taxpayer as reduced by § 1.48–14(g)(6).

Proposed § 1.48–14(g)(2) would define the term “qualified interconnection property” to mean, with respect to an energy project that is not a microgrid controller, any tangible property that is

part of an addition, modification, or upgrade to a transmission or distribution system that is required at or beyond the point at which the energy project interconnects to such transmission or distribution system in order to accommodate such interconnection; is either constructed, reconstructed, or erected by the taxpayer, or for which the cost with respect to the construction, reconstruction, or erection of such property is paid or incurred by such taxpayer; and the original use of which, pursuant to an interconnection agreement, commences with a utility.

Proposed § 1.48–14(g)(2) also would provide that qualified interconnection property is not part of an energy property and that as a result, qualified interconnection property is not taken into account in determining whether an energy property satisfies the requirements for the domestic content bonus credit amount referenced in section 48(a)(12) and the increase in credit rate for energy communities provided in section 48(a)(14).

Some commenters requested that the final regulations confirm that equipment required to modify and upgrade transmission or distribution systems beyond the point of interconnection would be considered qualified interconnection property and eligible for inclusion in basis. As already noted, proposed § 1.48–14(g)(2) would define the term “qualified interconnection property” to mean, with respect to an energy project that is not a microgrid controller, any tangible property that is part of an addition, modification, or upgrade to a transmission or distribution system that is required at or beyond the point at which the energy project interconnects to such transmission or distribution system in order to accommodate such interconnection. These final regulations adopt this definition in renumbered § 1.48–14(h)(2). Therefore, the Treasury Department and the IRS confirm that tangible property required to modify and upgrade transmission or distribution systems beyond the point of interconnection would (provided the property satisfies the other requirements of section 48(a)(8)(B)) be considered qualified interconnection property and eligible for inclusion in basis for purposes of the section 48 credit.

Some commenters requested that certain components or technologies be specifically listed as qualified interconnection property. For example, a commenter asked for clarification that existing technologies that can be used to upgrade grid infrastructure to allow for interconnection of energy projects

would be considered qualified interconnection property. Two commenters recommended including equipment between “a customer’s distribution system and the utility’s distribution point of common coupling (POC).” These commenters listed relays, switchgears (including low-voltage assemblies, medium-voltage assemblies, and circuit breakers), transformers, and voltage regulators.

The Proposed Regulations would adopt the statutory requirements for qualified interconnection property provided in section 48(a)(8)(B). The final regulations adopt these rules as proposed. Because a definitive response to comments requesting greater specificity regarding equipment that is considered qualified interconnection property would require the Treasury Department and the IRS to conduct a complete factual analysis of the property in question, the requested clarifications are not addressed in these final regulations.

One commenter requested that the final regulations include a detailed definition of “point of interconnection” to distinguish between energy property and qualified interconnection property for purposes of calculating the basis of the energy property eligible for a section 48 credit. After consultation with the DOE, the Treasury Department and the IRS understand that the “point of interconnection” is a term of art well understood by the industry and taxpayers seeking an interconnection agreement. At the transmission level, interconnection procedures are, in most of the United States, governed by the Federal Energy Regulatory Commission (FERC). Providing a further definition of “point of interconnection” outside of the FERC context risks creating confusion for generators and taxpayers. Therefore, no additional clarifications to define the “point of interconnection” are included in the final regulations.

a. Interaction With PWA Requirements

Section 48(a)(9)(A)(i) (general rules for the increased credit amount for energy projects) provides that in the case of any energy project that satisfies the requirements of section 48(a)(9)(B), the amount of the credit determined under section 48(a) (determined after the application of section 48(a)(1) through (8) and (15), and without regard to this clause) is equal to such amount multiplied by 5.

The Proposed Regulations did not address the interaction between the rules for qualified interconnection costs and the PWA requirements. A commenter requested that the final regulations confirm that the PWA

requirements do not apply to the construction, alteration, or repair of interconnection property.

Section 48(a)(9) provides that the increased credit amount (for satisfying the PWA requirements) is determined after the application of section 48(a)(8) (rules for interconnection property) and therefore, amounts paid or incurred by the taxpayer for qualified interconnection property in connection with the installation of energy property are eligible for the increased credit amount. However, the PWA requirements apply only to “energy projects,” which is defined in a way that excludes interconnection property. See section 48(a)(9)(A)(ii) (defining “energy project” as “a project consisting of one or more energy properties that are part of a single project”); section 48(a)(8)(B)(i) (defining “interconnection property” as required “at or beyond the point at which the energy project interconnects to” a transmission or distribution system, implying that interconnection property is distinct from the energy project). Thus, interconnection property is not subject to the PWA requirements.

In addition to not being part of an energy project, interconnection property generally is not within the control of the taxpayer that owns the energy project because it need not be owned by the same taxpayer. Instead, qualified interconnection property may be owned by a utility and is part of an addition, modification, or upgrade to a transmission or distribution system that is required at or beyond the point at which the energy project interconnects to such transmission or distribution system. It would be difficult or impossible in such a case for the taxpayer to control or monitor whether the construction of the interconnection property complies with PWA requirements. This may explain why the statute permits the increased credit amount for amounts paid or incurred for qualified interconnection property, without subjecting the construction of such property to the PWA requirements.

2. Interaction With Other Bonus Credit Amounts

Section 48(a)(12)(A) provides generally that in the case of any energy project that satisfies the domestic content requirements, for purposes of computing the section 48 credit with respect to such property, the energy percentage is to be increased by the applicable credit rate increase, which is 2 percentage points in the case of an energy project that does not satisfy the requirements of section 48(a)(9)(B), and 10 percentage points in the case of any

energy project that satisfies those requirements.

Section 48(a)(14)(A) provides that in the case of any energy project that is placed in service within an energy community (as defined in section 45(b)(11)(B), as applied by substituting “energy project” for “qualified facility” each place it appears), for purposes of computing the section 48 credit with respect to energy property that is part of such project, the energy percentage is to be increased by the applicable credit rate increase that is 2 percentage points in the case of any energy project that does not satisfy the requirements of section 48(a)(9)(B), and 10 percentage points in the case of any energy project that satisfies those requirements.

A commenter requested clarification regarding the interaction between the rules for qualified interconnection costs and the computation of the domestic content bonus credit amount and the increased credit amount for energy projects located in an energy community. This commenter stated that if a community solar project seeks interconnection to the distribution grid, usually there will be upgrades or other investments necessary to support the connection to the distribution system. The commenter explained that the generator generally has little control or ability to determine the components or design of a distribution utility’s interconnection requirements, and as a result, it is entirely appropriate to exclude these investments for the eligibility determination for the domestic content bonus credit amount and the increased credit amount for energy projects located in an energy community. According to the commenter, however, because these qualified interconnection costs are paid by the developer, they would still be part of the basis not only for the section 48 credit, but also for the domestic content bonus credit amount and the increased credit amount for energy projects located in an energy community. This commenter requested that the Treasury Department and the IRS confirm that this is the correct interpretation of the rule.

As highlighted by commenter and as provided in proposed § 1.48–14(g)(2), qualified interconnection property is not part of an energy property and as a result, qualified interconnection property is not taken into account in determining whether an energy property satisfies the requirements for the domestic content bonus credit amount and the increased credit amount for energy projects located in an energy community. However, the commenter requested clarification regarding

whether qualified interconnection costs are eligible for these provisions.

Section 48(a)(8)(A) provides that for purposes of determining the credit under section 48(a), energy property includes amounts paid or incurred by the taxpayer for qualified interconnection property in connection with the installation of certain energy property (subject to certain additional requirements). Because the credit under section 48(a) is calculated by multiplying the energy percentage—which includes any domestic content bonus credit amount and any increased credit amount for energy projects located in an energy community—by the basis of the energy project—which includes amounts paid or incurred by the taxpayer for qualified interconnection property, qualified interconnection costs are taken into account in calculating the domestic content bonus credit amount and the increased credit amount for energy projects located in an energy community to the extent included in the basis of the energy property.

3. Basis Reduction

Section 48(a)(8)(E) provides that in the case of costs paid or incurred for interconnection property, amounts otherwise chargeable to capital account with respect to such costs are to be reduced under rules similar to the rules of section 50(c). Similarly, proposed § 1.48–14(g)(6) would provide that in the case of costs paid or incurred for qualified interconnection property as defined in proposed § 1.48–14(g)(2), amounts otherwise chargeable to capital account with respect to such costs must be reduced under rules similar to the rules of section 50(c). Neither the statute nor the proposed regulations specify whether the provisions of section 50(c)(1) or (3) apply. Section 48(a)(8)(A) provides that energy property includes amounts paid or incurred by the taxpayer for qualified interconnection property in connection with the installation of energy property. Therefore, the special rule in section 50(c)(3)(A), which provides for a basis reduction of 50 percent in the case of any energy credit, applies to qualified interconnection property the costs of which are included for purposes of the section 48 credit.

Proposed § 1.48–14(g)(6) would also provide that the taxpayer must pay or incur qualified interconnection property costs; therefore, any reimbursement, including by a utility, must be accounted for by reducing taxpayers' expenditure to determine eligible costs. As acknowledged in the preamble to the Proposed Regulations, and as raised by

some commenters, uncertainty exists regarding the inclusion of qualified interconnection costs in situations in which the taxpayer that owns the energy property does not fully bear the qualified interconnection costs (for example, cases in which the taxpayer is reimbursed). In the preamble to the Proposed Regulations, the Treasury Department and the IRS requested comments on whether a payment, credit, or service received by the owner of the energy property (first taxpayer), as the result of subsequent payments made to a utility by other parties, should be treated as a reimbursement to the first taxpayer and impact the amount of the qualified interconnection costs that the first taxpayer may include in its basis for purposes of the section 48 credit.

The Treasury Department and the IRS also requested comments on whether the costs paid by a second taxpayer should be treated as amounts paid or incurred for qualified interconnection property in connection with the installation of the second taxpayer's energy property. Further, the Treasury Department and the IRS requested comments on industry practices relevant to the determination of costs paid or incurred for qualified interconnection property, including the accounting treatment of costs paid or incurred for qualified interconnection property. Lastly, the Treasury Department and the IRS requested comments on whether any clarifications are needed regarding the tax treatment of amounts paid or incurred for qualified interconnection property, including reimbursement of costs paid or incurred by a taxpayer for qualified interconnection property.

In response to these requests, commenters confirmed that future unforeseeable reimbursements of qualified interconnection costs may occur. Commenters also requested further guidance on these issues and provided recommendations for addressing these situations.

A commenter recommended that the section 48 credit avoid accounting for any reimbursements paid to the taxpayer for qualified interconnection costs in a later taxable year. This commenter also suggested that the Treasury Department and the IRS incorporate a mechanism, similar to a recapture mechanism, in the final regulations to avoid a taxpayer receiving a greater amount in reimbursements than it paid for the qualified interconnection costs net of the section 48 credit. This commenter raised concerns with situations in which the owner of an energy property receives reimbursement or revenue for qualified

interconnection property, despite the energy project being situated in a region of the country with a “participant funding” mechanism (for example, generators must fully fund network upgrades without reimbursement). Additionally, this commenter cited the possibility that a utility may reimburse the taxpayer for all or a portion of the qualified interconnection costs, usually over a 20-year period. Additionally, this commenter noted that there are circumstances in which a future interconnection customer pays for the use of interconnection property by reimbursing the taxpayer, who is the initial interconnecting customer. This commenter noted that the first taxpayer would have no ability to foresee future payments from the second taxpayer at the time the first taxpayer interconnects to the utility's transmission system.

Another commenter recommended that the final regulations disregard utility reimbursements, to the extent includible in taxpayers' gross income, to determine taxpayers' eligible qualified interconnection costs. This commenter also stated that the final regulations should clarify that unforeseeable payments for the use of interconnection property that a taxpayer has funded with no expectation of future compensation should not be treated as a reimbursement or as amounts paid toward qualified interconnection costs but should instead be treated as revenue.

The Treasury Department and the IRS recognize that situations may arise in which the cost of qualified interconnection property is reduced after the taxable year in which the taxpayer claims the section 48 credit. The Treasury Department and the IRS also recognize that other complicated situations may arise in determining whether a taxpayer has paid or incurred qualified interconnection costs. The comments received confirmed that these questions are not unique to the reimbursement of qualified interconnection costs and may also arise in the context of other tax credits. Therefore, the determination of whether qualified interconnection costs have been paid or incurred by the taxpayer and whether cost is reduced by virtue of transactions with the utility or with a third party should be based on generally applicable Federal tax principles.

In consideration of the comments, the final regulations revise the rule regarding reduction to amounts chargeable to capital account to reflect the application of Federal tax principles to such transactions in determining the amount a taxpayer paid or incurred for qualified interconnection costs. The

final regulations, which are now at § 1.48–14(h)(1) (previously proposed § 1.48–14(g)(6)), explain that if the costs borne by the taxpayer are reduced by utility or non-utility payments, Federal tax principles may require the taxpayer to reduce the amount treated as paid or incurred for qualified interconnection property to determine a section 48 credit. The final regulations also include two examples.

4. Leases

A commenter requested clarification regarding the treatment of qualified interconnection costs if an energy property is subject to a lease. This commenter questioned the availability of the section 48 credit for qualified interconnection costs incurred by small projects in a sale-leaseback or any transaction in which the taxpayer that initially incurred the qualified interconnection costs is different than the taxpayer that claims the section 48 credit. The commenter noted that the Proposed Regulations do not address this question and made the issue worse in cases in which the “three-month sale-leaseback” rule or the “lease pass-through” rule is combined with the section 48 credit rules regarding qualified interconnection costs.

The commenter also requested that the final regulations address how the rule that the “energy property shall include amounts paid or incurred by the taxpayer for qualified interconnection property” operates if one taxpayer pays the interconnection costs, then sells the project to another taxpayer, and the second taxpayer claims the section 48 credit. The commenter stated that the language in the Proposed Regulations seems to effectively deny companies using the three-month sale-leaseback and the lease-pass-through rules from claiming a section 48 credit for qualified interconnection costs. The commenter suggested that the final regulations should add language that expands the original use rule to take into account the principles of section 50(d)(4), with original use determined on the date of the sale-leaseback or lease. The commenter also recommended that the definition of “interconnection agreement” in the final regulations be revised to include an acknowledgement that energy property can be leased if there is an election under section 50(d)(5). Finally, the commenter proposed designating and identifying specifically a portion of the purchase price for the sale of an energy project as a reimbursement for qualified interconnection costs.

The Treasury Department and the IRS acknowledge that developers and

operators of energy properties may utilize the existing sale-leaseback or lease-pass-through structures in cases in which they are seeking the section 48 credit. Nothing in these final regulations prohibits the application of general principles, including those in section 50(d). The specific applications of the sale-lease back or lease-pass-through rules, however, are beyond the scope of these regulations.

The Treasury Department and the IRS recognize that the section 48 credit attributable to interconnection costs for qualified interconnection property is allowed to a purchaser of energy property that bears those costs in connection with the purchase (for example, by adjusting the purchase price or making a separate payment to account for them). Thus, in the case of a purchase of energy property (or a deemed purchase of energy property in the case a pass-through lease transaction), any amount paid or incurred by the buyer attributable to the value of interconnection costs associated with that energy property is an amount paid or incurred with respect to the construction, reconstruction, or erection of that qualified interconnection property.

Further, in the case of a sale-leaseback transaction subject to the “three-month rule” provided in section 50(d)(4), the original use of the energy property is deemed to commence with the buyer-lessee not earlier than the date on which the property is used under the sale-leaseback transaction, and in the case of a pass-through lease transaction, with the lessee as if the lessee actually purchased the property in accordance with § 1.48–4.

Accordingly, these final regulations revise § 1.48–14(h)(2) (previously proposed § 1.48–14(g)(2)) to provide “[f]or purposes of determining the original use of interconnection property in the context of a sale-leaseback or lease transaction, the principles of section 50(d)(4) must be taken into account, as applicable, with such original use determined on the date of the sale-leaseback or lease.” Likewise, these final regulations revise § 1.48–14(h)(4) (previously proposed § 1.48–14(g)(4)) to provide “[i]n the case of the election provided under section 50(d)(5) (relating to certain leased property), the term includes an agreement regarding energy property leased by such taxpayer.”

5. Five-Megawatt Limitation

Proposed § 1.48–14(g)(3)(i) would provide that the Five-Megawatt Limitation is measured at the level of the energy property in accordance with

section 48(a)(8)(A). Further, proposed § 1.48–14(g)(3)(i) would provide that the maximum net output of an energy property is measured by the nameplate generating capacity of the unit of energy property at the time the energy property is placed in service.

Proposed § 1.48–14(g)(3)(ii) would describe nameplate capacity for purposes of the Five-Megawatt Limitation. The Proposed Regulations would provide that the determination of whether an energy property has a maximum net output of not greater than five MW (as measured in alternating current) is based on the nameplate capacity for purposes of proposed § 1.48–14(g)(1). If applicable, taxpayers should use the ISO conditions to measure the maximum electrical generating output or usable energy capacity of an energy property. Proposed § 1.48–14(g)(3)(ii)(A) and (B) would provide rules for applying the Five-Megawatt Limitation (as provided in proposed § 1.48–14(g)(1)) to electrical generating energy property and electrical energy storage property, respectively.

Proposed § 1.48–14(g)(3)(ii)(A) would provide that in the case of an electrical generating energy property, the Five-Megawatt Limitation is based on the maximum electrical generating output in MW that the unit of energy property is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202.

Proposed § 1.48–14(g)(3)(ii)(B) would provide that in the case of electrical energy storage property, the Five-Megawatt Limitation is determined by the storage device’s maximum net output, which is its nameplate capacity.

Generally, commenters agreed that the Five-Megawatt measurement should be done at the level of underlying energy property, not the energy project. The final regulations (now found in § 1.48–14(h)(3)) retain the proposed rule that the Five-Megawatt Limitation is measured at the level of the energy property in accordance with section 48(a)(8)(A).

Other commenters expressed concerns with applying the Five-Megawatt Limitation based on nameplate capacity and by the reference to alternating current output. A commenter stated that the interchangeable use of two distinct electrical concepts, maximum net output in alternating current and nameplate generating capacity, in the Proposed Regulations could lead to misinterpretation and unintentionally

exclude otherwise qualifying interconnection property. A commenter stated that proposed § 1.48–14(g)(3) must be modified to clarify that interconnection property eligible for the credit is measured at the point of output, that is, five MW (measured in alternating current) at the inverter, and not determined by the nameplate generation capacity. This commenter stated that section 48(a)(8) does not contain the words “nameplate” or “capacity” and instead, it refers to “output . . . measured in alternating current,” which, for solar systems, can only be measured after the inverter. This commenter also stated that the definition of “qualified interconnection property” at proposed § 1.48–14(g)(3)(ii)(A), as applied to property that generates electricity in direct current, such as solar panels, would result in a nullity, with only energy property that generates electricity in alternating current able to qualify for the credit.

Similarly, a commenter stated that for purposes of claiming the section 48 credit for qualified interconnection property, the final regulations should refer only to energy property output in alternating current, without presuming that nameplate capacity perfectly corresponds to alternating current output. This commenter asserted that the final regulations should clarify that energy property is defined at the inverter level (that is, the source of alternating current output) for the purposes of determining eligibility of upstream network upgrades as qualified interconnection property.

The Treasury Department and the IRS understand commenters’ concerns and agree that the rule provided in the Proposed Regulations should be revised. Section 48(a)(8) refers to a maximum net output of not greater than five MW (as measured in alternating current). The Proposed Regulations provide for nameplate capacity in alternating current, without addressing types of energy property, such as solar energy property, that generate electricity in direct current. Nameplate capacity for these types of energy property is measured before the property’s output is converted to alternating current by an inverter. Because an inverter would be considered property that is an integral part of the energy property and not part of the unit of property itself, measuring the nameplate capacity of an energy property that generates electricity in direct current would be difficult under the Proposed Regulations.

In consultation with the DOE, the Treasury Department and the IRS conclude that nameplate generating

capacity is the best and most practical measure of the maximum net output of an energy property. Therefore, the Treasury Department and the IRS do not adopt comments suggesting changes to the use of nameplate capacity. The final regulations at § 1.48–14(h)(3)(ii) (previously proposed § 1.48–14(g)(3)(ii)) retain the rule that the determination of whether an energy property has a maximum net output of not greater than five MW (as measured in alternating current) is based on the nameplate capacity of the energy property.

However, in response to comments, the Treasury Department and the IRS coordinated with the DOE to provide a method of measuring nameplate capacity for an energy property that generates electricity in direct current. The final regulations at § 1.48–14(h)(3)(iii) (previously proposed § 1.48–14(g)(3)(iii)) provide that, for energy properties that generate electricity in direct current, the taxpayer may choose to determine whether an energy property has a maximum net output of not greater than five MW (in alternating current) by using the lesser of: (i) the sum of the nameplate generating capacities within the unit of energy property in direct current, which is deemed the nameplate generating capacity of the unit of energy property in alternating current; or (ii) the nameplate capacity of the first component of property that inverts the direct current electricity generated into alternating current. This rule provides flexibility for taxpayers while ensuring that the maximum net output (in alternating current) of an energy property can be determined in an administrable and reasonably accurate manner for energy properties that generate electricity in direct current.

A commenter recommended that the Treasury Department and the IRS clarify the size limitation for eligible properties with a nameplate capacity exceeding five MW. This commenter asserted that further clarification is needed to ensure that there is no gaming by projects that attempt to get around the Five-Megawatt Limitation, and to safeguard against the possibility of multiple energy properties being improperly treated as a single energy property. The commenter noted that this has been done effectively in many States by limiting the amount of capacity that can be installed on a parcel of land and precluding subdivisions that are performed for the purpose of circumventing a rule. The commenter also referenced guidelines developed by the Massachusetts Department of Energy Resources, which outline particular scenarios that would qualify for an exception allowing

flexibility in the event that (i) there are multiple energy properties that are owned by separate regarded taxpayers; (ii) the energy properties are placed in service in a different tax year from other portions of the project; or (iii) there is a gap in time (for example, 6 to 12 months) between different properties being placed in service. As described in the preamble to the Proposed Regulations, the addition of amounts paid or incurred by the taxpayer for qualified interconnection property in section 48(a)(8)(A) is tied to the installation of “energy property.” Since the statute clearly ties the Five-Megawatt Limitation to the energy property, as long as an energy property is five MW or less, the statute is satisfied.

A few commenters requested greater clarity or examples regarding the application of the Five-Megawatt Limitation. For example, a commenter requested that the final regulations confirm that multiple energy properties each with a nameplate capacity of less than five MW could utilize common interconnection agreements (versus separate agreements). Other commenters requested clarification for cases in which multiple properties share interconnection property. Another commenter requested clarification or an example of multiple energy properties sharing interconnection property and the application of the Five-Megawatt Limitation with respect to various technologies and specifically solar energy property.

In response to commenters that requested additional clarification of the Five-Megawatt Limitation, the final regulations add an additional example as well as provide clarifications to the existing examples. These clarifications illustrate the revised method of measuring nameplate capacity for an energy property that generates electricity in direct current. The clarifications also demonstrate the application of the Five-Megawatt Limitation in cases in which the nameplate capacity differs from the maximum output provided in the interconnection agreement. Specifically, the newly added example describes the application of the Five-Megawatt Limitation to an interconnection agreement for multiple energy properties owned by a single taxpayer. In that example, although the taxpayer has an interconnection agreement with the utility that allows for a maximum output of 10 MW (as measured in alternating current), the taxpayer may include the costs taxpayer paid or incurred for qualified interconnection property, subject to the terms of the

interconnection agreement, to calculate the taxpayer's section 48 credits for each of the energy properties because each has a maximum net output of not greater than five MW (alternating current).

A commenter proposed that the final regulations treat interconnection property as integral property by stating that in circumstances in which multiple energy properties (each with alternating current output at or below five MW) utilize higher-capacity interconnection property, such interconnection property should be deemed integral to multiple energy properties. Section 48(a)(8)(A) provides that energy property includes amounts paid for qualified interconnection property; it does not provide that energy property includes qualified interconnection property. Because the statute makes clear that interconnection property is distinct from energy property, it also cannot be property that is integral to an energy property. The preamble to the Proposed Regulations explains that qualified interconnection property, which is most similar in function to transmission and distribution property, is neither property that is a functionally interdependent component of an energy property nor an integral part of an energy property.

6. Non-Application to Certain Types of Energy Properties

The preamble to the Proposed Regulations clarified that the definition of qualified interconnection property specifically would exclude interconnection property installed with respect to an energy project that is a microgrid controller. Additionally, taxpayers may not include the costs of qualified interconnection property in the basis of electrochromic glass property and fiber optic solar energy property because these types of energy property do not require additions, modifications, or upgrades to a transmission or distribution system. Similarly, in the case of energy properties that generate thermal energy, such as certain geothermal property and qualified biogas property, this provision is inapplicable. Excluding certain properties from including interconnection costs is required by the statute and the fact that interconnection property is irrelevant to these technologies. The rule, therefore, is adopted as proposed.

However, the Treasury Department and the IRS did receive a comment regarding qualified interconnection property and the application of the proposed rules to microgrid controllers. Section 48(a)(8)(B)(i) defines "qualified interconnection property", with respect

to an energy project that is not a microgrid controller. The commenter noted that section 48(a)(8)(B)(i) is not intended to disqualify an energy project from including interconnection property costs solely because such project includes a microgrid controller. The Treasury Department and the IRS agree with this commenter's view that if an energy project includes both a microgrid controller and another type of energy property, then interconnection property costs for the energy project may be included in calculating the section 48 credit for the other energy property.

IV. Severability

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

Effect on Other Documents

Notice 2009–52, 2009–25 I.R.B. 1094, will be obsoleted for tax years beginning after the date of publication of the final regulations in the **Federal Register**. Notice 2009–52, in relevant part, provides procedures for taxpayers to make an irrevocable election under section 48(a)(5) to treat qualified property that is part of a qualified investment credit facility as energy property eligible for a section 48 credit in lieu of a section 45 credit.

Applicability Dates

The provisions of §§ 1.48–9 and 1.48–14 apply with respect to property that is placed in service during a taxable year beginning after December 12, 2024. Section 1.6418–5(f) applies to taxable years ending on or after December 12, 2024. Taxpayers may choose to apply §§ 1.48–9, 1.48–14, and 1.6418–5(f) with respect to property that is placed in service after December 31, 2022, and during a taxable year beginning on or before December 12, 2024, provided taxpayers follow §§ 1.48–9, 1.48–14, and 1.6418–5(f) in their entirety and in a consistent manner.

Section 1.48–13 applies to energy projects placed in service in taxable years ending after December 12, 2024, and the construction of which begins after December 12, 2024. Taxpayers may choose to apply § 1.48–13 to energy projects placed in service in taxable years ending on or before December 12, 2024, and energy projects placed in service in taxable years ending after December 12, 2024, the construction of which begins before December 12, 2024,

provided that taxpayers apply § 1.48–13 in its entirety and in a consistent manner.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these final regulations contain reporting and recordkeeping requirements that are required to verify the eligibility of the property for the credit. These collections of information generally are used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and compliance.

The reporting requirement mentioned within these final regulations with respect to section 48 are in § 1.48–14(f)(5), which provides the time and manner for a taxpayer to make a section 48(a)(5)(C) election to have qualified investment credit facility property that was placed in service after December 31, 2008, treated as a qualified investment credit facility for purposes of claiming the section 48 credit. These requirements are considered general tax records under § 1.6001–1.

A taxpayer must make a section 48(a)(5)(C) election on a completed Form 3468, *Investment Credit*, (or successor forms, or pursuant to instructions and other guidance) with the taxpayer's timely filed return (including extensions) for the taxable year in which the energy property is placed in service. The taxpayer must make a separate section 48(a)(5)(C) election for each qualified facility that is to be treated as a qualified investment credit facility. These collections are included on Form 3468, which is

already approved in OMB Control Numbers 1545–0155 for trust and estate filers, 1545–0074 for individual filers, and 1545–0123 for business filers. These final regulations do not change the collection requirements already approved by OMB.

These final regulations also include reporting requirements, in addition to the general reporting requirements set forth in § 1.45–12, for taxpayers that claim an increased credit amount under section 48(a)(9)(B)(iii). These final regulations require taxpayers to verify compliance with the Prevailing Wage Requirements by providing information that includes the aggregate information detailed in § 1.45–12 during the five-year recapture period after an energy project is placed in service. The Secretary may issue forms and instructions in future guidance for the purpose of meeting these reporting requirements. As set forth in the preamble to § 1.45–12, these reporting requirements are covered under OMB control numbers 1545–0074 for individuals/sole proprietors, 1545–0123 for business entities, and 1545–2315 for trust and estate filers. These final regulations are not changing or creating new collection requirements not already approved by OMB for § 1.45–12.

These final regulations also describe recapture procedures as detailed in § 1.6418–5. The reporting of a section 48(a)(10)(C) recapture event will still be required to be reported using Form 4255, *Recapture of Investment Credit*. This form is approved under OMB control numbers 1545–0074 for individuals, 1545–0123 for business entities, and 1545–0166 for trust and estate filers. These final regulations are not changing or creating new collection requirements not already approved by OMB.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations.

These final regulations affect taxpayers, including small entities, that claim section 48 credits. Although data

is not readily available about the number of small entities that are potentially affected by these rules, it is possible that a substantial number of small entities may be affected.

In connection with the Proposed Regulations, the Treasury Department and the IRS presented an IRFA to invite comments on both the number of entities affected and the economic impact on small entities. No comments were received specific to these areas of inquiry. In the absence of comments in response to the Proposed Regulations, this FRFA is presented with the final regulations.

In addition, pursuant to section 7805(f), the Proposed Regulations preceding these final regulations were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

A. Need for and Objectives of the Rule

The final regulations will provide greater clarity to taxpayers for purposes of claiming the section 48 credit for energy property. These final regulations are expected to encourage taxpayers to invest in developing new energy properties, including qualified facilities otherwise eligible for the section 45 credit for which a taxpayer makes a section 48(a)(5)(C) election. Thus, the Treasury Department and the IRS intend and expect that the final regulations will deliver benefits across the economy that will beneficially impact various industries.

B. Affected Small Entities

The Small Business Administration estimated in its 2018 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small business. The applicability of these final regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to the Proposed Regulations and in this FRFA, these rules may affect a variety of different businesses across several different industries.

The section 48 credit incentivizes the development of energy property. Because the potential credit claimants can vary widely, it is difficult to estimate at this time the impact of these final regulations, if any, on small businesses.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses once taxpayers start to claim the section 48

credit using the guidance and procedures provided in these final regulations.

1. Impact of the Rules

The final regulations will allow taxpayers to plan investments and transactions based on the ability to claim the section 48 credit. The increased use of the section 48 credit will incentivize the development of technologies for energy generation and storage. The use of the section 48 credit may also lead to additional investment in electrical grid infrastructure to transport electricity.

Because the statutory changes that are reflected in the final regulations have already been accounted for by Form 3468, the recordkeeping and reporting requirements should not increase for taxpayers that already claim the section 48 credit. The Form 3468 already provides the procedures for taxpayers to make a section 48(a)(5)(C) election. To make the election, a taxpayer must claim the section 48 credit with respect to a qualified investment credit facility property on a completed Form 3468, *Investment Credit* (or successor forms, or pursuant to instructions and other guidance) and file such form with the taxpayer's timely filed return (including extensions) for the taxable year in which the property is placed in service. Although the Treasury Department and the IRS do not have sufficient data to precisely determine the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of this Special Analyses.

2. Alternatives Considered

The Treasury Department and the IRS considered alternatives to these final regulations. Significant alternatives considered include the definition of energy project in § 1.48–13(d). As described in more detail in part II.C of the Summary of Comments and Explanation of Revisions section of this preamble, the Treasury Department and the IRS considered comments explaining that the energy project definition was too broad with only two factors required to cause energy properties to be considered an energy project. Commenters suggested instead providing that three or four factors should be met. Revising the definition of energy project to require three factors would resolve challenges for most commenters on this issue, which were represented by solar developers. However, section 48 encompasses many different technologies in addition to

solar photovoltaic energy property. Accordingly, to provide taxpayers flexibility across the various technologies eligible for the tax credit, § 1.48–13(d) requires that four factors be met for energy properties to be considered an energy project.

3. Duplicative, Overlapping, or Conflicting Federal Rules

The final regulations would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed above, these final regulations would merely provide procedures and definitions to allow taxpayers to claim the section 48 credit.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

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

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

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These final regulations do not have substantial direct effects on one or more

Federally recognized Indian Tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**.

Notwithstanding this requirement, section 808(2) of the CRA allows agencies to specify a different effective date when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. Pursuant to section 808(2) of the CRA, the Treasury Department and the IRS find, for good cause, that a 60-day delay in the effective date is unnecessary and contrary to the public interest.

The IRA amended section 48 in several ways, including by making additional types of energy property eligible for the section 48 credit and provided, for many such technologies, that construction must begin before January 1, 2025. Further, the IRA amendments included a special rule to allow certain lower-output energy properties to include amounts paid for qualified interconnection property in connection with the installation of energy property, and provided an increased credit amount for energy projects that satisfy prevailing wage and apprenticeship requirements, a domestic content bonus credit amount, and an increase in credit rate for energy communities.

Following the IRA's amendments to section 48, the Treasury Department and the IRS published the Proposed Regulations. In response to the Proposed Regulations, commenters continued to express uncertainty regarding the proper application of the statutory rules under section 48 and the need for timely final regulations because in many cases taxpayers must begin construction before January 1, 2025, in order to be eligible to claim the section 48 credit.

Consistent with Executive Order 14008 (January 27, 2021), letters from Members of Congress urging expeditious publication of final regulations, and commenters' request for finalized rules, the Treasury Department and the IRS have determined that an expedited effective date of the final regulations is appropriate here to provide certainty to

taxpayers placing in service energy property before provisions expire and taxpayers seeking to begin construction before January 1, 2025 to maintain eligibility for the section 48 credit. The final regulations provide needed rules on what the law requires for taxpayers to begin job-generating construction of capital-intensive projects qualifying for section 48 credits. Accordingly, the Treasury Department and the IRS have determined that the rules in this Treasury decision will take effect on the date of publication in the **Federal Register**.

Statement of Availability of IRS Documents

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by:

- a. Revising the entry for § 1.48–9;
- b. Removing the entry for §§ 1.6418–0–1.6418–5; and
- c. Adding entries in numerical order for §§ 1.48–13, 1.48–14, and 1.6418–1 through 1.6418–5.

The revision and additions read in part as follows:

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

* * * * *

Section 1.48–9 also issued under 26 U.S.C. 48(a)(3)(D)(i) and (16).

Section 1.48–13 also issued under 26 U.S.C. 48(a)(10)(C) and (16).

Section 1.48–14 also issued under 26 U.S.C. 48(a)(16).

* * * * *

Section 1.6418–1 also issued under 26 U.S.C. 6418(g) and (h).

Section 1.6418–2 also issued under 26 U.S.C. 6418(g) and (h).

Section 1.6418–3 also issued under 26 U.S.C. 6418(g) and (h).

Section 1.6418–4 also issued under 26 U.S.C. 6418(g) and (h).

Section 1.6418–5 also issued under 26 U.S.C. 48(a)(10)(C) and 6418(g) and (h).

* * * * *

■ **Par. 2.** Section 1.48–9 is revised to read as follows:

§ 1.48–9 Definition of energy property.

(a) *In general.* For purposes of the credit determined under section 48 of the Internal Revenue Code (Code), the term *energy property* means property that, taking into account the definition of the term *unit of energy property* (defined in paragraph (f)(2)(i) of this section) and of other terms defined in paragraph (b) and other provisions of this section, meets the requirements of paragraph (c) of this section and is of a type of energy property set forth in paragraph (e) of this section. If a property is described more than once in the types of energy property set forth in paragraph (e), only a single section 48 credit is allowed. Paragraph (d) of this section provides rules for property excluded from energy property. Paragraph (f) of this section provides rules for components included in an energy property. Paragraph (g) of this section provides the applicability date for this section.

(b) *Definitions related to requirements for energy property.* For purposes of section 48, this section, §§ 1.48–13 and 1.48–14, and any provision of the Code or this chapter that expressly refers to any of the foregoing, the definitions in this paragraph (b) apply:

(1) *Construction, reconstruction, or erection of energy property.* The term *construction, reconstruction, or erection of energy property* means work performed to construct, reconstruct, or erect energy property either by the taxpayer or for the taxpayer in accordance with the taxpayer's specifications.

(2) *Acquisition of energy property.* The term *acquisition of energy property* means a transaction by which a taxpayer acquires the rights and obligations to establish tax ownership of an energy property for Federal income tax purposes.

(3) *Original use of energy property—*(i) *In general.* The term *original use of energy property* means the first use to which a unit of energy property is put, whether or not such use is by the taxpayer.

(ii) *Retrofitted units of energy property.* A retrofitted unit of energy property acquired by the taxpayer will be treated as not being put to original use by the taxpayer unless the rules in § 1.48–14(a) regarding retrofitted energy property (80/20 Rule) or paragraph (e)(10)(v) of this section regarding modifications of certain energy storage technology apply. The question of whether a unit of energy property meets the 80/20 Rule or is modified (as described in paragraph (e)(10)(v) of this section) is a facts and circumstances determination.

(4) *Allowable—*(i) *In general.* For purposes of applying paragraph (c)(1)(ii) of this section, depreciation or amortization in lieu of depreciation (collectively, *depreciation*) is *allowable* with respect to energy property if such property is of a character subject to the allowance for depreciation under section 167 of the Code and the basis or cost of such property is recovered using a method of depreciation (for example, the straight line method), which includes any additional first year depreciation deduction method of depreciation (for example, under section 168(k) of the Code). Further, if an Internal Revenue Service adjustment with respect to the Federal income tax or information return for such taxable year requires the basis or cost of such energy property to be recovered using a method of depreciation, depreciation is allowable to the taxpayer with respect to energy property.

(ii) *Exclusions from allowable.* For purposes of paragraph (b)(4)(i) of this section, depreciation is not allowable with respect to energy property if the basis or cost of such property is not recovered through a method of depreciation but, instead, such basis or cost is recovered through a deduction of the full basis or cost of the energy property in one taxable year (for example, under section 179 of the Code).

(5) *Placed in service—*(i) *In general.* Energy property is considered placed in service in the earlier of:

(A) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such energy property begins; or

(B) The taxable year in which the energy property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income. Energy property in a condition or state of readiness and availability for a specifically assigned function includes, but is not limited to, components that are acquired and set aside during the taxable year for use as replacements for a particular energy property (or energy properties) to avoid operational time loss and equipment that is acquired for a specifically assigned function and is operational but is undergoing testing to eliminate any defects. However, components acquired to be used in the construction of an energy property will not be considered in a condition or state of readiness and availability for a specifically assigned function.

(ii) *Energy property subject to § 1.48–4 election to treat lessee as purchaser.* Notwithstanding paragraph (b)(5)(i) of

this section, energy property with respect to which an election is made under § 1.48–4 to treat the lessee as having purchased such energy property is considered placed in service by the lessor in the taxable year in which possession is transferred to such lessee.

(6) *Unit of energy property.* The term *unit of energy property* is defined in paragraph (f)(2)(i) of this section. No provision of this section or § 1.48–13 or § 1.48–14 uses the term *unit* in respect of energy property with any meaning other than that provided in paragraph (f)(2)(i) of this section.

(7) *Claim.* With respect to a section 48 credit determined with respect to energy property of a taxpayer, the term *claim* means filing a completing Form 3468, *Investment Credit*, or any successor form(s) with the taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the energy property is placed in service, and includes the making of an election under section 6417 or 6418 of the Code and corresponding regulations with respect to such section 48 credit and made on the taxpayer's Federal income tax return or annual information return.

(c) *Requirements for energy property—*(1) *In general.* Energy property must satisfy each of the requirements of paragraphs (c)(1)(i) through (v) of this section:

(i) The taxpayer constructs, reconstructs, or erects the property, or, if the original use of the property commences with the taxpayer, acquires the property;

(ii) Depreciation (or amortization in lieu of depreciation) is allowable with respect to the property;

(iii) The property meets the performance and quality standards as provided in paragraph (c)(2) of this section;

(iv) The construction of the property begins before the date provided in section 48 (if any such date is provided); and

(v) The property is placed in service by the taxpayer by the date provided in section 48 (if any such date is provided).

(2) *Performance and quality standards—*(i) *In general.* Energy property must meet performance and quality standards, if any, that have been prescribed by the Secretary of the Treasury or her delegate (after consultation with the Secretary of Energy) and are in effect at the time of acquisition of the energy property.

(ii) *Special rules for performance and quality standards—*(A) *Small wind energy property—*(1) Small wind energy property must meet one of the following performance and quality standards in

effect at the time of acquisition of the small wind turbine:

(i) American Wind Energy Association Small Wind Turbine Performance and Safety Standard 9.1 (AWEA standards);

(ii) International Electrotechnical Commission standards 61400–1, 61400–2, 61400–11, 61400–12 (IEC standards); or

(iii) ANSI/ACP Small Wind Turbine Standard 101–1 (ACP standards).

(2) Taxpayers may rely on a certification that the performance and quality standards set forth in this paragraph (c)(2)(ii)(A)(1) are met. Guidance published in the Internal Revenue Bulletin sets forth the requirements to certify that the performance and quality standards provided in this paragraph (c)(2)(ii)(A)(1) are met. See § 601.601 of this chapter.

(B) *Electrochromic glass property.* To be eligible for the section 48 credit, electrochromic windows must be rated in accordance with the National Fenestration Rating Council (NFRC) and secondary glazing systems must be rated in accordance with the Attachments Energy Rating Council (AERC) Rating and Certification Process, or subsequent revisions. See paragraph (e)(2)(ii) of this section for the definition of electrochromic glass property.

(iii) *Time of acquisition.* For purposes of applying performance and quality standards, the time of acquisition is the date the taxpayer enters into a binding contract (defined in paragraph (c)(2)(iv) of this section) to acquire the property, or, in the case of property constructed, reconstructed, or erected by the taxpayer, the earlier of the date that—

(A) The taxpayer begins construction, reconstruction, or erection of the property, or

(B) The taxpayer and another person enter into a binding contract (as defined in paragraph (c)(2)(iv) of this section) requiring the other person to construct, reconstruct, or erect property and to place the property in service for an agreed upon use.

(iv) *Binding contract.* For purposes of this paragraph (c)(2), whether a contract is binding is determined based on the rules described in § 1.168(k)–2(b)(5)(iii)(A).

(d) *Property that is not energy property.*—(1) *Interaction with section 45.* Energy property does not include any property that is part of a qualified facility the production from which is allowed as a credit determined under section 45 of the Code (section 45 credit) for the taxable year or any prior taxable year. However, see paragraph (f)(3) of this section for rules regarding

property that is an integral part of an energy property that is also used by a qualified facility. See § 1.48–14(f)(1) for rules regarding making an election under section 48(a)(5) to treat a qualified facility as an energy property.

(2) *Other property.* Energy property also does not include power purchase agreements, goodwill, going concern value, or renewable energy certificates.

(e) *Types of energy property.* The types of energy property eligible for a section 48 credit are:

(1) *Solar energy property.*—(i) *In general.* *Solar energy property* is equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool. Solar energy property includes solar electric generation equipment (as defined in paragraph (e)(1)(ii) of this section), solar process heat equipment (as defined in paragraph (e)(1)(iii) of this section), and equipment that uses solar energy to heat or cool a structure or provide hot water for use in a structure, and parts related to the functioning of all such equipment.

(ii) *Solar electric generation equipment.* *Solar electric generation equipment* is equipment that converts sunlight into electricity through the use of devices such as solar cells or other collectors.

(iii) *Solar process heat equipment.* *Solar process heat equipment* is equipment that uses solar energy to generate steam at high temperatures for use in industrial or commercial processes.

(2) *Fiber-optic solar energy property and electrochromic glass property.*—(i) *Fiber-optic solar energy property.* *Fiber-optic solar energy property* is equipment that uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight.

(ii) *Electrochromic glass property.* *Electrochromic glass energy property* uses electricity to change its light transmittance properties (both visible and near infrared light) in order to heat or cool a structure. For purposes of section 48, windows, including secondary windows (also referred to as secondary glazings), that incorporate electrochromic glass are treated as electrochromic glass property.

(3) *Geothermal energy property.*—(i) *In general.* *Geothermal energy property* is equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2) of the Code), but only, in the case of electricity generated by geothermal power, up to (but not

including) the electrical transmission stage. Geothermal equipment includes production equipment (as defined in paragraph (e)(3)(ii) of this section) and distribution equipment (as defined in paragraph (e)(3)(iii) of this section).

(ii) *Production equipment.* For purposes of paragraph (e)(3)(i) of this section, *production equipment* is equipment necessary to bring geothermal energy from the subterranean deposit to the surface, including well-head and downhole equipment (such as screening or slotting liners, tubing, downhole pumps, and associated equipment). Production, injection, and monitoring wells required for production of the geothermal deposit qualify as production equipment. If geothermal energy is used to generate electricity, production equipment also includes the property necessary to produce electricity. Production equipment does not include equipment used for exploration and development of geothermal deposits, such as drilling wells.

(iii) *Distribution equipment.* For purposes of paragraph (e)(3)(i) of this section, *distribution equipment* is equipment that transports geothermal energy from a geothermal deposit to the site of ultimate use. If geothermal energy is used to generate electricity, distribution equipment includes equipment that transports geothermal fluids between the geothermal deposit and the power plant. Distribution equipment also includes components of a building's heating and/or cooling system, such as pipes and ductwork that distribute within a building the energy derived from the geothermal deposit.

(4) *Qualified fuel cell property.* *Qualified fuel cell property* is a fuel cell power plant that has a nameplate capacity of at least 0.5 kilowatts (kW) (1 kW in the case of a fuel cell power plant with a linear generator assembly) of electricity using an electrochemical or electromechanical process, and an electricity-only generation efficiency greater than 30 percent. For this purpose, electricity-only generation efficiency may be calculated by dividing the heat rate of the fuel cell (for example, kilowatt-hours (kWh) electricity produced per kilogram (kg) of fuel consumed) by the higher heating value of the fuel (for example, kWh per kg). A fuel cell power plant is an integrated system comprised of a fuel cell stack assembly, or linear generator assembly, and associated balance of plant components that converts a fuel into electricity using electrochemical or electromechanical means. A linear generator assembly does not include any assembly that contains rotating parts.

(5) *Qualified microturbine property.* *Qualified microturbine property* is a stationary microturbine power plant that has a nameplate capacity of less than 2,000 kW and an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions. A stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components that converts a fuel into electricity and thermal energy. A stationary microturbine power plant also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

(6) *Combined heat and power system (CHP) property*—(i) *In general.* *CHP property* is property comprising a system that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications). *CHP property* must produce at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power (or combination thereof), and at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof). The energy efficiency percentage of *CHP property* must exceed 60 percent (except in the case of *CHP systems* that use biomass within the meaning of section 45). *CHP property* does not include any property comprising a system if such system has a capacity in excess of 50 MW or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(ii) *Components excluded.* *CHP property* does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

(7) *Qualified small wind energy property.* *Qualified small wind energy property* is property that uses a qualifying small wind turbine to generate electricity. A qualifying small wind turbine means a wind turbine that has a nameplate capacity of not more than 100 kW.

(8) *Geothermal heat pump (GHP) property.* *GHP property* is equipment

that uses the ground, ground water, or other underground fluids as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

(9) *Waste energy recovery property (WERP)*—(i) *In general.* *WERP* is property that generates electricity solely from heat from buildings or equipment if the primary purpose of such building or equipment is not the generation of electricity. Examples of buildings or equipment the primary purpose of which is not the generation of electricity include, but are not limited to, manufacturing plants, medical care facilities, facilities on college campuses, pipeline compressor stations, and associated equipment. *WERP* does not include any property that has a capacity in excess of 50 MW.

(ii) *Coordination with CHP property.* Any *WERP* that is part of a system that is a *CHP property* is not treated as *WERP* for purposes of section 48 unless the taxpayer elects to not treat such system as a *CHP property* for purposes of section 48.

(10) *Energy storage technology*—(i) *In general.* *Energy storage technology* includes electrical energy storage property described in paragraph (e)(10)(ii) of this section, thermal energy storage property described in paragraph (e)(10)(iii) of this section, and hydrogen energy storage property described in paragraph (e)(10)(iv) of this section.

(ii) *Electrical energy storage property.* *Electrical energy storage property* is property (other than property primarily used in the transportation of goods or individuals and not for the production of electricity) that receives, stores, and delivers energy for conversion to electricity, and has a nameplate capacity of not less than 5 kWh. For example, subject to the exclusion for property primarily used in the transportation of goods or individuals, electrical energy storage property includes, but is not limited to, rechargeable electrochemical batteries of all types (such as lithium ion, vanadium flow, sodium sulfur, and lead-acid), ultracapacitors, physical storage such as pumped storage hydropower, compressed air storage, flywheels, and reversible fuel cells.

(iii) *Thermal energy storage property*—(A) *In general.* *Thermal energy storage property* is property comprising a system that is directly connected to a heating, ventilation, or air conditioning (HVAC) system; removes heat from, or adds heat to, a storage medium for subsequent use; and provides energy for the heating or cooling of the interior of a residential or commercial building. *Thermal energy storage property* includes equipment

and materials, and parts related to the functioning of such equipment, to store thermal energy for later use to heat or cool, or to provide hot water for use in heating, a residential or commercial building. It does not include property that transforms other forms of energy into heat in the first instance. Property that *removes heat from, or adds heat to, a storage medium for subsequent use* is property that is designed with the particular purpose of substantially altering the time profile of when heat added to or removed from the thermal storage medium can be used for heating or cooling of the interior of a residential or commercial building. Paragraph (e)(10)(iii)(B) of this section provides a safe harbor for determining whether a thermal energy storage property has such a purpose. Thermal energy storage property does not include a swimming pool, *CHP property*, or a building or its structural components. For example, thermal energy storage property includes, but is not limited to, a system that adds heat to bricks heated to high temperatures that later use this stored energy to heat a building through the HVAC system; thermal ice storage systems that use electricity to run a refrigeration cycle to produce ice that is later connected to the HVAC system as an exchange medium for air conditioning the building; heat pump systems that store thermal energy in an underground tank, an artificial pit, an aqueous solution, a borehole field, or a solid-liquid phase change material to be extracted for later use for heating and/or cooling; and air-to-water heat pump systems with a water storage tank. However, consistent with § 1.48–14(d), if thermal energy storage property, such as a heat pump system, includes equipment, such as a heat pump, that also serves a purpose in an HVAC system that is installed in connection with the thermal energy storage property, the taxpayer's basis in the thermal energy storage property includes the total cost of the thermal energy storage property and HVAC system less the cost of an HVAC system without thermal storage capacity that would meet the same functional heating or cooling needs as the heat pump system with a storage medium, other than time shifting of heating or cooling.

(B) *Safe harbor.* A thermal energy storage property will be deemed to have the purpose of substantially altering the time profile of when heat added to or removed from the thermal storage medium can be used to heat or cool the interior of a residential or commercial building if that thermal energy storage property is capable of storing energy

that is sufficient to provide heating or cooling of the interior of a residential or commercial building for a minimum of one hour.

(iv) *Hydrogen energy storage property.* *Hydrogen energy storage property* is property (other than property primarily used in the transportation of goods or individuals and not for the production of electricity) that stores hydrogen and has a nameplate capacity of not less than 5 kWh, equivalent to 0.127 kg of hydrogen or 52.7 standard cubic feet (scf) of hydrogen. Hydrogen energy storage property includes, but is not limited to, above ground storage tanks, underground storage facilities, and associated compressors. Property that is an integral part of hydrogen energy storage property includes, but is not limited to, hydrogen liquefaction equipment and gathering and distribution lines within a hydrogen energy storage property.

(v) *Modifications of energy storage property.* With respect to electrical energy storage property and hydrogen energy storage property placed in service after December 31, 2022, energy storage technology that is modified as set forth in this paragraph (e)(10)(v) is treated as electrical energy storage property described in paragraph (e)(10)(ii) of this section or hydrogen energy storage property described in paragraph (e)(10)(iv) of this section, except that the basis of any existing property prior to such modification is not taken into account for purposes of this section and section 48. This paragraph (e)(10)(v) applies to any electrical energy storage property and hydrogen energy storage property that either:

(A) Was placed in service before August 16, 2022, and would be described in section 48(c)(6)(A)(i), except that such property had a nameplate capacity of less than 5 kWh and is modified in a manner that such property (after such modification) has a nameplate capacity (after such modification) of not less than 5 kWh; or

(B) Is described in section 48(c)(6)(A)(i) and is modified in a manner that such property (after such modification) has an increase in nameplate capacity of not less than 5 kWh.

(11) *Qualified biogas property—(i) In general.* *Qualified biogas property* is property comprising a system that converts biomass (as defined in section 45K(c)(3), as in effect on August 16, 2022) into a gas that consists of not less than 52 percent methane by volume (tested at the point described in paragraph (e)(11)(ii) of this section), or is concentrated by such system into a

gas that consists of not less than 52 percent methane (tested at the point described in paragraph (e)(11)(ii) of this section), and captures such gas for sale or productive use and not for disposal via combustion. Qualified biogas property also includes any property that is part of such system that cleans or conditions such gas, including gas upgrading equipment, to make the gas suitable for sale or productive use. For example, qualified biogas property includes, but is not limited to, an anaerobic digester. Property that is an integral part of qualified biogas property includes, but is not limited to, a waste feedstock collection system, a landfill gas collection system and mixing or pumping equipment.

(ii) *Methane content requirement.* The methane content requirement described in section 48(c)(7)(A)(i) and paragraph (e)(11)(i) of this section is measured at the point at which the biogas exits the qualified biogas property.

(iii) *Flaring Allowance.* While a qualified biogas property generally may not capture biogas for disposal via combustion, combustion in the form of flaring will not disqualify a qualified biogas property provided the primary purpose of the qualified biogas property is sale or productive use of biogas and any flaring is in compliance with all relevant Federal, State, regional, Tribal, and local laws and regulations.

(12) *Microgrid controllers—(i) In general.* A microgrid controller is equipment that is part of a qualified microgrid and is designed and used to monitor and control the energy resources and loads on such microgrid. A qualified microgrid is an electrical system that includes equipment that is capable of generating not less than 4 kW and not greater than 20 MW of electricity; is capable of operating in connection with the electrical grid and as a single controllable entity with respect to such electrical grid, and independently (and disconnected) from such electrical grid; and is not part of a bulk-power system (as defined in section 215 of the Federal Power Act (16 U.S.C. 824o)).

(ii) *Capable of operating in connection with the electrical grid.* For purposes of this paragraph, a qualified microgrid includes an electrical system that is capable of operating in connection with the larger electrical grid, regardless of whether a connection to the larger electrical grid exists.

(13) *Other property included in section 48.* Any other property specified by section 48 as energy property is energy property for purposes of this section and §§ 1.48–13 and 1.48–14.

(f) *Property included in energy property—(1) In general.* An energy property includes a unit of energy property (defined in paragraph (f)(2)(i) of this section) that meets the requirements of paragraph (c) of this section, that is not excluded from energy property as provided in paragraph (d) of this section, and that is of a type of energy property included in paragraph (e) of this section. Property owned by the taxpayer that is an integral part of an energy property (as defined in paragraph (f)(3) of this section) is treated as part of that energy property. Energy property does not include any electrical transmission equipment, such as transmission lines and towers, or any equipment beyond the electrical transmission stage. Energy property also generally does not include equipment that is an addition or modification to an existing energy property. However, see § 1.48–14(a) for rules regarding retrofitted energy property (80/20 Rule) and paragraph (e)(10)(v) of this section for rules regarding modifications of certain types of energy storage technology.

(2) *Unit of energy property—(i) Definition.* The term *unit of energy property* means all functionally interdependent components of property (as defined in paragraph (f)(2)(ii) of this section) owned by the taxpayer that are operated together and that can operate apart from other energy properties within a larger energy project (as defined in § 1.48–13(d)). For rooftop solar energy property, all components of energy property that are installed on a single rooftop are treated as a single unit of energy property. See § 1.48–13(d) for rules regarding the treatment of multiple energy properties as an energy project for certain purposes.

(ii) *Functionally interdependent—(A) In general.* Except as provided in paragraph (f)(3)(ii)(B) of this section, with respect to components of a unit of energy property, the term *functionally interdependent* means that the placing in service of each component is dependent upon the placing in service of each of the other components in order to generate or store electricity, thermal energy, or hydrogen as provided by section 48(a)(3) and (c) and as described in paragraph (e) of this section.

(B) *Components of certain energy property.* In the case of solar process heat equipment, fiber-optic solar energy property, electrochromic glass property, GHP property, qualified biogas property, and microgrid controllers, with respect to components of such property, the term *functionally interdependent* means that the placing in service of each component is dependent upon the

placing in service of each of the other components in order to perform the intended function of the energy property as provided by section 48(a)(3) and (c) and as described in paragraph (e) of this section.

(3) *Integral part*—(i) *In general*. For purposes of the section 48 credit, property owned by a taxpayer is an integral part of an energy property owned by the same taxpayer if it is used directly in the intended function of the energy property as provided by section 48(a)(3) and (c) and as described in paragraph (e) of this section and is essential to the completeness of the intended function. Property that is an integral part of an energy property is treated as part of that energy property. A taxpayer may not claim the section 48 credit for any property not owned by the taxpayer that is an integral part of energy property owned by the taxpayer. Multiple energy properties (whether owned by one or more taxpayers) may include shared property that may be considered an integral part of each energy property so long as the cost basis for the shared property is properly allocated to each energy property. The total cost basis of such shared property divided among the energy properties may not exceed 100 percent of the cost of such shared property. In addition, the exclusion in paragraph (d)(1) of this section does not apply to property that is shared by a qualified facility (as defined in section 45(d)) and an energy property if it is an integral part of that energy property. The basis of any such property must be properly allocated across the energy property and qualified facility that share such property.

(ii) *Power conditioning and transfer equipment*. Property that is an integral part of energy property includes power conditioning equipment and transfer equipment used to perform the intended function of the energy property as provided by section 48(a)(3) and (c) and as described in paragraph (e) of this section. Power conditioning equipment includes, but is not limited to, transformers, inverters, and converters, which modify the characteristics of electricity or thermal energy into a form suitable for use or transmission or distribution. Parts related to the functioning or protection of power conditioning equipment are also treated as power conditioning equipment and include, but are not limited to, switches, circuit breakers, arrestors, and hardware and software used to monitor, operate, and protect power conditioning equipment. Transfer equipment includes equipment that permits the aggregation of energy generated by components of energy properties and

equipment that alters voltage to permit transfer to a transmission or distribution line. Transfer equipment does not include transmission or distribution lines. Examples of transfer equipment include, but are not limited to, wires, cables, and combiner boxes that conduct electricity. Parts related to the functioning or protection of transfer equipment are also treated as transfer equipment and may include items such as current transformers used for metering, electrical interrupters (such as circuit breakers, fuses, and other switches), and hardware and software used to monitor, operate, and protect transfer equipment. Power conditioning equipment and transfer equipment that are integral to an energy property may be integral to another energy property or used by a qualified facility (as defined in section 45(d)), so long as the total cost basis of the integral property is properly allocated across the energy property and qualified facility that share such property.

(iii) *Roads*. Roads that are an integral part of an energy property are integral to the activity performed by the energy property such as onsite roads that are used for equipment to operate and maintain the energy property. Roads primarily for access to the site, or roads used primarily for employee or visitor vehicles, are not integral to the activity performed by an energy property.

(iv) *Fences*. Fencing is not an integral part of an energy property because it is not integral to the activity performed by the energy property.

(v) *Buildings*. Generally, buildings are not integral parts of an energy property because they are not integral to the activity of the energy property. However, the structures described in paragraphs (f)(3)(vi) and (vii) of this section are not treated as buildings for this purpose.

(vi) *Structures essentially items of machinery or equipment*. A structure that is essentially an item of machinery or equipment is not treated as a building for purposes of paragraph (f)(3)(v) of this section.

(vii) *Structures that house certain property*. A structure that houses property that is integral to the activity of an energy property is not treated as a building for purposes of paragraph (f)(3)(v) of this section if the use of the structure is so closely related to the use of the housed energy property that the structure clearly can be expected to be replaced if the energy property it initially houses is replaced.

(4) *Location of energy property*. Any property that meets the requirements of paragraphs (f)(2) and (3) of this section

is part of an energy property regardless of where such property is located.

(5) *Examples*. This paragraph provides examples illustrating property included in energy property.

(i) *Example 1. Solar energy property*. X constructs a solar energy property (Solar Property) comprised of 500 separate solar panels. The solar panels are connected by wires, cables, and combiner boxes. Generated electricity is conditioned for subsequent use through one inverter and eventually carried to a substation that houses a transformer where the electricity is stepped up to electrical grid voltage before being transmitted to the electrical grid through an intertie. All components of the Solar Property up to the inverter are functionally interdependent components of the Solar Property. The inverter and up to and including the transformer are integral parts of the Solar Property. Therefore, the Solar Property is an energy property for purposes of the section 48 credit. When X places the Solar Property in service, the cost of the components up to and including the transformer is included in the basis of the Solar Property for purposes of computing the section 48 credit.

(ii) *Example 2. Co-located energy properties*. Assume the same facts as in paragraph (f)(5)(i) of this section (*Example 1*), except that Y constructs a wind energy property (Wind Property) near X's solar energy property (Solar Property). X's Solar Property and Y's Wind Property each connect to a substation that houses a transformer where the electricity is stepped up to electrical grid voltage before being transmitted to the electrical grid through an intertie. X and Y each pay 50% of the cost of, and own a 50% undivided interest in, the transformer and related power conditioning equipment housed in the substation. X's Solar Property and Y's Wind Property are separate energy properties. When X and Y place their respective energy properties in service, the cost of the components up to and including 50% of the cost of the transformer and related power conditioning equipment is included in X's and Y's basis in their respective energy properties for purposes of computing the section 48 credit.

(iii) *Example 3. Qualified offshore wind energy project*. Z constructs an offshore wind farm (Offshore Wind Energy Project) comprised of 150 turbines (energy properties) for which Z makes a valid election under section 48(a)(5) to claim the section 48 credit in lieu of the section 45 credit. The alternating current electricity generated by the individual wind turbines will be

carried by inter-array cables to an offshore substation where a transformer will step up the voltage of the electricity and a converter will convert it to direct current so it may be transported by subsea export cables to an onshore substation adjacent to the point of interconnection with the electrical grid. When the electricity reaches the onshore substation, it will flow into another converter where it will be converted back to alternating current, and then through a transformer and associated switchgear where it will be converted to electrical grid voltage and where the Offshore Wind Energy Project can be electrically isolated from the grid. The electricity will then pass through an intertie that will take the electricity from the substation to the point of interconnection with the electrical grid. All components of the Offshore Wind Energy Project, up to and including the transformer and switchgear housed in the onshore substation, are either functionally interdependent components or integral parts of the energy properties that comprise the Offshore Wind Energy Project. Therefore, when Z places the Offshore Wind Energy Project in service, the cost of the components up to and including the transformer and switchgear housed in the onshore substation are included in the aggregate basis of the energy properties that comprise the Offshore Wind Energy Project for purposes of computing the section 48 credit.

(iv) *Example 4. Co-located energy property and qualified facility.* X constructs a wind facility (Wind Facility) that is co-located with an energy storage technology (Energy Storage). The Wind Facility and Energy Storage share power conditioning and transfer equipment. The power conditioning and transfer equipment are integral parts of the Energy Storage, and are therefore considered energy property. Therefore, X will include a properly allocated share of the shared power conditioning and transfer equipment costs to determine the section 48 credit for the Energy Storage. If the Wind Facility otherwise satisfies the requirements of the section 45 credit, X may claim the section 45 credit with respect to the Wind Facility.

(g) *Applicability date.* This section applies with respect to property placed in service after December 31, 2022, and during a taxable year beginning after December 12, 2024.

■ **Par. 3.** Sections 1.48–13 and 1.48–14 are added to read as follows:

§ 1.48–13 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If a qualified energy project satisfies the requirements in paragraph (b) of this section, the amount of the credit determined under section 48(a) of the Internal Revenue Code (Code), after the application of section 48(a)(1) through (8), and (15), is equal to the credit determined under section 48(a) (section 48 credit) multiplied by five.

(b) *Requirements.* A qualified energy project satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A project with a maximum net output of less than one megawatt (MW) of electrical (as measured in alternating current) or thermal energy determined based on the nameplate capacity as provided in paragraph (e) of this section (One Megawatt Exception);

(2) A project the construction of which began prior to January 29, 2023; or

(3) A project that meets the prevailing wage requirements of section 48(a)(10)(A), § 1.45–7(a)(2) and (3) and (b) through (d), and paragraph (c) of this section, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12.

(c) *Special rule applicable to general prevailing wage requirements—*(1) *In general.* In addition to satisfying the prevailing wage requirements under § 1.45–7(a)(2) and (3) and (b) through (d), a taxpayer must ensure that any laborers and mechanics employed (within the meaning of § 1.45–7) by the taxpayer or any contractor or subcontractor in the construction of such energy project, and for the five-year period beginning on the date such project is placed in service, the alteration or repair of such project, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor, in accordance with 40 U.S.C. chapter 31, subchapter IV. Subject to section 48(a)(10)(C) and this paragraph (c), for purposes of determining the increased credit amount under section 48(a)(9)(B)(iii), the taxpayer is deemed to satisfy the prevailing wage requirements of section 48(a)(10)(A)(ii) at the time such project is placed in service.

(2) *Transition waiver of penalty for prevailing wage requirements.* For purposes of the transition waiver described in § 1.45–7(c)(6)(iii), the

penalty payment required by § 1.45–7(c)(1)(ii) to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (b)(3) of this section is waived with respect to a laborer or mechanic who performed work in the construction, alteration, or repair of an energy project on or after January 29, 2023, and prior to December 12, 2024, if the taxpayer relied upon Notice 2022–61, 2022–52 I.R.B. 560, or the Proposed Regulations (REG–132569–17) (88 FR 82188), corrected in 89 FR 13293 (Feb. 22, 2024), to determine when the activities of any laborer or mechanic became subject to the prevailing wage requirements, and the taxpayer makes the correction payments required by § 1.45–7(c)(1)(i) with respect to such laborer and mechanics within 180 days of December 12, 2024.

(3) *Exception.* For purposes of satisfying the prevailing wage requirements of paragraph (b)(3) of this section, § 1.45–7(a)(1) does not apply.

(4) *Recapture—*(i) *In general.* In the case of an energy project that receives the increased credit amount under paragraph (a) of this section by reason of satisfying the requirements of paragraph (b)(3) of this section, the increased credit amount is subject to recapture for any project that does not satisfy the prevailing wage requirements in § 1.45–7(b) through (d) and paragraph (c)(1) of this section for any period with respect to an alteration or repair of such project during the five-year period beginning on the date such project is originally placed in service (five-year recapture period) (but that does not cease to be investment credit property within the meaning of section 50(a) of the Code).

(ii) *Recapture event—*(A) *In general.* Any failure to satisfy the prevailing wage requirements in § 1.45–7(b) through (d) and paragraph (c)(1) of this section for any period with respect to the alteration or repair of any project during the five-year recapture period is a recapture event. Any failure to satisfy the prevailing wage requirements in § 1.45–7(b) through (d) and paragraph (c)(1) of this section with respect to the alteration or repair of any project during the five-year recapture period described in paragraph (c)(6) of this section remains subject to the correction and penalty provisions in § 1.45–7(c), including the waiver provisions in § 1.45–7(c)(6). Subject to § 1.45–7(c)(5) and (6), if the correction and penalty payments described in § 1.45–7(c) are not made by the taxpayer on or before the date that is 180 days after the date of a final determination by the IRS (as defined in § 1.45–7(c)(4)(ii)), the cure provision described in § 1.45–7(c) does

not apply and the increased credit amount is subject to recapture.

(B) *Yearly determination.* A determination of whether a recapture event has occurred under paragraph (c)(3)(ii) of this section must be made for each taxable year (or portion thereof) occurring within the five-year recapture period, beginning with the taxable year ending after the date the energy project is placed in service. Thus, for each taxable year beginning or ending within the five-year recapture period, the taxpayer must determine whether the prevailing wage requirements of section 48(a)(10)(A), § 1.45–7(b) through (d), and paragraph (c)(1) of this section are satisfied for the recapture year(s) occurring during each taxable year. If no alteration or repair work occurs during the five-year recapture period, the taxpayer is deemed to satisfy the Prevailing Wage Requirements described in paragraph (b)(3) of this section with respect to such taxable year.

(C) *Carrybacks and carryforward adjusted.* In the case of any recapture event described in paragraph (c)(3)(ii)(A) of this section, the carrybacks and carryforwards under section 39 of the Code must be adjusted by reason of such recapture event.

(iii) *Correction and penalty payments not required if taxpayer is subject to recapture under section 48(a)(10)(C).* If the IRS determines that a taxpayer that claimed the increased credit amount under section 48(a)(9)(B)(iii) or transferred a specified credit portion under section 6418 of the Code that includes the increased credit amount under section 48(a)(9)(B)(iii) failed to satisfy the prevailing wage requirements in § 1.45–7(b) through (d) and paragraph (c)(1) of this section for any period with respect to the alteration or repair of any project during the five-year recapture period and the taxpayer does not make the correction and penalty payments provided in § 1.45–7(c), then no penalty is assessed under § 1.45–7, and the increased credit amount is subject to recapture. Taxpayers whose increased credit amount is subject to recapture under this section may retain the amount of the section 48(a) credit (base credit) determined under section 48(a) of this section provided all requirements were met in the year of determination.

(5) *Recapture amount—(i) In general.* If a recapture event has occurred as described in paragraph (c)(3)(ii) of this section, the tax under chapter 1 of the Code for the taxable year in which the recapture event occurs is increased by the applicable recapture percentage multiplied by the increased credit amount allowed to the taxpayer

pursuant to paragraphs (a) and (b)(3) of this section.

(ii) *Applicable recapture percentage.* If the recapture event occurs:

(A) Within one full year after the property is placed in service, the recapture percentage is 100;

(B) Within one full year after the close of the period described in paragraph (c)(4)(ii)(A) of this section, the recapture percentage is 80;

(C) Within one full year after the close of the period described in paragraph (c)(4)(ii)(B) of this section, the recapture percentage is 60;

(D) Within one full year after the close of the period described in paragraph (c)(4)(ii)(C) of this section, the recapture percentage is 40; or

(E) Within one full year after the close of the period described in paragraph (c)(4)(ii)(D) of this section, the recapture percentage is 20.

(6) *Recapture period.* The five-year recapture period begins on the date the project is placed in service and ends on the date that is five full years after the placed-in-service date. Each 365-day period (366-day period in case of a leap year) within the five-year recapture period is a separate recapture year for recapture purposes.

(7) *Increase in tax for recapture.* The increase in tax under chapter 1 of the Code for the recapture of an increased credit amount claimed under paragraph (a) of this section occurs in the year of the recapture event.

(8) *Annual prevailing wage compliance report.* In addition to the general reporting requirements in § 1.45–12, a taxpayer that has claimed an increased credit amount under paragraph (a) of this section or transferred a specified credit portion under section 6418 that includes an increased credit amount under paragraph (a) of this section is required to provide to the IRS, information on the payment of prevailing wages with respect to any alteration or repair of the project during the recapture period at the time and in the form and manner prescribed in IRS forms or instructions or in publications or guidance published in the Internal Revenue Bulletin. See § 601.601 of this chapter.

(9) *Transferred specified credit portions.* In the case of a transferred specified credit portion under section 6418, to which recapture of an increased credit amount under this paragraph (c) applies, the eligible taxpayer is required to notify the transferee taxpayer of the recapture event in accordance with the provisions of § 1.6418–5(f)(2) and the transferee taxpayer is responsible for any amount of increase in tax under section 48(a)(10)(C) and this paragraph

(c) in accordance with the provisions of § 1.6418–5(f)(3).

(d) *Energy project defined—(1) In general.* For purposes of the increased credit amount provided by section 48(a)(9) and paragraphs (b) and (c) of this section, the domestic content bonus credit amount provided by section 48(a)(12), and the increase in credit rate for energy communities provided in section 48(a)(14), the term *energy project* means one or more energy properties (multiple energy properties) that are operated as part of a single energy project. Multiple energy properties will be treated as one energy project if they are owned by a taxpayer (subject to the related taxpayer rule provided in paragraph (d)(2) of this section) and any four or more of the following factors are present:

(i) The energy properties are constructed on contiguous pieces of land;

(ii) The energy properties are described in a common power purchase, thermal energy, or other off-take agreement or agreements;

(iii) The energy properties have a common intertie;

(iv) The energy properties share a common substation, or thermal energy off-take point;

(v) The energy properties are described in one or more common environmental or other regulatory permits;

(vi) The energy properties are constructed pursuant to a single master construction contract; or

(vii) The construction of the energy properties is financed pursuant to the same loan agreement.

(2) *Time of determination—(i) Energy project.* A taxpayer may make the determination that multiple energy properties are an energy project either—

(A) At any point during the construction of the multiple energy properties, or

(B) During the taxable year in which the last such energy property is placed in service.

(ii) *Placed in Service.* An energy project (as defined in § 1.48–13(d)) is considered placed in service on the date the last of the energy properties within the energy project is placed in service.

(3) *Related taxpayers—(i) Definition.* For purposes of this section, the term *related taxpayers* means members of a group of trades or businesses that are under common control (as defined in § 1.52–1(b)).

(ii) *Related taxpayer rule.* For purposes of this section, related taxpayers are treated as one taxpayer in determining whether multiple energy properties are treated as an energy

project with respect to which a section 48 credit may be determined.

(4) *Separate reporting for energy properties within an energy project*—(i) *In general.* While multiple energy properties may be treated as a single energy project for specified purposes, this information must be separately reported for each energy property within an energy project on Form 3468, *Investment Credit*, or any successor form(s), and such form must be filed with the taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the energy property is placed in service.

(e) *Nameplate capacity for purposes of the One Megawatt Exception*—(1) *In general.* For purposes of paragraph (b)(1) of this section, whether an energy project has a maximum net output of less than 1 megawatt (MW) of electrical (as measured in alternating current) or thermal energy is determined based on the nameplate capacity. If an energy project is comprised of more than one energy property, the energy project's maximum net output is calculated as the sum of the nameplate capacity of each energy property. If applicable, taxpayers should use the International Standard Organization (ISO) conditions to measure the maximum electrical generating output or usable energy capacity of an energy project. Paragraphs (e)(2) through (7) of this section provide rules for measuring output for different types of energy properties to determine whether the One Megawatt Exception (as provided in paragraph (b)(1) of this section) applies. Because electrochromic glass property (as defined in § 1.48–9(e)(2)(ii)), fiber-optic solar energy property (as defined in § 1.48–9(e)(2)(i)), and microgrid controllers (as defined in § 1.48–9(e)(12)) do not generate electricity or thermal energy, these energy properties are not eligible for the One Megawatt Exception.

(2) *Nameplate capacity for energy properties that generate in direct current for purposes of the One Megawatt Exception.* Only for energy properties that generate electricity in direct current, the taxpayer may choose to determine the maximum net output (in alternating current) of each energy property that is part of the energy project by using the lesser of:

(i) The sum of the nameplate generating capacities within the unit of energy property in direct current, which is deemed the nameplate generating capacity of the unit of energy property in alternating current; or

(ii) The nameplate capacity of the first component of property that inverts the

direct current electricity into alternating current.

(3) *Electrical generating energy property.* In the case of an electrical generating energy property, the One Megawatt Exception is determined by using maximum electrical generating output in megawatts that the unit of energy property is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202.

(4) *Electrical energy storage property.* In the case of electrical energy storage property (as defined in § 1.48–9(e)(10)(ii)), the One Megawatt Exception is determined by using the storage device's maximum net output. If the output of electrical energy storage property is in direct current, apply the rules of paragraph (2) of this section.

(5) *Thermal energy storage property and other property generating or distributing thermal energy.* In the case of thermal energy storage property (as defined in § 1.48–9(e)(10)(iii)) and other energy property that generates or distributes thermal energy for productive use (for example, geothermal energy property, GHP property, solar process heat property), the One Megawatt Exception is determined by using the property's maximum net output. The maximum net output in MW is calculated by using a conversion whereby one MW is equal to 3.4 million British Thermal Units per hour (mmBtu/hour) for heating and 284 tons for cooling (Btu per hour/3,412,140 = MW). The maximum net output is the maximum instantaneous rate of discharge and is determined based on the nameplate capacity of the equipment that generates or distributes thermal energy for productive use (including distributing the thermal energy from the storage medium). For purposes of determining the maximum net output of thermal energy storage property, if the nameplate capacity of the thermal energy storage is not available, the nameplate capacity of the equipment delivering thermal energy to the thermal energy storage may be used. For thermal energy storage property and other energy property distributing thermal energy to a building or buildings, the nameplate capacity can be assessed as either the aggregate maximum thermal output of all individual heating or cooling elements within the building or buildings, or as the maximum thermal output that the entire project is capable of delivering to a building or buildings at any given moment. The maximum thermal output

an entire project is capable of delivering at any given moment does not take into account the capacity of redundant equipment if such equipment is not operated when the system is at maximum output during normal operation. For thermal energy storage property and other energy property that generates or distributes thermal energy for a productive use, the maximum thermal output that the entire system is capable of delivering is considered to be the greater of the rate of cooling or the rate of heating of the aggregate of the nameplate capacity of the equipment distributing energy for productive use, including distributing the thermal energy from the thermal energy storage medium to the building or buildings. If such nameplate capacity is unavailable, in the case of thermal energy storage property only, the maximum thermal output may instead be considered to be the greater of the rate of cooling or the rate of heating of the aggregate of the nameplate capacity of all the equipment delivering energy to the thermal energy storage property in the project.

(6) *Hydrogen energy storage property and specified clean hydrogen production facilities.* In the case of a hydrogen energy storage property (as defined in § 1.48–9(e)(10)(iv)) or a specified clean hydrogen production facility (as defined in section 48(a)(15)(C)), the One Megawatt Exception is determined by using the property's or facility's maximum net output. The maximum net output in MW is calculated by using a conversion whereby one MW is equal to 3.4 mmBtu/hour of hydrogen or equivalently 10,500 standard cubic feet (scf) per hour of hydrogen.

(7) *Qualified biogas property.* In the case of qualified biogas property, the One Megawatt Exception is determined by the property's maximum net output. The maximum net output in MW is calculated by using a conversion whereby one MW is equal to 3.4 mmBtu/hour. Taxpayers may convert the maximum net output of 3.4 mmBtu/hour into an equivalent maximum net volume flow in scf per hour using the appropriate high heat value conversion factors found in the Environmental Protection Agency (EPA) Greenhouse Gas Reporting Rule (GHGRR) at table C–1 to subpart C of part 98 (40 CFR part 98). Otherwise, taxpayers may calculate their own equivalent volumetric flow if the heat content of the gas is known.

(f) *Applicability date.* This section applies to energy projects placed in service in taxable years ending on or after December 12, 2024, and the construction of which begins after December 12, 2024.

§ 1.48–14 Rules applicable to energy property.

(a) *Retrofitted energy property*—(1) *In general.* For purposes of section 48(a)(3)(B)(ii), (5)(D)(iv), and (8)(B)(iii) of the Internal Revenue Code (Code), a retrofitted energy property may be originally placed in service even though it contains some used components of the unit of energy property only if the fair market value of the used components of the unit of energy property is not more than 20 percent of the total value of the unit of energy property taking into account the cost of the new components of property plus the value of the used components of the unit of energy property (80/20 Rule). Only the cost of new components of the unit of energy property is taken into account for purposes of computing the credit determined under section 48 (section 48 credit) with respect to the unit of energy property. The cost of new components of the unit of energy property includes all costs properly included in the depreciable basis of the new components. If the taxpayer satisfies the 80/20 Rule with regard to the unit of energy property and the taxpayer pays or incurs new costs for property that is an integral part of the energy property (as defined in § 1.48–9(f)(3)(i)), then the taxpayer may include the new costs paid or incurred for property that is an integral part of the energy property (as defined in § 1.48–9(f)(3)(i)) in the basis of the energy property for purpose of the section 48 credit. In the case of an energy project (as defined in § 1.48–13(d)), the 80/20 Rule is applied to each unit of energy property comprising an energy project.

(2) *Excluded costs.* Costs incurred for new components of property added to used components of a unit of energy property may not be taken into account for purposes of the section 48 credit unless the taxpayer satisfies the 80/20 Rule (as provided in paragraph (a)(1) of this section) by placing into service a unit of energy property for which the fair market value of the used components of property is not more than 20 percent of the total value of the unit of energy property taking into account the cost of the new components of property plus the value of the used components of property.

(3) *Examples.* This paragraph (a)(3) provides examples illustrating the provisions of this paragraph (a):

(i) *Example 1. Retrofitted solar energy property that satisfies the 80/20 Rule.* Z owns an existing solar energy property for which the section 48 credit has been claimed and the recapture period for the section 48 credit has elapsed. Z replaces used components of the solar energy

property with new components of property at a cost of \$1.4 million. The retrofitted solar energy property constitutes a unit of energy property. The fair market value of the remaining original components of the retrofitted solar energy property is \$100,000, which is not more than 20 percent of the retrofitted solar energy property's total value of \$1.5 million (that is, the cost of the new components (\$1.4 million) + the value of the remaining original components (\$100,000)). The value of the old components of the retrofitted solar energy property is 7 percent of the value of total value of the retrofitted solar energy property (\$100,000/\$1.5 million), thus the retrofitted solar energy property will be considered newly placed in service for purposes of section 48, and Z will be able to claim a section 48 credit based on the cost of the new components (\$1.4 million).

(ii) *Example 2. Capital improvements to an existing energy property that do not satisfy the 80/20 Rule.* X owns an existing unit of energy property for which the section 48 credit has been claimed and the recapture period for the section 48 credit has elapsed. The fair market value of the unit of energy property is \$1 million. During the tax year, X makes capital improvements to the unit of energy property. The expenditures for such capital improvements total \$300,000. X may not claim a section 48 credit for the \$300,000 spent on capital improvements during the tax year because the capital improvements did not satisfy the 80/20 Rule.

(iii) *Example 3. Upgrades to a qualified hydropower production facility that satisfies the 80/20 Rule:* Y owns a qualified hydropower production facility (hydropower facility) as defined under section 45 and no taxpayer, including Y, has ever claimed a section 45 credit for the hydropower facility. The hydropower facility consists of a unit of energy property including water intake, water isolation mechanisms, turbine, pump, motor, and generator. The associated impoundment (dam) and power conditioning equipment are integral parts of the unit of energy property. Y makes upgrades to the unit of energy property by replacing the turbine, pump, motor, and generator with new components at a cost of \$1.5 million. Y does not make any upgrades to the property that is an integral part of the unit of energy property. The remaining original components of the unit of energy property have a fair market value of \$100,000, which is not more than 20 percent of the retrofitted hydropower facility's total value of \$1.6 million (that is, the cost of the new

components (\$1.5 million) + the value of the remaining original components (\$100,000)). Thus, the retrofitted hydropower facility will be considered newly placed in service for purposes of section 48, and Y will be able to make a valid section 48(a)(5) election and claim a section 48 credit based on the cost of the new components (\$1.5 million).

(b) *Dual use property*—(1) *Definition.* For purposes of section 48, the term *dual use property* means property that uses energy derived from both a qualifying source (that is, from an energy property defined in § 1.48–9(a) (including a qualified facility for which an election has been made as provided by paragraph (f)(2) of this section)) and from a non-qualifying source (that is, sources other than an energy property defined in § 1.48–9(a) (including a qualified facility for which an election has been made as provided by paragraph (f)(2) of this section)).

(2) *Qualification as energy property*—(i) *In general.* Dual use property qualifies as energy property if its use of energy from non-qualifying sources does not exceed 50 percent of its total energy input (as determined under the rules of paragraph (b)(2)(ii) of this section) during an annual measuring period (as defined in paragraph (b)(2)(iii) of this section). If the energy used from qualifying sources is between 50 percent and 100 percent, only a proportionate amount of the basis of the energy property will be taken into account in computing the amount of the section 48 credit (for example, if 80 percent of the energy used by a dual use property is from qualifying sources, 80 percent of the basis of the dual use property will be taken into account in computing the amount of the section 48 credit).

(ii) *Aggregation of energy inputs.* The measurement of energy use required for purposes of paragraph (b)(2)(i) of this section may be made by comparing, on the basis of British thermal units (Btus), energy input to dual use property from all qualifying sources with energy input from all non-qualifying sources. To convert the energy inputs for CHP into Btus, the lower heating value of the fuel is used for CHP property and the higher heating value of the hydrogen is used for fuel cells. The Commissioner may also accept any other method that accurately establishes the relative annual use of energy derived from all qualifying sources and of energy input from all non-qualifying sources by dual use property.

(iii) *Annual measuring period.* For purposes of paragraph (b)(2)(i) of this section, the term *annual measuring period* means with respect to an item of

dual use property the 365-day period (366-day period in case of a leap year) beginning with the day the dual use property is placed in service (initial annual measuring period) or a 365-day period (366-day period in case of a leap year) beginning the day after the last day of the immediately preceding annual measuring period (subsequent annual measuring period).

(iv) *Recapture.* If, for any subsequent annual measuring period (within the recapture period specified in section 50(a) of the Code, the equipment's use of energy from all qualifying sources is reduced below 50 percent of its total energy input (as determined under the rules of paragraph (b)(2)(i) of this section), then recapture of the section 48 credit is required under section 50(a).

(v) *Example.* On October 1, 2021, X, a calendar year taxpayer, places in service a unit of energy property that includes a system that heats its office building by circulating hot water heated by energy derived from a geothermal deposit through the building. The water heated by energy derived from a geothermal deposit is not hot enough to provide sufficient heat for the building. The circulation system includes an electric boiler in which the water is further heated before being circulated in the heating system. Energy from the electric boiler is not from a qualifying source and therefore the system is dual use property. On a Btu basis, sixty percent of the total energy input to the circulating system during the initial annual measuring period (the 365-day period beginning on October 1, 2021) is energy derived from a geothermal deposit. Accordingly, the circulation system, including the pumps and pipes that circulate the hot water through the building, are part of the unit of energy property and eligible for a section 48 credit. Sixty percent of the basis of the circulation system is taken into account in determining the section 48 credit for X's unit of energy property. During the 365-day period beginning on October 1, 2023, forty-five percent of the total energy input to the circulating system (on a Btu basis) is energy derived from a geothermal deposit. X's section 48 credit is therefore subject to recapture under section 50.

(c) *Energy property eligible for multiple Federal income tax credits—(1) In general.* The basis of energy property may be eligible for calculating both the section 48 credit and another Federal income tax credit, subject to the limitation provided in paragraph (c)(2) of this section.

(2) *Limitation.* Except as provided in paragraph (g) of this section, a taxpayer may not claim both a section 48 credit

and another Federal income tax credit with respect to the same basis in an energy property. See paragraph (e) of this section for special rules regarding ownership of energy property.

(d) *Incremental cost—(1) In general.* For purposes of section 48, if a component of energy property is also used for a purpose other than the intended function of the energy property, only the incremental cost of a component of energy property is included in the basis of the energy property. The term *incremental cost* means the excess of the total cost of a component over the amount that would have been expended for the component if that component were used for a non-qualifying purpose.

(2) *Example.* A installs solar energy property above the surface of an existing roof of a building that A owns. The solar energy property uses bifacial panels that convert to energy the light that strikes both the front and back of the panels. Therefore, along with installing the bifacial panels, A is reroofing their building with a reflective roof that has a highly reflective surface. Because the reflective roof enables the panels' generation of significant amounts of electricity from reflected sunlight, when installed in connection with the solar energy property, it constitutes part of that energy property to the extent that the cost of the reflective roof exceeds the cost of reroofing A's building with a non-reflective roof. The cost of reroofing with the reflective roof is \$15,000 whereas the cost of a reroofing with a standard roof for the building would be \$10,000. The incremental cost of the reflective roof is \$5,000, and that amount is included in A's basis in the solar energy property for purposes of the section 48 credit.

(e) *Special rules concerning ownership—(1) Basis.* For purposes of section 48, a taxpayer that owns an energy property is eligible for the section 48 credit only to the extent of the taxpayer's basis in the energy property. In the case of multiple taxpayers holding direct ownership in an energy property, each taxpayer determines its basis based on its fractional ownership interest in the energy property.

(2) *Multiple owners.* A taxpayer must directly own at least a fractional interest in the entire unit of energy property for a section 48 credit to be determined with respect to such taxpayer's interest. No section 48 credit may be determined with respect to a taxpayer's ownership of one or more separate components of an energy property if the components do not constitute a unit of energy property. However, the use of property owned by

one taxpayer that is an integral part of an energy property owned by a second taxpayer will not prevent a section 48 credit from being determined with respect to the second taxpayer's energy property (though neither taxpayer would be eligible for a section 48 credit with respect to the first taxpayer's property).

(3) *Related taxpayers—(i) Definition.* For purposes of this section, the term *related taxpayers* means members of a group of trades or businesses that are under common control (as defined in § 1.52–1(b)).

(ii) *Related taxpayer rule.* For purposes of this section, related taxpayers are treated as one taxpayer in determining whether a taxpayer has made an investment in an energy property with respect to which a section 48 credit may be determined.

(4) *Examples.* The following examples illustrate the rules in this paragraph (e). In each example, X and Y are unrelated taxpayers.

(i) *Example 1. Fractional ownership required to satisfy section 48.* X and Y own fractional ownership interests in a GHP property that is a unit of energy property. Because X and Y each own a fractional ownership interest in a unit of energy property, a section 48 credit may be determined with respect to X's and Y's fractional ownership interests in the unit of energy property.

(ii) *Example 2. Separate ownership of GHP property.* A GHP property is comprised of coils in the ground and several individual heat pumps used in conjunction with those coils. X owns both the coils in the ground and one of the individual heat pumps used in conjunction with the coils. Y owns one or more of the individual heat pump(s) used in conjunction with the coils. No section 48 credit may be determined with respect to Y because Y owns merely a component of energy property rather than a unit of energy property as defined in § 1.48–9(f)(2). However, while X does not own all of the individual heat pumps used in conjunction with the coils, X does own both the coils in the ground and one heat pump used in conjunction with the coils and thus owns an entire unit of energy property. Accordingly, X may compute a section 48 credit with respect to this unit of energy property.

(iii) *Example 3. Shared ownership of property that is an integral part of separate energy properties.* X owns a wind energy property that is a unit of energy property and Y owns a solar energy property that is a unit of energy property that are co-located. Both X's wind energy property and Y's solar energy property connect to a substation

that houses a step-up transformer where the electricity is stepped up to electrical grid voltage before being transmitted to the electrical grid through an intertie. X and Y each own a 50 percent fractional ownership interest in the step-up transformer. The step-up transformer is an integral part of both the wind energy property and the solar energy property (as defined in § 1.48–9(f)(3)(i)). As a result, X and Y may both compute a section 48 credit for their respective energy properties by including their respective bases in the step-up transformer.

(iv) *Example 4. Separate ownership of property that is an integral part of separate energy property.* X owns a wind energy property that is a unit of energy property and property that is an integral part of the wind energy property, specifically a transformer where the electricity is stepped up to electrical grid voltage before being transmitted to the electrical grid through an intertie. Y owns a solar energy property that is a unit of energy property that connects to X's transformer. X and Y are not related persons within the meaning of paragraph (e)(3)(i) of this section. Because Y does not hold an ownership interest in the transformer, Y may compute its section 48 credit for its solar energy property, but it cannot include any basis relating to the transformer.

(v) *Example 5.* X owns a wind energy property that is a unit of energy property and a solar energy property that is a unit of energy property. Both the wind energy property and the solar energy property are connected to a transformer where the electricity is stepped up to electrical grid voltage before being transmitted to the electrical grid through an intertie. The transformer is an integral part of both the wind energy property and the solar energy property (within the meaning of § 1.48–9(f)(3)(i)) and is owned by Y. X and Y are related persons within the meaning of paragraph (e)(3)(i) of this section. X and Y are treated as one taxpayer under paragraph (e)(3)(ii) of this section. X may include the basis of the transformer in computing its section 48 credit with respect to the wind energy and the solar energy property (but may not include more than 100% of that basis in the aggregate).

(f) *Election to treat qualified facilities as energy property—(1) In general.* If a taxpayer makes an election under section 48(a)(5)(C) (pursuant to paragraph (f)(5) of this section) to treat qualified property that is part of a qualified investment credit facility as energy property with respect to which a

section 48 credit may be determined, such property will be treated as energy property for purposes of section 48. No section 45 credit may be determined with respect to any qualified investment credit facility and the requirements of section 45 are not imposed on a qualified investment credit facility.

(2) *Qualified investment credit facility.* The term qualified investment credit facility means any facility—

(i) That is a qualified facility (within the meaning of section 45) described in section 45(d)(1) through (4), (6), (7), (9) or (11);

(ii) That meets the placed in service and beginning of construction requirements (if any) provided in section 48;

(iii) With respect to which no credit has been allowed under section 45; and

(iv) For which the taxpayer makes an irrevocable election under section 48(a)(5) and paragraph (f)(5) of this section.

(3) *Qualified property.* The term *qualified property* means property that meets each of the requirements of paragraphs (f)(3)(i) through (iv) of this section. Regardless of where qualified property is located, any qualified property that meets the requirements of this paragraph (f)(3) is part of a qualified investment credit facility with respect to which a section 48 credit may be determined.

(i) The property is tangible personal property or other tangible property (not including a building or its structural components), but only if such other tangible property is an integral part of the qualified investment credit facility.

(ii) Depreciation (or amortization in lieu of depreciation) is allowable (as defined in § 1.48–9(b)(4)) with respect to the property.

(iii) The taxpayer constructs, reconstructs, or erects the property (as defined in § 1.48–9(b)(1)) or acquires the property (as defined in § 1.48–9(b)(2)) if the original use of the property (as defined in § 1.48–9(b)(3)) commences with the taxpayer.

(iv) The property is not intangible property.

(4) *Definitions related to requirements for qualified property.*

(i) *Tangible personal property.* The term *tangible personal property* means any tangible property except land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of such buildings or structures). Tangible personal property includes all property (other than structural components) that is contained in or attached to a building. Further, all property that is in the nature

of machinery (other than structural components of a building or other inherently permanent structure) is considered tangible personal property even though located outside a building. Local law is not controlling for purposes of determining whether property is or is not tangible property or tangible personal property. Thus, tangible property may be personal property for purposes of the section 48 credit even though under local law the property is considered to be a fixture and therefore real property.

(ii) *Other tangible property.* The term *other tangible property* means tangible property other than tangible personal property (not including a building and its structural components), that is used as an integral part of furnishing electrical energy by a person engaged in a trade or business of furnishing any such service.

(iii) *Integral part—(A) In general.* Property owned by a taxpayer is an integral part of a qualified investment credit facility owned by the same taxpayer if it is used directly in the intended function of the qualified investment credit facility and is essential to the completeness of the intended function of the qualified investment credit facility. A taxpayer may not claim the section 48 credit for any property that is not owned by the taxpayer, regardless of whether that property is otherwise an integral part of the taxpayer's qualified investment credit facility.

(B) *Power conditioning and transfer equipment.* Property that is an integral part of a qualified investment credit facility includes power conditioning equipment and transfer equipment used to perform the intended function of the qualified investment credit facility. Power conditioning equipment includes, but is not limited to, transformers, inverters, and converters, which modify the characteristics of electricity or thermal energy into a form suitable for use or transmission or distribution. Parts related to the functioning or protection of power conditioning equipment are also treated as power conditioning equipment and include, but are not limited to, switches, circuit breakers, arrestors, and hardware used to monitor, operate, and protect power conditioning equipment. Transfer equipment includes equipment that permits the aggregation of energy generated by components of energy properties and equipment that alters voltage in order to permit transfer to a transmission or distribution line. Transfer equipment does not include transmission or distribution lines. Examples of transfer equipment include,

but are not limited to, wires, cables, and combiner boxes that conduct electricity. Parts related to the functioning or protection of transfer equipment are also treated as transfer equipment and may include items such as current transformers used for metering, electrical interrupters (such as circuit breakers, fuses, and other switches), and hardware used to monitor, operate, and protect transfer equipment.

(C) *Roads*. Roads that are an integral part of a qualified investment credit facility are integral to the activity performed by the qualified investment credit facility; these include onsite roads that are used for equipment to operate and maintain the qualified investment credit facility. Roads primarily for access to the site, or roads used primarily for employee or visitor vehicles, are not integral to the activity performed by a qualified investment credit facility.

(D) *Fences*. Fencing is not an integral part of a qualified investment credit facility because it is not integral to the activity performed by the energy property.

(E) *Buildings*. Generally, buildings are not integral parts of a qualified investment credit facility because they are not integral to the activity of the qualified investment credit facility. However, the structures described in paragraphs (f)(4)(iii)(F) and (G) of this section are not treated as buildings for this purpose.

(F) *Structures essentially items of machinery or equipment*. A structure that is essentially an item of machinery or equipment is not treated as a building for purposes of paragraph (f)(4)(iii)(E) of this section.

(G) *Structures that house certain property*. A structure that houses property that is integral to the activity of a qualified investment credit facility is not treated as a building for purposes of paragraph (f)(4)(iii)(E) of this section if the use of the structure is so closely related to the use of the housed qualified investment credit facility that the structure clearly can be expected to be replaced if the qualified investment credit facility it initially houses is replaced.

(5) *Time and manner of making election*—(i) *In general*. To make an election under section 48(a)(5) and paragraph (f) of this section to treat a qualified facility as a qualified investment credit facility, a taxpayer must claim the section 48 credit with respect to such qualified investment credit facility on a completed Form 3468, *Investment Credit*, or any successor form(s), and file such form with the taxpayer's timely filed

(including extensions) Federal income tax return for the taxable year in which the qualified investment credit facility is placed in service. The taxpayer must also attach a statement to its Form 3468, or any successor form(s), filed with its timely filed Federal income tax return (including extensions) that includes all of the information required by the instructions to Form 3468, or any successor form(s) for each qualified investment credit facility subject to an election under section 48(a)(5) and paragraph (f) of this section. A separate election must be made for each qualified facility that meets the requirements provided in paragraph (f)(5)(v) of this section to be treated as a qualified investment credit facility. If any taxpayer owning an interest in a qualified facility makes an election with respect to such qualified facility, that election is binding on all taxpayers that directly or indirectly own an interest in the qualified facility.

(ii) *Special rule for partnerships and S corporations*. In the case of a qualified facility owned by a partnership or an S corporation, the election under paragraph (f) of this section is made by the partnership or S corporation and is binding on all ultimate credit claimants (as defined in § 1.50–1(b)(3)(ii)) of a section 48 credit. The partnership or S corporation must file a Form 3468, *Investment Credit*, or any successor form(s), with its timely filed partnership or S corporation return (including extensions) with respect to Federal income tax for the taxable year in which the qualified investment credit facility is placed in service to indicate that it is making the election and attach a statement that includes all of the information required by the instructions to Form 3468, or any successor form(s) for each qualified facility subject to the election. The ultimate credit claimants must claim the section 48 credit on a completed Form 3468, or any successor form(s), and file such form with a timely filed (including extensions) Federal income tax return for the taxable year in which the ultimate credit claimant's distributive share or pro rata share of the section 48 credit is taken into account under section 706(a) of the Code or section 1366(a) of the Code, respectively. The partnership or S corporation making the election must provide the ultimate credit claimants with the necessary information to complete Form 3468, or any successor form(s), to claim the section 48 credit.

(6) *Election irrevocable*. The election under section 48(a)(5) and paragraph (f) of this section to treat a qualified facility as an energy property is irrevocable.

(g) *Coordination rule for sections 42 and 48 credits*. As provided under section 50(c)(3)(C), in determining eligible basis for purposes of calculating a section 42 credit, a taxpayer is not required to reduce its basis in an energy property by the amount of the section 48 credit determined with respect to the property. The basis of an energy property may be used to determine a section 48 credit and may also be included in eligible basis to determine a section 42 credit. See paragraph (e) of this section for special rules regarding ownership of energy property.

(h) *Qualified interconnection costs included in certain lower-output energy properties*—(1) *In general*. For purposes of determining the section 48 credit, energy property includes amounts paid or incurred by the taxpayer for qualified interconnection property (as defined in paragraph (h)(2) of this section), in connection with the installation of energy property (as defined in § 1.48–9(a)) that has a maximum net output of not greater than five megawatts (MW) (as measured in alternating current) (as described in paragraph (h)(3) of this section). The qualified interconnection property must provide for the transmission or distribution of the electricity produced or stored by such energy property and must be properly chargeable to the capital account of the taxpayer as reduced by paragraph (h)(6) of this section. If the costs borne by the taxpayer are reduced by utility or non-utility payments, Federal income tax principles may require the taxpayer to reduce the amounts of costs treated as paid or incurred for qualified interconnection property to determine a section 48 credit.

(2) *Qualified interconnection property*. The term *qualified interconnection property* means, with respect to an energy project that is not a microgrid controller, any tangible property that is part of an addition, modification, or upgrade to a transmission or distribution system that is required at or beyond the point at which the energy project interconnects to such transmission or distribution system in order to accommodate such interconnection; is either constructed, reconstructed, or erected by the taxpayer, (as defined in § 1.48–9(b)(1)), or for which the cost with respect to the construction, reconstruction, or erection of such property is paid or incurred by such taxpayer; and the original use (as defined in § 1.48–9(b)(3)), of which, pursuant to an interconnection agreement (as defined in paragraph (h)(4) of this section), commences with a utility (as defined in paragraph (h)(5) of this section). For purposes of

determining the original use of interconnection property in the context of a sale-leaseback or lease transaction, the principles of section 50(d)(4) must be taken into account, as applicable, with such original use determined on the date of the sale-leaseback or lease. Qualified interconnection property is not part of an energy property. As a result, qualified interconnection property is not taken into account in determining whether an energy project satisfies the prevailing wage and apprenticeship requirements in section 48(a)(10)(A) and (11), the requirements for the domestic content bonus credit amount referenced in section 48(a)(12), or the increase in credit rate for energy communities provided in section 48(a)(14).

(3) *Five-Megawatt Limitation*—(i) *In general.* The Five-Megawatt Limitation is measured at the level of the energy property in accordance with section 48(a)(8)(A). The maximum net output of an energy property is measured only by nameplate generating capacity (in alternating current) of the unit of energy property, which does not include the nameplate capacity of any integral property, at the time the energy property is placed in service. The nameplate generating capacity of the unit of energy property is measured independently from any other energy properties that share the same integral property.

(ii) *Nameplate capacity for purposes of the Five-Megawatt Limitation.* For purposes of paragraph (h)(1) of this section, the determination of whether an energy property has a maximum net output of not greater than five MW (as measured in alternating current) is based on the nameplate capacity for purposes of paragraph (h)(1) of this section. If applicable, taxpayers should use the International Standard Organization (ISO) conditions to measure the maximum electrical generating output or usable energy capacity of an energy property. Paragraphs (h)(3)(iv) and (v) of this section provide rules for applying the Five-Megawatt Limitation (as provided in paragraph (h)(1) of this section) to electrical generating energy property and electrical energy storage property, respectively.

(iii) *Nameplate capacity for energy properties that generate in direct current for purposes of the Five-Megawatt Limitation.* For energy properties that generate electricity in direct current, the taxpayer may choose to determine whether an energy property has a maximum net output of not greater than five MW (in alternating current) by using the lesser of:

(A) The sum of the nameplate generating capacities within the unit of energy property in direct current, which is deemed the nameplate generating capacity of the unit of energy property in alternating current; or

(B) The nameplate capacity of the first component of property that inverts the direct current electricity into alternating current.

(iv) *Electrical generating energy property.* In the case of an electrical generating energy property, the Five-Megawatt Limitation is determined by using the maximum electrical generating output in megawatts that the unit of energy property is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. If applicable, taxpayers should use the International Standard Organization (ISO) conditions to measure the maximum electrical generating output of a unit of energy property.

(v) *Electrical energy storage property.* In the case of electrical energy storage property (as defined in § 1.48–9(e)(10)(ii)), the Five-Megawatt Limitation is determined by using the energy storage property's maximum net output as its nameplate capacity.

(4) *Interconnection agreement.* The term *interconnection agreement* means an agreement with a utility for the purposes of interconnecting the energy property owned by such taxpayer to the transmission or distribution system of the utility. In the case of the election provided under section 50(d)(5) (relating to certain leased property), the term includes an agreement regarding energy property leased by such taxpayer.

(5) *Utility.* For purposes of section 48(a)(8) and this paragraph (h), the term *utility* means the owner or operator of an electrical transmission or distribution system that is subject to the regulatory authority of a State or political subdivision thereof, any agency or instrumentality of the United States, a public service or public utility commission or other similar body of any State or political subdivision thereof, or the governing or ratemaking body of an electric cooperative.

(6) *Reduction to amounts chargeable to capital account*—(i) *In general.* In the case of costs paid or incurred for qualified interconnection property as defined in paragraph (h)(2) of this section, amounts otherwise chargeable to capital account with respect to such costs must be reduced under rules

similar to the rules of section 50(c) (including section 50(c)(3)).

(7) *Examples.* This subparagraph provides examples illustrating the application of the general rules provided in paragraph (h)(1) of this section and Five-Megawatt Limitation provided in this paragraph (h).

(i) *Example 1. Application of Five-Megawatt Limitation to an interconnection agreement for energy properties owned by taxpayer.* X places in service two solar energy properties (Solar Properties) each with a maximum net output of 4 MW (as measured in alternating current by using the nameplate capacity of an inverter, which is the first component of property attached to each of the Solar Properties that inverts the direct current electricity into alternating current). Each inverter is integral property to each Solar Property but is not shared by the Solar Properties. The Solar Properties share a step-up transformer, which is integral property to both Solar Properties. As part of the development of the Solar Properties, payment of qualified interconnection costs is required by the utility to modify and upgrade the utility's transmission system at or beyond the point of interconnection to accommodate such interconnection. X has an interconnection agreement with the utility that allows for a maximum output of 10 MW (as measured in alternating current). The interconnection agreement provides the total cost to X of the qualified interconnection property. X may include the costs X paid or incurred for qualified interconnection property subject to the terms of the interconnection agreement, to calculate X's section 48 credits for each of the Solar Properties because each has a maximum net output of not greater than five MW (alternating current). X cannot include more than the total costs X paid or incurred for the qualified interconnection property in calculating the aggregate section 48 credit amount for both Solar Properties.

(ii) *Example 2. Application of Five-Megawatt Limitation to an interconnection agreement for energy properties owned by separate taxpayers.* X places in service a solar energy property (Solar Property) with a maximum net output of 3 MW (as measured in alternating current by using the nameplate capacity of the first component of property attached to the Solar Property that inverts the direct current electricity into alternating current). Y places in service a wind facility (Wind Facility), for which Y has made a valid election under section 48(a)(5), with a maximum net output of

4 MW (as measured in alternating current). The Solar Property and the Wind Facility share a step-up transformer, which is integral to both facilities. As part of the development of the Solar Property and the Wind Facility, payment of qualified interconnection costs is required by the utility to modify and upgrade the transmission system at or beyond the point of interconnection to accommodate that interconnection. X and Y are party to the same interconnection agreement with the utility that allows for a maximum output of 10 MW (as measured in alternating current). The interconnection agreement provides the total cost of the qualified interconnection property to X and Y. X and Y may include the costs paid or incurred by X and Y, respectively, for qualified interconnection property subject to the terms of the interconnection agreement, to calculate their respective section 48 credits for the Solar Property and the Wind Facility because each has a maximum net output of not greater than five MW (in alternating current).

(iii) *Example 3. Application of Five-Megawatt Limitation to an interconnection agreement for a single energy property.* X develops three solar properties (Solar Properties) located in close proximity. The Solar Properties are not considered an energy project pursuant to the definition in § 1.48–13(d). Each of the Solar Properties is a unit of energy property that has a maximum net output of 4 MW. The nameplate capacity of each Solar Property is determined by using the sum of the nameplate generating capacities within the unit of each Solar Property in direct current, which is deemed the nameplate generating capacity of each Solar Property in alternating current. Electricity from the three Solar Properties feeds into a single gen-tie line and a common point of interconnection with the transmission system. X is party to a separate interconnection agreement with the utility for each of the Solar Properties and each interconnection agreement allows for a maximum output of 10 MW (as measured in alternating current). X may include the costs it paid or incurred for qualified interconnection property for each of the Solar Properties to calculate its section 48 credit for each of the Solar Properties, subject to the terms of each interconnection agreement, because each of the Solar Properties has a maximum net output of not greater than five MW (in alternating current). X cannot include more than the total costs X paid or incurred for the

qualified interconnection property in calculating the aggregate section 48 credit amount for both Solar Properties.

(iv) *Example 4. Application of Five-Megawatt Limitation to a single interconnection agreement for multiple energy properties.* The facts are the same as in paragraph (h)(7)(iii) of this section (*Example 3*), except that X is party to one interconnection agreement with the utility with respect to the three solar energy properties (Solar Properties) and the interconnection agreement allows for a maximum output of 12 MW (as measured in alternating current). With respect to each of the three Solar Properties, X may include the costs it paid or incurred for qualified interconnection property for each Solar Property to calculate its section 48 credit for each Solar Property, subject to the terms of the interconnection agreement, because each Solar Property has a maximum net output of not greater than five MW (in alternating current).

(v) *Example 5. Application of Five-Megawatt Limitation to an Energy Project.* The facts are the same as in paragraph (h)(7)(iv) of this section (*Example 4*), except that the three solar energy properties (Solar Properties) are also subject to a common power purchase agreement and as a result, are considered an energy project (as defined in § 1.48–13(d)). With respect to each of the three Solar Properties, X may include the costs it paid or incurred for qualified interconnection property to calculate its section 48 credit for each of the three Solar Properties, subject to the terms of the interconnection agreement, because each of the Solar Properties has a maximum net output of not greater than five MW (in alternating current).

(vi) *Example 6. Utility payment reducing costs borne by taxpayer.* In year 1, X places in service a solar energy property (Solar Property) with a maximum net output of 3 MW (as measured in alternating current by using the nameplate capacity of the inverter attached to the solar energy property, which is the first component of property attached to each of the Solar Properties that inverts the direct current electricity into alternating current). X is party to an interconnection agreement with a utility for the purpose of connecting the Solar Property to the transmission or distribution system of the utility. Pursuant to the interconnection agreement, X pays \$1 million to the utility, and the utility places in service qualified interconnection property. In year 1, X had no reasonable expectation of any payment from the utility or other parties with respect to the qualified interconnection property. The \$1 million is properly chargeable to the

capital account of X, subject to paragraph (h)(6) of this section. X properly includes the \$1 million paid to the utility in determining its credit under section 48 for Year 1. In Year 4, taxpayer Y enters into an agreement with the utility under which Y pays the utility \$100,000 for the use of qualified interconnection property placed in service by the utility pursuant to the interconnection agreement between X and the utility. The utility pays \$100,000 to X. Under these circumstances, the payment from the utility in year 4 would not require X to reduce the amount treated as paid or incurred for the qualified interconnection property for the purpose of determining the section 48 credit in year 1.

(vii) *Example 7. Non-utility payment reducing costs borne by taxpayer.* The facts in year 1 are the same as in paragraph (h)(7)(vi) of this section (*Example 6*). In Year 4, taxpayer Y enters into an agreement with the utility under which Y pays X \$100,000 for the use of qualified interconnection property placed in service by the utility pursuant to the interconnection agreement between X and the utility. Y pays \$100,000 to X. In year 1, X had no reasonable expectation of any payment from Y for subsequent agreements with Y or other parties with respect to the qualified interconnection property. Under these circumstances, the payment from Y in year 4 would not require X to reduce the amount treated as paid or incurred for the qualified interconnection property for the purpose of determining the section 48 credit in year 1.

(i) *Cross references.* (1) For rules regarding the coordination of the section 42 credit and section 48 credit, see section 50(c)(3).

(2) For rules regarding the denial of double benefit for qualified biogas property, see section 45(e).

(3) For applicable recapture rules, see section 50(a).

(4) For rules regarding the credit eligibility of property used outside the United States, see section 50(b)(1).

(5) For rules regarding the credit eligibility of property used by certain tax-exempt organizations, see section 50(b)(3). See section 6417(d)(2) of the Code for an exception to this rule in the case of an applicable entity making an elective payment election.

(6) For application of the normalization rules to determine the section 48 credit taken by certain regulated companies, including rules regarding the election not to apply the normalization rules to energy storage

technology (as defined in section 48(c)(6)), see section 50(d)(2).

(j) *Applicability date.* This section applies with respect to property placed in service after December 31, 2022, and during a taxable year beginning after December 12, 2024.

■ **Par. 4.** Section 1.6418–5 is amended by adding paragraph (f) and revising paragraph (j) to read as follows:

§ 1.6418–5 Special rules.

* * * * *

(f) *Notification and impact of recapture under section 48(a)(10)(C)—*

(1) *In general.* In the case of any election under § 1.6418–2 or § 1.6418–3 with respect to any specified credit portion described in § 1.6418–1(c)(2)(ix), if, during any taxable year, there is recapture under section 48(a)(10)(C) of the Code and § 1.48–13(c)(4) of any increased credit amount under section 48(a)(9)(B)(iii) before the close of the recapture period (as described in § 1.48–13(c)(6)), such eligible taxpayer and the transferee taxpayer must follow the notification process in paragraph (f)(2) of this section with the Federal income tax consequences of recapture impacting the transferee taxpayer as described in paragraph (f)(3) of this section.

(2) *Notification requirements.* The notification requirements for the eligible taxpayer are the same as for an eligible taxpayer that must report a recapture event as described in paragraph (d)(2)(i)

of this section, except that the recapture amount that must be computed is defined in § 1.48–13(c)(5).

(3) *Impact of recapture—(i) Section 48(a)(10)(C) recapture event.* The transferee taxpayer is responsible for any amount of tax increase under section 48(a)(10)(C) and § 1.48–13(c)(5) upon the occurrence of a recapture event under § 1.48–13(c)(4), provided that if an eligible taxpayer retains any amount of an eligible credit determined with respect to an energy property directly held by the eligible taxpayer, the amount of the tax increase under section 48(a)(10)(C) and § 1.48–13(c)(5) that the eligible taxpayer is responsible for is equal to the recapture amount multiplied by a fraction, the numerator of which is the total credit amount that the eligible taxpayer retained, and the denominator of which is the total credit amount determined for the energy property. The amount of the tax increase under section 48(a)(10)(C) that the transferee taxpayer is responsible for is equal to the recapture amount multiplied by a fraction, the numerator of which is the specified credit portion transferred to the transferee taxpayer, and the denominator of which is the total credit amount determined for the energy property.

(ii) *Impact of section 48(a)(10)(C) recapture event on basis of energy property held by eligible taxpayer.* The eligible taxpayer must increase the basis

of the energy property (as of the first day of the taxable year in which the recapture event occurs) by an amount equal to the recapture amount provided to the eligible taxpayer by the transferee taxpayer pursuant to the notification required under paragraph (f)(2) of this section and the recapture amount on any credit amounts retained by the eligible taxpayer in accordance with section 48(a)(10)(C) and § 1.48–13(c)(4).

* * * * *

(j) *Applicability dates—(1) In general.* Except as provided in paragraph (j)(2) of this section, this section applies to taxable years ending on or after April 30, 2024. For taxable years ending before April 30, 2024, taxpayers, however, may choose to apply the rules of this section and §§ 1.6418–1 through 1.6418–3 provided the taxpayers apply the rules in their entirety and in a consistent manner.

(2) *Paragraph (f) of this section.* Paragraph (f) of this section applies to taxable years ending on or after December 12, 2024.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: November 25, 2024.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–28190 Filed 12–4–24; 4:15 pm]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species
Status With Section 4(d) Rule for Monarch Butterfly and Designation of
Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R3-ES-2024-0137;
FXES1111090FEDR-256-FF09E21000]

RIN 1018-BE30

**Endangered and Threatened Wildlife
and Plants; Threatened Species Status
With Section 4(d) Rule for Monarch
Butterfly and Designation of Critical
Habitat**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the monarch butterfly (*Danaus plexippus*), the iconic orange and black butterfly, as a threatened species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). We propose to list the monarch butterfly as a threatened species with protective regulations under section 4(d) of the Act (a “4(d) rule”). Finalizing this rule as proposed would add this species to the List of Endangered and Threatened Wildlife and extend the Act’s protections to the species. We also propose to designate critical habitat for the monarch butterfly under the Act. In total, approximately 4,395 acres (1,778 hectares) in Alameda, Marin, Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura Counties, California, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of an economic analysis of the proposed designation of critical habitat for the monarch butterfly. We also are notifying the public that we have scheduled two informational meetings followed by public hearings on the proposed rule.

DATES: We will accept comments received or postmarked on or before March 12, 2025. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

Public informational meetings and public hearings: We will hold two public informational meetings followed by public hearings. The first meeting and hearing will be from 6 p.m. to 8:30 p.m., eastern time, on January 14, 2025. To accommodate those in western time zones, the second meeting and hearing will be from 8 p.m. to 10:30 p.m., eastern time, on January 15, 2025.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R3-ES-2024-0137, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R3-ES-2024-0137, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at <https://www.regulations.gov> at Docket No. FWS-R3-ES-2024-0137. If we finalize the critical habitat designation, we will make the coordinates or plot points or both from which the maps are generated available at <https://www.regulations.gov> at Docket No. FWS-R3-ES-2024-0137.

Public informational meeting and public hearing: The public informational meeting and the public hearing will be held virtually using the Zoom platform. See Public Hearing, below, for more information.

FOR FURTHER INFORMATION CONTACT: Barbara Hosler, Regional Listing Coordinator, U.S. Fish and Wildlife Service, Midwest Region Headquarters, 5600 American Blvd., Bloomington, MN 55437, telephone 517-580-0254, email: monarch@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS-R3-ES-2024-0137 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species’ critical habitat to the maximum extent prudent and determinable. We have determined that the monarch butterfly meets the Act’s definition of a threatened species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and making a critical habitat designation can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to add the monarch butterfly as a threatened species to the List of Endangered and Threatened Wildlife with protective regulations under section 4(d) of the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the monarch butterfly meets the definition of a threatened species due to the following threats: the ongoing impacts from loss and degradation of breeding, migratory, and overwintering habitat (from past conversion of grasslands and shrublands to agriculture and widespread use of herbicides; logging/thinning at overwintering sites in Mexico; urban development, senescence (*i.e.*, deterioration with age), and incompatible management of overwintering sites in California; and drought) (Factor A); exposure to insecticides (Factor E); and effects of climate change (Factor E).

To improve future conditions so that the monarch migratory populations stabilize and grow, we need to (1)

achieve a significant increase in the availability of milkweed and nectar plants in monarch breeding and migratory areas; (2) protect and enhance overwintering habitat; (3) avoid and minimize impacts to monarchs and their habitat from insecticides and herbicides; and (4) maintain public support for the conservation of monarch butterflies. Because of the monarch butterfly's general habitat use and wide distribution, all sectors of society, including the general public, have an opportunity to participate in a broad range of conservation efforts throughout the species' range.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, concurrently with listing designate critical habitat for the species. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns, alternative migratory pathways, and the locations of any additional populations of this species;

(d) Population dynamics and contributions from the nonmigratory populations, specifically resident monarchs in southern Florida, the Gulf Coast, the southern Atlantic Coast, and the southern Pacific Coast;

(e) Historical and current population levels, and current and projected trends; and

(f) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species;

(c) Existing regulations or conservation actions that may be addressing threats to this species; and

(d) Other potential threats that were not identified as key threats to the species.

(3) Additional information concerning the historical and current status of this species.

(4) Information to assist us with applying or issuing protective regulations under section 4(d) of the Act that may be necessary and advisable to provide for the conservation of the monarch butterfly. In particular, we seek information concerning:

(a) The extent to which we should include any of the Act's section 9 prohibitions in the 4(d) rule;

(b) Whether we should consider any modifications or additional exceptions from the prohibitions in the 4(d) rule;

(c) Whether the provisions related to the maintenance, enhancement, removal, or establishment of milkweed should be revised to include spatial or temporal restrictions or deferments;

(d) Whether we should include an exception for the use of pesticides and, if so, what measures are reasonable, feasible, and adequate to reduce or offset pesticide exposure to monarchs from agricultural and non-agricultural uses (e.g., rangeland, rights-of-way, forestry, commercial areas, and mosquito control), including measures for specific classes of pesticides (e.g., herbicides, insecticides), pesticide uses, and application methods;

(e) Whether we should include an exception for direct impacts from transportation and energy infrastructure, including mortality from collisions with wind turbines; and

(f) Whether we could improve or modify our approach to the 4(d) rule in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(5) Specific information related to critical habitat, such as the following:

(a) The amount and distribution of monarch butterfly habitat;

(b) Any additional areas occurring within the range of the species in the United States, especially in breeding, migratory, or overwintering areas, that should be included in the critical habitat designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species; and

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change.

(6) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(7) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(8) Information on the extent to which the description of probable economic impacts in the economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(9) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to

allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the protective regulations issued or applied under section 4(d) of the Act if we

conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions if we conclude that the protective regulation as a whole, including those additional prohibitions, is necessary and advisable to provide for the conservation of the species. Conversely, we may establish additional or different exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

We have scheduled two public informational meetings with public hearings on this proposed rule for the monarch butterfly. We will hold the public informational meetings and public hearings on the dates and times listed above under *Public informational meeting and public hearing* in **DATES**. We are holding the public informational meetings and public hearings via the Zoom online video platform and via teleconference so participants can attend remotely. For security purposes, registration is required. To listen and view a meeting and hearing via Zoom, listen to a meeting and hearing by telephone, or provide oral public comments at a public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit <https://www.fws.gov/species/monarch-danaus-plexippus>. Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing for which they have registered. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials>) prior to the public informational meetings and public hearings.

The public hearings will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule. While the public informational meetings will be opportunities for dialogue with the Service, the public hearings are not: They are forums for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at a public hearing for the

record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at a public hearing must register before the hearing <https://www.fws.gov/species/monarch-danaus-plexippus>. The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On August 26, 2014, we received a petition from the Center for Biological Diversity, Center for Food Safety, Xerces Society for Invertebrate Conservation, and Dr. Lincoln Brower, requesting that we list the monarch butterfly as a threatened species under the Act. On December 31, 2014, we published a 90-day finding that the petition presented substantial scientific or commercial information, indicating that listing the monarch butterfly may be warranted (79 FR 78775). On December 17, 2020, we published a 12-month finding that listing the species as an endangered or threatened species is warranted but precluded by higher priority actions (85 FR 81813). The species remained so designated in the annual candidate notices of review on May 3, 2022 (87 FR 26152), and June 27, 2023 (88 FR 41560).

Peer Review

A species status assessment (SSA) team prepared an SSA report for the monarch butterfly. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the Act (<https://www.fws.gov/sites/default/files/documents/peer-review-policy-directors-memo-2016-08-22.pdf>), we solicited independent scientific review of the information contained in the monarch butterfly SSA report. In 2018, we sent the first version (1.0) of the SSA report to 6 independent peer reviewers and received 5 responses. In 2020, we sent the second version (2.0) of the SSA report to 3 peer reviewers and received 2 responses. In 2023, we sent the SSA

report version 2.2 to 13 peer reviewers and received 7 responses. No individual peer reviewed the SSA report more than once. Results of this structured peer review process can be found at <https://www.regulations.gov>. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from 14 total peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the contents of the SSA report. The peer reviewers provided additional references, clarifications, and suggestions.

We updated the SSA report based on these peer reviewers' comments, including restructuring several sections within the report, revising our description of adaptive capacity, clarifying specific points and terminology where appropriate, and adding additional details and suggested references when needed. Additional peer reviewer comments are addressed in the following summary, as well as throughout the Summary of Biological Status and Threats, below, and were incorporated into the SSA report as appropriate (Service 2024a, entire).

Comment 1: Two reviewers asked us to elaborate on whether our assessment of resilience or the extinction threshold for western migratory monarchs should change based on a few years of numbers that have bounced back above 200,000 after the low of less than 2,000 individuals in the winter of 2019–2020.

Our response: It is plausible that migratory monarchs experienced good weather that resulted in abundant and well-timed milkweed and nectar resources across their breeding habitat in western North America in 2021, which provided for a significant increase in the overwintering count from below 2,000 individuals in 2019–2020. With only a few years of improved population numbers, we are currently unable to determine whether the western migratory population's status is improving or if these data support the continuation of its fluctuation and decline. While this does not change our current assessment of the population's resilience, we have added text clarifying this uncertainty to our SSA report to further address this comment.

We also revisited our extinction thresholds in western North America. In the model presented in our SSA, we use a range of extinction thresholds, which

are informed by scientific literature (*i.e.*, Schultz et al. 2017, entire; Wells et al. 1990, p. 124). With the observed western population rebound, these estimates may be conservative. While the extinction thresholds we used are currently the best available, some uncertainty remains about the size of extinction thresholds and the time lag necessary to confirm assumptions about population stability or extinction trajectories. Therefore, we could be either overestimating or underestimating extinction risk depending on the accuracy of the thresholds.

Comment 2: One reviewer questioned our reliance on overwintering counts to inform our understanding of eastern North American monarch butterfly population trends, in contrast to using surveys at other locations and at other times during the year.

Our response: Monitoring at overwintering sites allows for the most practical and direct assessment of annual population levels, where the near-entirety of the migratory population can be evaluated consistently and comprehensively, reflecting the full range of threats and population dynamics encountered over the prior annual breeding and migration cycle. The question about the optimal approach for annual census of monarch butterfly populations (*e.g.*, overwintering data v. non-overwintering data) has been addressed in a more recent review of the methodology, which concluded that the overwintering area of the eastern North American population is an accurate representation of the size of the population (Pleasant et al. 2024, p. 62). Our analysis of this topic based on the preponderance of scientific evidence is incorporated into the most recent version of the SSA report (Service 2024a, pp. 70–76).

Comment 3: Two reviewers noted that the decline of the eastern North American monarchs may have slowed or stabilized for the past decade or more, potentially due to an associated slowing or plateau of habitat loss. With this potential slowing or stabilization, one of these reviewers asked if the extinction risk may have thus decreased. They also noted differences in population decline based on the modeling assumption of density-dependence or independence.

Our response: The estimates of population viability (and extinction risk) presented in the SSA report are based on the overall population trajectory (growth rate), along with the current population size and the fluctuations exhibited year-to-year. Growth rate and variability are derived

using time series data, which may be influenced by the number of years being analyzed.

Different analyses have explored the possibility that past declines in milkweed, or habitat more generally, alongside the expansion of genetically modified crops and associated herbicides and pesticides, may have effectively plateaued in recent years. Some evidence has emerged of a change in trajectory for the eastern population since 2014, but as of 2020, statistical support for such a change was insufficient (Thogmartin et al. 2020, entire). More recently, an analysis of overwintering data for the eastern population estimated a median annual rate of growth of 0.93 (0.67–1.30, 95-percent confidence interval (CI)). These results indicate that the population is declining, even when assuming relatively stable land use and landcover change relative to the conditions that had driven steeper population declines in previous decades (Thogmartin 2024, entire).

Other published analyses estimate monarch population growth rates and persistence/extinction risks using alternative models and different data sets. These include non-overwintering population data, different time-series of annual population estimates, different modeling assumptions about density-dependence, and different relationships between population size and growth (*i.e.*, increased density of monarchs will result in decreased population growth and decreased density of monarchs will result in increased population growth). One recent analysis (Meehan and Crossley 2023, entire) used a variable change model to characterize the trend in eastern North American monarch abundance, suggesting that the monarch population has rebounded after a period of decline, thereby leading to a markedly lower risk of extinction relative to other assessments (*e.g.*, Semmens et al. 2016, entire; Schultz et al. 2017, entire; Thogmartin 2024, entire), including our SSA analyses. Meehan and Crossley (2023, entire) assume density dependence, which constrains the uncertainty associated with the predicted abundance estimates (small populations recover faster under density-dependent assumptions than density-independent assumptions). Though their density dependent model provides a good fit for the 10-year dataset they analyzed, the models cannot identify the mechanism behind the apparent decline in growth rate as populations increase. The assessment by Meehan and Crossley (2023, entire) did not incorporate the impacts of changing future conditions.

Another analysis that also did not incorporate the impacts of changing future conditions assumes the variability in the population numbers is now driven by environmental and demographic stochasticity (Thogmartin 2024, entire). This approach is more conservative because it results in increased variability at small populations sizes, as compared to the assumption of density dependence (which assumes increased per capita growth when populations are small). In this modeling approach, when population abundance has been reduced to a low level, demographic and environmental stochasticity alone (and not necessarily a declining trend) are now the driving factors, resulting in an increased risk of extinction. After careful examination, our estimates in the SSA for the annual rate of growth, population viability, and extinction risk continue to be in line with the best available information.

Comment 4: One reviewer of a later version of the SSA asked for additional clarification on why the model for monarch butterfly extinction was not re-run with updated data that had been collected since the first version of the SSA.

Our response: Based on our previous sensitivity testing of the model presented in the SSA, updated values would not significantly change the output and results, and thus would not change the outcomes in our report. Therefore, instead of rerunning the model, we instead prioritized evaluating new literature and information that might have changed the SSA analyses and conclusions. We provide further clarification and explanation in the updated SSA report (Service 2024a, p. 149).

Comment 5: One reviewer commented that nonmigratory monarch butterflies might persist, even if the migratory monarchs were to become extirpated. The reviewer also suggested that one potential reason for the declines in migratory individuals in the West could be due to a shift to more individuals existing in nonmigratory populations during winter.

Our response: According to recent research, the resident (nonmigratory) population in California is not sufficient to make up for the loss of the migratory population in western North America; there are still orders of magnitude fewer butterflies now than in the recent past (Crone and Schultz 2021, p. 1535). Also, the resident population probably lacks the demographic capacity to expand its range inland during summer months. Resident populations of monarch butterflies build up high levels of a

protozoan parasite, *Ophryocystis elektroscirrha* (OE), at least in part due to the absence of migratory culling and migratory escape (Satterfield et al. 2015, pp. 4–5). In California, about 8 percent of migratory monarch butterflies are infected with OE, compared to about 75 percent of residents (Satterfield et al. 2016, p. 346). Similarly, for the eastern North American population, less than 10 percent of migratory monarch butterflies are infected with OE, compared to 75–100 percent of nonmigratory monarchs in Florida (Altizer and de Roode 2015, p. 91). OE-infected monarch butterflies experience lower survival, lower egg-laying rates, and produce about 0.8 adult daughters per female (Crone and Schultz 2021, Supplement S4). This rate of increase is enough for resident monarch butterfly populations to persist in urban areas, but it does not provide the ability to rapidly colonize the other Western States (Crone and Schultz 2021, p. 1536). We acknowledge alternative overwintering strategies, including nonmigratory monarchs, in the uncertainties section of the SSA report (Service 2024a, pp. 70–76).

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the monarch butterfly (*Danaus plexippus*; referred to as “monarch” or “monarch butterfly” herein) is presented in the SSA report version 2.3 (Service 2024a, entire).

The monarch is a brightly colored butterfly species, native to North America, with a range that has expanded west via human assistance to many islands in the Pacific Ocean and to the east to the Iberian Peninsula to now occupy 90 countries, islands, and island groups. Despite the expansion, over 90 percent of monarchs worldwide continue to live and migrate in their native range in North America. The species requires habitat with milkweed (genus *Asclepias* or closely related genera) as a larval host plant and floral nectar sources for adults. Migratory monarchs in North America also use overwintering habitat, where the adults cluster on trees.

Adult monarch butterflies are large and conspicuous, with bright-orange wings surrounded by a black border and covered with black veins. The black border has a double row of white spots, present on the upper side and lower side of forewings and hindwings (Bouseman and Sternburg 2001, p. 222). Adult monarchs are sexually dimorphic, with males having narrower wing venation and scent patches

(Commission for Environmental Cooperation (CEC) 2008, p. 11). The monarch butterfly has bright and contrasting coloration, which serves as a warning to predators that eating them can be toxic.

The migratory North American populations are located east and west of the Rocky Mountains and overwinter primarily at sites with specific microhabitats in central Mexico and California, respectively. In central Mexico, the species primarily overwinters in mountainous regions where the monarchs form dense clusters mainly on oyamel fir trees (*Abies religiosa*). Western monarchs spend the fall and winter at tree groves along the California coast, northern Baja California, Mexico, and at a few inland sites in the Saline Valley of California. These groves are populated by a variety of tree species, including blue gum eucalyptus (*Eucalyptus globulus*), Monterey pine (*Pinus radiata*), Monterey cypress (*Cupressus macrocarpa*), and others. The overwintering sites for both the eastern and western North American migratory monarch populations provide protection from the elements and a microhabitat conducive for winter survival. In contrast, monarchs in habitats with suitable winter climates (e.g., some areas in California and Florida) may breed year-round without migrating.

During the breeding season for monarchs, adults lay their eggs on milkweed, and larvae emerge after 2 to 5 days (Zalucki 1982, p. 242; CEC 2008, p. 12). Larvae develop through five larval instars (intervals between molts) over a period of 9 to 18 days, feeding on milkweed and sequestering toxic cardenolides as a defense against predators (Parsons 1965, p. 299). The larva then pupates into a chrysalis before eclosing 6 to 14 days later as an adult butterfly. Monarchs produce multiple generations during the breeding season, with most adult butterflies living approximately 2 to 5 weeks; however, migrating and overwintering adults enter into reproductive diapause (suspended reproduction) and live 6 to 9 months (Cockrell et al. 1993, pp. 245–246; Herman and Tatar 2001, p. 2509).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations (CFR) set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective

regulations for threatened species, and designating critical habitat for endangered and threatened species.

The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the species’ expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect

of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M–37021, January 16, 2009; “M–Opinion,” available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and National Marine Fisheries Service (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species’ responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species’ life-history characteristics, threat projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess monarch butterfly viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species’ life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R3–ES–2024–0137 on <https://www.regulations.gov>.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species’ current and future condition, in order to assess the species’ overall viability and the risks to that viability.

Species Needs

Individual-Level Ecology

The monarch life cycle varies by geographic location. Migratory monarchs in North America are the

ancestral population for all other monarch populations (Pierce et al. 2014, p. 4; Zhan et al. 2014, p. 318; Hemstrom et al. 2022, pp. 4551–4552), which dispersed from North America via human assistance, potentially aided through wind dispersal events (Brower 1995, p. 354), and now occur in Central and South America; Australia; New Zealand; islands of the Pacific and Caribbean, and elsewhere (Malcolm and Zalucki 1993, pp. 3–5) where milkweed (their larval host plant) was already present or introduced. In a few parts of North America (such as parts of Florida, the Gulf Coast, and California) and in most areas outside North America, monarchs breed year-round, repeatedly following the above-referenced life cycle throughout the year. However, monarchs in temperate climates such as eastern and western North America undergo long-distance migration, where the migratory generation of adults is in reproductive diapause and lives for an extended period of time (Herman and Tatar 2001, p. 2509).

In the fall, in both eastern and western North America, monarchs begin migrating to their respective overwintering sites. This migration can take monarchs distances of over 2,000 miles (mi) (3,000 kilometers (km)) (Urquhart and Urquhart 1978, p. 1760) and last for over 2 months (Brower 1996, p. 93). The vast majority of migratory individuals in eastern North America fly south or southwest to mountainous overwintering grounds in central Mexico, although some minor alternative migratory routes have also been suggested (Dockx et al. 2023, p. 314). Migratory individuals in western North America generally fly shorter distances south and west to overwintering groves along the California coast into northern Baja California (Solensky 2004, p. 79). Data from monarchs tagged in the southwestern States in the fall suggest that those in Nevada migrate to California, those in New Mexico migrate to Mexico, and those in Arizona migrate to either Mexico or California (Southwest Monarch Study Inc. 2018, unpaginated). In early spring (February–March), surviving monarchs break diapause and mate at the overwintering sites before dispersing (Leong et al. 1995, p. 46; van Hook 1996, pp. 16–17). The same individuals that undertook the initial southward migration begin flying back through the breeding grounds, and their offspring start the cycle of generational migration over again (Malcolm et al. 1993, p. 262).

The spring monarch migrations in eastern and western North America represent massive annual range

expansions. In eastern North America, monarchs travel north in the spring, from Mexico to Canada, over two to three successive generations, breeding along the way (Flockhart et al. 2013, pp. 4–5). Individual monarchs may disperse as far north as they can physiologically tolerate based on climatic conditions and available vegetation; the most specific predictors of the northern distribution of individual monarchs are monthly mean temperature and precipitation (Flockhart et al. 2013, p. 4; Flockhart et al. 2017, p. 2570). The number of generations of monarchs produced in a given year in a migratory population can vary between three and five and is dependent upon environmental conditions (Brower 1996, p. 100). While a majority of the eastern monarchs shift to the more northern reaches of their range, western monarchs continue to occupy and breed in warmer climates throughout the summer, while also expanding to include the farther reaches of their range. In the spring in western North America, monarchs migrate north and east over multiple generations from coastal California toward the Rockies and to the Pacific Northwest (Urquhart and Urquhart 1977, p. 1585; Nagano et al. 1993, entire). In the southwestern States, migrating monarchs tend to occur more frequently near water sources such as rivers, creeks, roadside ditches, and irrigated gardens (Morris et al. 2015, p. 100).

In addition to the monarchs that overwinter by clustering at known overwintering roost sites, some monarchs in North America also breed year-round or breed throughout the winter. These individuals require the breeding habitat and suitable climate (table 1) and are discussed further in Species-Level Ecology, below.

To facilitate the massive annual spring range expansion, adult monarch butterflies require a diversity of blooming nectar resources, which they feed on both throughout their migration routes and in their breeding grounds (spring through fall). Monarchs also need milkweed (for both oviposition and larval feeding) embedded within this diverse nectaring habitat. The correct phenology, or timing, of both monarchs and nectar plants and milkweed is important for monarch survival. The position of these resources on the landscape is important as well (see Population-Level Ecology, below). In western North America, nectar and milkweed resources are often associated with riparian corridors, and milkweed may function as the principal nectar source for monarchs in more arid regions (Dingle et al. 2005, p. 494;

Pelton et al. 2018, p. 18; Waterbury and Potter 2018, p. 38; Dilts et al. 2018, p. 8). Individuals need nectar and milkweed resources year-round in nonmigratory populations. Additionally, many monarchs use a variety of roosting trees along the fall migration route (table 1).

Migratory individuals of eastern and western North America require a specific microclimate at overwintering sites. The eastern population of monarchs overwinter in Mexico, where this microclimate is provided by forests primarily composed of oyamel fir trees, on which the monarchs form dense clusters (Williams and Brower 2015, pp. 109–110). These cluster formations provide a buffer for individuals against freezing temperatures, lipid depletion, and desiccation (Brower et al. 2008, p. 186). The sites used for overwintering primarily occur in mountainous areas west of Mexico City located between elevations of 9,500 feet (ft) (2,900 meters (m)) and 10,800 ft (3,300 m) (Slayback and Brower 2007, p. 147). The temperature must remain cool enough to prevent excessive lipid depletion (Alonso-Mejía et al. 1997, p. 935), while at the same time staying warm enough to prevent freezing (Anderson and Brower 1996, pp. 111–113). Exposure to these cooler temperatures also helps orient the monarchs northward in the spring (Guerra and Reppert 2013, pp. 421–422). The oyamel fir forest provides essential protection from the elements, including rain, snow, wind, hail, and excessive solar radiation (Williams and Brower 2015, p. 109). Many sites also provide a source of hydration via nectar plants or a water source (Brower et al. 1977, pp. 237–238). Most of the observed overwintering sites are located within the Monarch Butterfly Biosphere Reserve, which covers more than 138,000 acres (ac) (56,000 hectares (ha)) (Vidal and Rendón-Salinas 2014, p. 169; Ramírez et al. 2015, p. 158).

Migratory monarchs in the western population primarily overwinter in groves along the coast of California and Baja California (Jepsen and Black 2015, p. 149). The location and structure of these sites provide the specific microclimate (although different from the Mexico overwintering microclimate) needed for survival in the western overwintering areas. Approximately 400 groves have been known to be occupied, but only a portion of these sites is occupied in any given year. These sites, typically close to the coast, span approximately 761 mi (1,225 km) of coastline (COSEWIC 2010, p. 10). These groves are populated by a variety of tree species, including blue gum eucalyptus, Monterey pine, and Monterey cypress

(Griffiths and Villablanca 2015, pp. 41, 46–47), all of which act as roost trees. These groves provide indirect sunlight for the overwintering monarchs, sources of moisture for hydration, defense

against freezing temperatures, and protection against strong winds (Tuskes and Brower 1978, p. 149; Leong 1990, pp. 908–910, Leong 1999, p. 213). The close proximity to the coast (average

distance of 1.47 mi (2.37 km)) also provides a mild winter climate (Leong et al. 2004, p. 180).

TABLE 1—INDIVIDUAL-LEVEL REQUISITES FOR MONARCH SURVIVAL AND REPRODUCTION

Life stage	Requirements	Description
Egg, larva, and adult—breeding.	Milkweed resources	Healthy and abundant milkweed is needed for oviposition and larval consumption.
Adult—breeding and migration.	Nectar resources	Sufficient quality and quantity of nectar from flowers is needed for adult feeding throughout the breeding and migration seasons.
Adult—overwintering	Suitable habitat for overwintering.	Habitat that provides a specific roosting microclimate for overwintering: protection from the elements (e.g., rain, wind, hail, excessive radiation) and moderate temperatures that are warm enough to prevent freezing yet cool enough to prevent lipid depletion. Nectar and clean water sources located near roosting sites.
Adult—migration	Connectivity and phenology	Nectar and milkweed resources along the migration route when butterflies are present; the size and spatial arrangement of habitat patches are generally thought to be important aspects, but currently unknown. Roosting sites may also be important for monarchs along their fall migration route.

Population-Level Ecology

Monarchs, like many insects, are sensitive to environmental conditions (temperature and precipitation) and can experience large swings in population numbers from year to year in response to these conditions (Rendón-Salinas et al. 2015, p. 3; Schultz et al. 2017, pp. 345–346). During favorable conditions, monarch survival and reproductive rates are high and population numbers increase; conversely, when environmental conditions are unfavorable, survival and reproductive rates are low and population numbers can plummet. Thus, to successfully recruit over generations and years, they must be capable of withstanding large swings in population sizes (N). Specifically, they need a positive population growth rate (λ , or λ) that is sufficient for the species to recover from annual stochasticity.

To support a strong growth rate, monarch populations require sufficiently large population sizes and an adequate quantity and quality of habitat to support these large population sizes. Large population sizes also help maintain genetic health and facilitate thermoregulation during the winter, which is important for good physical health. A sufficiently large population size may also be important for finding mates and repelling predators (Malcolm 2018, pers. comm.). Both migratory and breeding habitat need to be distributed throughout the landscape to ensure connectivity, allowing monarchs within a population to reach all portions of their range and to maximize lifetime fecundity (Zalucki and Lammers 2010, p. 84; Miller et al. 2012, p. 2).

Species-Level Ecology

The ecological requisites at the species level include having a sufficient number and distribution of healthy populations to ensure the species can withstand annual variation in its environment (resiliency), catastrophes (redundancy), and novel biological and physical changes in its environment (representation). We describe the monarch's requirements for resiliency, redundancy, and representation below.

Resiliency

Monarch populations with a robust growth rate, large effective population size, and suitable quality, quantity, and distribution of habitat conditions are better able to withstand and recover from environmental variability and stochastic perturbations (e.g., storms, dry years) than those populations that are less demographically, genetically, or physically healthy. Given the monarch's sensitivity to environmental conditions, which can cause large swings in population numbers year-to-year (Rendón-Salinas et al. 2015, p. 3), monarchs occupying a diversity of environmental conditions and being widely distributed helps guard against populations being exposed to adverse conditions concurrently, and thus, fluctuating in synchrony. Asynchronous dynamics within and among populations minimizes the chances of concurrent losses, and thus, provides species resiliency.

Redundancy

Monarch redundancy is best achieved by having a broad geographic distribution of monarchs relative to the spatial occurrence of catastrophic events. For the eastern North American migratory population, potential

catastrophic events include extreme storms when monarchs are densely congregated and widespread drought. For the western North American migratory population, potential catastrophic events include widespread drought and co-occurrence of poor environmental conditions and low population abundance. For dispersed non-migratory populations, potentially catastrophic events include sea level rise, which can inundate habitat, and lethal high temperatures.

Migratory North American monarchs are distributed across vast and diverse habitats across much of North America during their breeding and migratory seasons. However, while overwintering, most migratory monarchs are highly concentrated at sites in Mexico and California. Nonmigratory monarchs in North America are distributed in warmer, suitable areas throughout the year, including in parts of Florida, the Gulf Coast, and California. A very small proportion of the species is also distributed in nonnative or naturalized populations across diverse habitats throughout 90 countries, islands, and island groups.

Representation

The monarch's ability to withstand novel changes in its environment is influenced by its adaptive capacity, which is primarily a function of the species' breadth of variation in biological traits and genetic diversity. Without such variation, species are less responsive to change and more prone to extinction (Spielman et al. 2004, p. 15263). Additionally, as populations with higher genetic diversity can more quickly adapt to novel changes, species with genetically healthy populations are better able to adapt (Ofori et al. 2017, p.

2). Below we describe monarch adaptive capacity by using the best available data.

Migratory monarchs in North America are the ancestral population for all other monarch populations around the world (Pierce et al. 2014, p. 4; Zhan et al. 2014, p. 318; Hemstrom et al. 2022, pp. 4551–4552). Their unique genetics separate them from nonmigratory monarchs (Freedman et al. 2021, p. 7). Genetic sampling indicates that the monarchs from eastern and western North America have continued interchange between the two populations contributing to low genetic differentiation (Talla et al. 2020, p. 2573; Freedman et al. 2021, pp. 7–8). During the annual breeding season, the North American migratory populations use a vast and diverse array of habitats. Following a long-distance migration through more varied habitats and conditions, the North American migratory monarchs use sites with a diversity of physical structures and climatic conditions for overwintering. Having monarchs occupying areas of unique ecological diversity guards against losses of adaptive capacity due to stochastic or catastrophic events. Nonmigratory monarchs represent a life-history strategy that exposes them to selection pressures that differ from migratory monarchs.

Eastern North American monarchs undergo long-distance migration every fall, a behavior that differentiates this population from nonmigratory populations or from migratory populations that fly shorter distances and to different locations. The migratory phenotype of monarchs in the eastern migratory population is distinct from monarchs in other populations that may have latent migratory phenotypes (Tenger-Trolander et al. 2019, p. 14673). This migratory phenotype consists of both reproductive diapause and directional flight orientation to the south, and this migratory behavior of monarchs is remarkably sensitive to genetic and environmental change (Tenger-Trolander et al. 2019, p. 14673). Monarchs from the eastern North American migratory population tend to have larger bodies and larger elongated wings compared to monarchs from most nonmigratory populations (Altizer and Davis 2010, pp. 1023–1025). Eastern North American migratory monarchs inhabit 70 percent or more of the total area occupied by monarch butterflies in North America.

Western North American monarchs also migrate long distances, although their migration is shorter than monarchs in eastern North America. Whereas eastern monarchs may fly well over

2,000 mi (3,000 km) to reach the Mexican overwintering sites, western monarchs reach the California coast by flying approximately 300 mi to 1,000 mi (500 km to 1,600 km) (Yang et al. 2016, p. 1002; Edwards et al. 2023, p. 5). Western monarchs occupy warmer climates throughout the summer to include the farther reaches of their range while they continue to breed in the hotter regions (expand their range). Eastern monarchs, in contrast, follow more of a stepping-stone path into the northern States, vacating areas as they warm and recolonizing their range.

Western North American migratory monarchs occupy as much as 30 percent of the total area occupied by monarch butterflies in North America (Dilts et al. 2019, p. 11). Western monarchs use ecologically different breeding, migrating, and overwintering habitats (Brower et al. 1995, p. 542) compared to monarchs in eastern North America. Differences in breeding habitat include climate (Zalucki and Rochester 2004, pp. 220–221) and availability and abundance of native nectar and native milkweed plants (Borders and Lee-Mäder 2015, entire). The West is generally hotter and drier than the East, and the milkweed and nectar resources used by monarchs in the West and East differ (Dilts et al. 2019, entire). In the fall, western monarchs migrate from Canada and States west of the Rockies to overwintering groves located primarily along the California coast south into Baja California, Mexico (Jepsen and Black 2015, pp. 147–156). Roosting tree species used by western monarchs for overwintering are different than those used by the eastern population and include blue gum eucalyptus, Monterey pine, and Monterey cypress (Griffiths and Villablanca 2015, pp. 43–44). The western population has fewer monarchs, spread out among hundreds of overwintering sites compared to fewer than 20 sites in Mexico for the eastern population (Jepsen and Black 2015, pp. 147–156; Vidal and Rendón-Salinas 2014, entire).

Migratory monarchs in eastern and western North America may also contribute unique phenotypic variation in wing morphology/coloration, lipid reserves, and reproductive behavior (Talla et al. 2020, pp. 2572–2573; Freedman and Dingle 2018, p. 66; Davis 2009, p. 3; Brower et al. 1995, p. 542; Herman et al. 1989, pp. 52–54; 56–57). Compared to monarchs in western North America and to nonmigratory monarchs in southern Florida, eastern North American monarchs have lower rates of infection by the protozoan parasite *OE* (<10 percent; Altizer et al.

2000, p. 131), which may be due in part to their long-distance migration (Bartel et al. 2011, p. 348). Migratory monarchs in the West have *OE* infection rates (averaging 5–30 percent) that are lower than most nonmigratory populations but higher than the rates of infection in migratory monarchs in eastern North America (Altizer and de Roode 2015, p. 91).

Resident (nonmigratory) monarchs in North America now live in areas where milkweed availability and climate permit year-round breeding, and thus are able to reside continually without migrating. These nonmigratory monarchs in southern Florida are genetically distinct from the migratory North American monarchs, although the southern Florida population gets an annual influx of individuals from the eastern migratory monarch population (Knight and Brower 2009, p. 821; Zhan et al. 2014, p. 322). Also, some monarchs remain or become reproductively active and breed throughout the winter along the Gulf Coast, the southern Atlantic Coast, and the southern Pacific Coast (Howard et al. 2010, p. 3; Satterfield et al. 2016, p. 346). These monarchs are more likely to be infected with *OE* (Satterfield et al. 2016, p. 347; 2018, p. 1676), and there is some question of whether some of the offspring of these individuals might emerge in diapause and continue to Mexico or California overwintering sites later in the season (Batalden and Oberhauser 2015, p. 223). The best available information, including the quantity and quality of the habitat, indicates that the total number of resident monarchs appears to be quite small relative to the North American migratory populations that overwinter in Mexico and California. Some experts consider the resident monarch populations demographic sinks (see Crone and Schultz 2021, p. 1536), requiring continual influxes of monarchs from migratory populations to sustain them.

Nonmigratory Florida monarchs experience some of the highest recorded *OE* infection rates compared to other monarchs worldwide and particularly high rates compared to migratory eastern and western North America monarch infection rates (75–100 percent average infection rates in Florida vs. 5–30 percent infection rates in the western North American population and less than 10 percent infection rates in the eastern North American population; Altizer and de Roode 2015, p. 91). This may be due both to their inability to escape infected habitat, as well as the nonmigratory behavior not leading to any migratory culling (the removal of

less fit individuals from a population due to their inability to migrate) (Bartel et al. 2011, entire). While we assume most monarchs found in southern Florida are nonmigratory, it is possible that some are migratory (Dockx et al. 2023, pp. 314–317).

In the West, the population of migratory monarchs has declined from several million butterflies in the 1980s (Schultz et al. 2017, p. 345) to current levels (figure 1b). Concurrently in the West, a portion of nonmigratory monarch butterflies in urban gardens has been growing (Crone and Schultz 2021, entire). The increase in numbers of these nonmigratory monarchs do not seem to make up for the decline of the migratory population (Crone and Schultz 2021, entire). Additionally, the nonmigratory portion also probably lacks the demographic capacity to expand its range inland during summer months. Nonmigratory monarch butterflies build up high levels of *OE*, at least in part because of a lack of migratory culling and migratory escape (Satterfield et al. 2015, pp. 4–5). In California, about 8 percent of migratory monarch butterflies are infected with *OE*, compared to about 75 percent of nonmigratory individuals (Satterfield et al. 2016, p. 346). *OE*-infected monarch butterflies have both lower survival and lower egg-laying rates and produce only about 0.8 adult daughters per female on average (Crone and Schultz 2021, Supplement S4). While this rate of increase is enough for nonmigratory monarch butterflies to persist in urban areas, it does not allow them to expand to other western States (Crone and Schultz 2021, p. 1536). Additional information on the genetic structuring of monarchs outside of continental North America is available in the SSA report (Service 2024a, appendix 2).

In order to better understand the population dynamics and contributions from the nonmigratory populations, we are requesting additional information on resident monarchs in southern Florida, the Gulf Coast, the southern Atlantic Coast, and the southern Pacific Coast. To submit information, see the Information Requested section.

Threats

We have little to no information on positive or negative influences acting upon monarchs occurring outside of the eastern and western North American populations. There is limited information on predation, parasitism, and disease outside of eastern and western North American populations. Given this limited information, we were unable to ascertain to what extent predation, parasitism, and disease

impact the monarch populations outside of the eastern and western North American populations. Similarly, while data suggest global use of insecticides is increasing, we are unable to estimate the degree of overlap with monarch populations and thus derive a credible projection of impact on the monarch populations outside of the eastern and western North American populations.

The primary drivers affecting the health of the two North American migratory populations are loss and degradation of breeding, migratory, and overwintering habitat (from past conversion of grasslands and shrublands to agriculture and widespread use of herbicides; logging/thinning at overwintering sites in Mexico; urban development, senescence, and incompatible management of overwintering sites in California; and drought); exposure to insecticides; and effects of climate change. Many other influences to monarchs were evaluated, including disease, parasitism, captive rearing, collection, impacts of tourism at overwintering sites, invasive swallow-wort plants, vehicle mortality, and natural catastrophes. However, these other potential influences were not determined to be key population drivers (Service 2024a, pp. 109–111).

Because the conversion of grasslands to agriculture was a key driver for past population declines, current and future activities that may remove milkweed and nectar resources within the breeding and migratory range, but that do not result in conversion of native or naturalized grassland, shrubland, or forested habitats and do not result in significant population-level mortality, are, therefore, not considered key population drivers. These include habitat restoration and management activities, livestock grazing and routine ranching activities, routine agricultural activities and conservation practices, fire management, silviculture and forest management, management of habitat on residential and other developed properties, and vegetation management activities when monarchs are not present. Given that so much milkweed has been lost historically and that monarchs are impacted by the ongoing effects of this past habitat loss and degradation, we need an approach that encourages landowners to add and maintain habitat in order to achieve a significant increase in the availability of milkweed and nectar resources. We expect localized removal of milkweed and nectar plants will be outweighed by an overall addition of these resources across the landscape, making broadscale public support for monarch conservation vitally important. For

example, landscape-scale habitat restoration and management activities that provide for the habitat needs of monarch butterflies (e.g., mowing, haying native rangeland, prescribed and cultural burning, and control of invasive plants or noxious weeds) may remove milkweed and could result in loss of monarchs in the short term but would also increase the overall quality and quantity of breeding habitat, which is likely to benefit monarch populations in the long term. We are requesting information on both our identified key threats as well as other potential threats to the species, such as collisions with wind turbines (see Information Requested). The key influences for monarch butterflies are discussed below.

Availability, Distribution, and Quality of Breeding Habitat and Migratory Habitat

The availability of milkweed is essential to monarch reproduction and survival. Reductions in milkweed are cited as a key driver in monarch declines (Brower et al. 2012, p. 97; Pleasants and Oberhauser 2013, p. 141; Inamine et al. 2016, p. 1081; Thogmartin et al. 2017a, p. 12; Waterbury and Potter 2018, pp. 42–44; Saunders et al. 2019, p. 8612).

A majority of the past milkweed loss has occurred in agricultural lands, where intensive herbicide usage for weed control has resulted in widespread milkweed eradication. More than 860 million milkweed stems were lost in the Midwest between 1999 and 2014, a decline of almost 40 percent (Pleasants 2017, p. 48). Approximately 89 and 94 percent of corn and soybean crop acreages, respectively, are planted as glyphosate (herbicide)-tolerant crops (USDA 2018, unpaginated). When glyphosate is sprayed in or near fields where crops are produced, it kills the milkweed without harming the glyphosate-tolerant crops. Glyphosate use in western agricultural lands has also increased dramatically since the 1990s, especially within the Central Valley of California, Snake River Plain of Idaho, and the Columbia River Basin, which spans the border between Washington and Oregon (USGS NAWQA 2017, unpaginated; Waterbury and Potter 2018, p. 42). As weed species develop increasing resistance to glyphosate, other herbicide (e.g., dicamba)-tolerant crops are developed, which can lead to a corresponding increase in use of those herbicides. Accordingly, herbicide impacts to milkweed and nectar plants will continue to impact monarch resources in agricultural lands.

Milkweed has also been lost on the landscape through development and conversion of grasslands (Lark et al. 2015, pp. 3–4). Between 2008 and 2016, a total of 4.9 million acres of grassland were converted to new cropland, including up to 3 million acres of Conservation Reserve Program land (Lark et al. 2015, p. 5). Past loss of agricultural milkweeds in the Midwest has resulted in an estimated 81 percent decline in monarch production, in part because monarch egg densities were higher on milkweed in agricultural fields (3.89 times more eggs than on non-agricultural milkweed; Pleasants and Oberhauser 2013, pp. 139–140). This situation particularly impacts the eastern monarch population because more Mexico overwintering monarchs originate from the Midwest crop belt region than any other region (with estimates ranging from 38 percent to over 85 percent of all overwintering monarchs originating from the Midwest; Wassenaar and Hobson 1998, pp. 15438–15439; Flockhart et al. 2017, p. 2568). Development and conversion of grasslands will continue to impact monarch resources in agricultural lands.

Losses of nectar sources have also been implicated as a potential key driver in monarch declines (Inamine et al. 2016, p. 1081; Thogmartin et al. 2017a, p. 12; Saunders et al. 2019, p. 8612). Losses of nectar resources are due to the same stressors identified above for milkweed resources. Additionally, with a warming climate, drought impacts may affect the availability of nectar sources, especially in the western population and in the migratory bottleneck through Mexico and into Texas for the eastern population (see *Climate Change Effects*, below).

Our future analyses forecast a range of projections for future nectar and milkweed throughout the monarch butterfly's range. While these breeding and migratory habitat resources show signs of regional stabilization or increase, even the best case scenario increases are less than the amount of milkweed and nectar resources that have been lost. The reduced amount of breeding and migratory habitat continues to negatively impact the viability of the migratory North American monarchs. Monarch conservation needs an approach that encourages and incentivizes landowners to add milkweeds and nectar resources and implement actions to maintain this habitat. Unlike with some at-risk species, the monarch's general habitat usage and wide distribution allow a broad range of landowners to participate in actions to support the species. Conservation for the species can occur

on land parcels ranging from quite small to very large, including gardens, parks, grasslands, agricultural areas, and more.

Availability, Distribution, and Quality of Overwintering Habitat

Both western and eastern monarchs rely on the microclimate provided by the trees at their overwintering sites (Leong et al. 2004, entire; Williams and Brower 2015, entire). Loss of trees occurs at overwintering sites in Mexico primarily through small- and large-scale logging, storms, and an increasingly unsuitable climate (see *Climate Change Effects* below). Most overwintering sites used by eastern monarchs occur within the Monarch Butterfly Biosphere Reserve (Reserve), a 139,019-ac (56,259-ha) protected area in Central Mexico. Within this area, logging is banned within the 33,485-ac (13,551-ha) core zone (Ramírez et al. 2015, p. 158). However, logging has continued to occur both legally (including salvage logging allowed after storms) and illegally at multiple colonies within the Reserve (Vidal et al. 2014, pp. 180–185; Brower et al. 2016, entire).

Logging was estimated in the core zone of the Reserve from 2002 through 2012 (Vidal et al. 2014, p. 180). Within this period, 5,384 acres (2,179 ha) of core zone were either deforested (less than 10 percent canopy cover remained; 3,099 ac (1,254 ha)) or degraded (a decrease in canopy cover; 2,286 ac (925 ha)). Most of these losses were attributed to illegal logging (5,083 ac (2,057 ha)), with the remaining 301 acres (122 ha) lost due to floods, drought, strong winds, and fire. Current estimates of forest loss throughout the Reserve vary from 0–2.4 percent per year (Ramírez et al. 2015, p. 163). While anti-logging and reforestation efforts are underway (López-García 2022, p. 245), logging is still ongoing within the Reserve (Brower et al. 2016, entire). Although clearcutting of forests destroys habitat directly, thinning of the forest also changes the microclimate needed by overwintering monarchs, making them more susceptible to winter mortality (Brower et al. 2011, p. 43).

Western monarch overwintering habitat along the Pacific Coast has been subject to loss through various forms of development, particularly urban development (Sakai and Calvert 1991, p. 149; Frey and Schaffner 2004, p. 172). Since the 1980s, development has caused the loss of at least 63 known California overwintering sites (Sakai and Calvert 1991, pp. 148–49; Meade 1999, p. 97–100, Xerces Society 2024a, unpaginated). Habitat alteration, such as through natural tree senescence and improper grove management, can also

alter the microclimate of the western overwintering sites, leading to less suitable habitat conditions (Jepsen et al. 2015, p. 17). Many other stressors can work alone or in tandem on the western overwintering sites, including disease and pests that impact the trees used for overwintering. Fire is also a threat, both indirectly through habitat loss and directly to overwintering monarchs (Pelton et al. 2016, pp. 28, 32). Drought in the West can further exacerbate the stressors on the western overwintering sites (see *Climate Change Effects* below).

Insecticide Exposure

Insecticides are pesticides with chemical properties that are designed to kill insects and most are non-specific and broad-spectrum in nature. That is, insects exposed to these insecticides are susceptible to mortality or sublethal effects. Furthermore, the larvae of many lepidopterans (*i.e.*, insects in the order that includes butterflies and moths) are considered major pest species, and insecticides are tested specifically on this taxon to ensure that they will effectively kill individuals at application rates indicated on product labels. Even though monarchs are not the target species of these products, they may be exposed to insecticides where they are applied and in areas beyond the insecticide application sites due to drift (Olaya-Arenas and Kaplan 2019, p. 1; Halsch et al. 2020, p. 3).

Insecticide impacts to monarchs are primarily influenced by the extent to which monarchs are exposed to insecticides throughout their range. Although insecticide use is most often associated with agricultural production (*e.g.*, between 2005 and 2012, 60 percent of insecticides applied occurred on agricultural lands; EPA 2017, p. 11), any habitat where monarchs are found may be subject to insecticide use. Insecticides can be used for insect pest control anywhere there is a pest outbreak or for general pest prevention. Homeowners may treat yards and gardens to protect plants from pests or purchase plants from nurseries that sell plants pre-treated or grown from seeds treated with insecticides as ornamentals. Natural areas, such as forests and parks, may be treated to control for insects that defoliate, bore into wood, or otherwise damage trees. Outbreaks of pests, such as spongy moths, mosquitoes, Mormon crickets, or grasshoppers, may trigger insecticide treatments over large areas to control populations. Use of insecticides in vector control, especially pyrethroids and organophosphates, may be significant in areas of the country where mosquitoes pose a public health threat

or reach nuisance levels. The most widely used classes of insecticides include organophosphates, pyrethroids, and neonicotinoids. Studies looking specifically at dose-response of monarchs to neonicotinoids, organophosphates, and pyrethroids have demonstrated monarch toxicity at product label application rates and field concentration levels (e.g., Krischik et al. 2015, entire; James 2019, entire; Krishnan et al. 2020, entire; Bargar et al. 2020, entire).

Insecticides are a threat to monarchs based on their mode of action to target insects and their potential exposure to monarchs. Monarchs can be exposed to liquid insecticides from direct spray at the time of application, contact with vegetation contaminated with an insecticide, or ingestion of leaves or nectar contaminated with insecticide following a spray. This exposure can occur on the site of application or in adjacent areas as a result of insecticide drift. Biopesticides, another type of insecticide, generally affect only the target pest and closely related organisms. These products contrast with broad-spectrum and conventional insecticides that target all insects. The primary identified biopesticide exposure threat to monarchs is limited to the liquid application of certain types of *Bacillus thuringiensis* (Bt) that are active against lepidopterans and often used to control caterpillar pests (such as spongy moth).

Monarchs may also be exposed to insecticides in forms other than liquids, such as those that have been systemically incorporated into plant tissues on which monarchs feed (e.g., milkweed leaves, flowers, pollen, and nectar) or dust that has drifted off treated seeds at the time of planting. Numerous types of insecticides may be incorporated into plants systemically or used to treat seeds, including neonicotinoids. However, there are limited data to suggest that insecticides used in this manner achieve concentrations likely to result in negative effects to monarchs. Thus, while monarchs may be exposed to insecticide residues from these application methods, the available information indicates that negative effects from insecticide residues are likely minimal. For insecticides applied in solid forms such as granules, no exposure is expected to monarchs; thus, negative effects from application of pesticides in solid forms are unlikely.

Herbicides and fungicides are used within or near areas where monarchs may be present; however, only a subset of these have data showing direct negative effects to insects (i.e., as

opposed to insecticides, where all pesticides within this class will cause negative effects to insects). As such, the information indicates the negative effects to monarchs from exposure to herbicides and fungicides is likely minor compared to the direct effects of exposure to insecticides.

See Appendix 5—Supplementary Information About Pesticides in the monarch butterfly SSA report (Service 2024a, pp. 123–146) for further discussion of the risk of pesticides to the monarch, including data, references, and supporting information.

Climate Change Effects

Climate change can affect monarchs both directly and indirectly (Nail and Oberhauser 2015, entire) on overwintering, migratory, and breeding grounds. Increasing storm frequency in the Mexican overwintering colonies can lead to catastrophic (up to 80 percent) mortality through the freezing temperatures that accompany these storms (Anderson and Brower 1996, p. 112; Brower et al. 2004, entire). Precipitation is predicted to increase during the winter when monarchs are present in Mexico (Oberhauser and Peterson 2003, p. 14067). Severe drought can cause tree loss and degradation, decreasing the availability and quality of overwintering roosting habitat in California as well (Pelton et al. 2016, p. 29). Eucalyptus trees, the dominant tree species in many of the groves, are drought sensitive and become vulnerable to infestation by insect borers when they are stressed, which can exacerbate tree loss in these groves (Marcar et al. 1995, p. 46; Paine and Millar 2002, p. 148). Eucalyptus loss and degradation reduces availability of roosting habitat, lessens wind protection, and eliminates the primary overwintering source of nectar at many sites. Other dominant trees, such as Monterey pines and Monterey cypress, are more resistant to drought, but are the primary species in fewer than 25 percent of overwintering sites. Although overwintering grounds are widespread, drought could be equally as widespread, such that it could occur throughout many or most of the overwintering sites simultaneously. Given the above, extreme drought at overwintering sites poses a catastrophic risk for the western monarch population.

Monarchs need a very specific microclimate at their overwintering sites not just to avoid storm mortality, but also to avoid early fat depletion. Changing precipitation patterns and temperatures may influence the microclimate needed by overwintering

monarchs (Williams and Brower 2015, p. 116). For example, current modeling of the monarch's fundamental niche predicts the loss of 38.6 to 69.8 percent of current suitable habitat within the Reserve due primarily to expected temperature changes (Zagorski 2016, p. 17). In western North America, climate change is predicted to cause a significant change in the distribution of overwintering monarchs in coastal California (Fisher et al. 2018, p. 10). While modeling projections suggest an inland and upslope displacement of suitable overwintering conditions by the year 2050, the best available evidence does not indicate that monarchs would move to or use these upslope areas (Fisher et al. 2018, pp. 10, 13–14).

In addition to the direct impact of climate change on overwintering monarchs, the Mexico overwintering sites are predicted to be less suitable for oyamel fir trees, the predominant monarch roosting tree. The overwintering sites are predicted to become increasingly warm throughout the year, potentially making 50 percent or more of the sites unsuitable for oyamel fir trees in 2030 (Sáenz-Romero et al. 2012, p. 102; Ramírez et al. 2015, p. 167). Widespread drought is similarly likely to negatively impact trees in the western overwintering areas both directly and indirectly due to increased susceptibility to pests (Paine and Millar 2002, p. 148).

Direct effects of climate change, particularly increasing temperatures, may impact monarch fecundity (reproductive rate) (Oberhauser 1997, pp. 168–169), mating success (Solensky and Oberhauser 2009, p. 333), and survival during migration and while overwintering (Masters et al. 1988, entire; Alonso-Mejía et al. 1997, entire). Laboratory studies indicate optimal temperatures for monarch range between 81–84 °F (27–29 °C) with sublethal effects beginning around 86–97 °F (30–36 °C) range and an upper lethal thermal limit of 108 °F (42 °C) (Zalucki 1982, p. 243; York and Oberhauser 2002, p. 294; Zalucki and Rochester 2004, p. 225; Nail et al. 2015, p. 101). Research also indicates that cooler nighttime temperatures provide respite from elevated daytime temperatures and are important in allowing monarchs to survive temperature stress (Nail et al. 2015, p. 104). Temperatures consistently above 91–95 °F (33–35 °C) are unsuitable for monarchs and may account for their general absence from the southern U.S. after spring (Malcolm et al. 1987, p. 78; Zalucki and Rochester 1999, pp. 155–157).

High temperatures and drought conditions may be particularly impactful during the crucial spring migration (Taylor 2020, pers. comm.). Spring temperatures and precipitation in the southern U.S. portion of the migratory range have been modeled to have a high relative importance affecting summer population size of eastern monarchs (a larger impact than compared to summer weather, summer herbicide use in cropland, and late-winter population size) (Zylstra et al. 2021, p. 1443). However, considerable uncertainty remains regarding the extent, intensity, and biological impacts of climate change during spring migration (Neupane et al. 2022, pp. 10–14). While increased temperatures may reduce monarch habitat in some areas, the climatically suitable niche for monarchs may increase northward, potentially increasing their summer breeding grounds if both monarchs and milkweed are able to adapt and track this niche northward (Lemoine 2015, pp. 10–17).

A warming climate may influence breeding habitat by altering suitable locations for both monarchs (Batalden et al. 2007, pp. 1369–1370) and their milkweed host plant (Lemoine 2015, entire). Nectar resources during migration may be reduced under climate conditions (decreased precipitation) projected for south-central Texas (Saunders et al. 2019, p. 8612). Drought may also influence the amount and availability of nectar needed for migrating butterflies (Brower et al. 2015, entire; Stevens and Frey 2010, p. 740; Espeset et al. 2016, p. 826). Widespread drought caused by climate change is expected to increase into the future (IPCC 2023, p. 69) negatively impacting monarchs and their habitat.

Sea level rise is increasing due to climate change. These rising sea levels are likely to impact monarch populations in coastal areas (e.g., along the Gulf Coast) and low lying islands through loss of habitat (TBCSAP 2015, entire; IPCC 2023, p. 69).

Climate change may additionally impact monarchs in ways that are more difficult to measure. This may include phenological mismatch (e.g., timing of milkweed and nectar sources not aligning with monarch migration; Thogmartin et al. 2017a, p. 13) or range mismatch with associated species. For example, a change in environmental suitability could cause a range shift for monarch predators and parasitoids, increasing or decreasing their overlap with the monarch's range (McCoshum et al. 2016, p. 229–233).

Conservation Efforts and Regulatory Mechanisms

While many factors have been implicated in the decline in monarch populations, the loss of milkweed and nectar resources (i.e., breeding and migratory habitat) has been targeted as the threat that can be most easily addressed through conservation efforts. Because of the monarch butterfly's general habitat use and wide distribution, all sectors of society, including the general public, have an opportunity to participate in a broad range of conservation efforts throughout the species' range. Protection, restoration, enhancement, and creation of habitat is a central aspect of recent monarch conservation strategies, thus highlighting the importance of restoring and enhancing milkweed and nectar resources (Oberhauser et al. 2017, pp. 56–58; Pleasants 2017, p. 43; Thogmartin et al. 2017a, pp. 2–3; MAFWA 2018, p. 52; Pelton et al. 2019, pp. 4–5, WAFWA 2019, p. 41). Management at overwintering sites in California has also been targeted to improve the status of western North American monarch butterflies (Pelton et al. 2019, p. 4; WAFWA 2019, pp. 37–40). We are not aware of conservation actions for the populations outside of eastern and western North America, but conservation measures for the eastern and western North American populations are described below.

Major overarching landscape-level conservation plans and efforts include the Mid-America Monarch Conservation Strategy developed by the Midwest Association of Fish and Wildlife Agencies (MAFWA) and the Western Monarch Butterfly Conservation Plan developed by the Western Association of Fish and Wildlife Agencies (WAFWA). The Mid-America Monarch Conservation Strategy established a goal of adding 1.3 billion stems of milkweed on the landscape by 2038 (MAFWA 2018, p. 42). The 1.3-billion-stem goal is an estimated target for adding enough breeding and migratory habitat to support 14.8 ac (6 ha) of forest occupied by overwintering monarchs for the eastern North American population (Thogmartin et al. 2017b, pp. 2–3). Twenty-nine States—including Arkansas, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, West Virginia, and Wisconsin—have agreed to participate

in the effort to reach the 1.3-billion-stem goal, which will also need contributions from multiple sectors of society, including private landowners, agricultural and nongovernmental organizations, rights-of-way organizations, and Federal, State, and local governments.

The Western Monarch Butterfly Conservation Plan currently encompasses the States of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, which comprise the core of the western monarch range (WAFWA 2019, p. 3). The plan includes short-term goals of: (1) protecting and managing 50 percent of all currently known and active monarch overwintering sites, including 90 percent of the most important overwintering sites by 2029; and (2) providing a minimum of 50,000 additional acres of monarch-friendly habitat in California's Central Valley and adjacent foothills by 2029. It also includes overwintering and breeding habitat conservation strategies, education and outreach strategies, and research and monitoring needs. Many land managers who oversee overwintering sites in California have developed and implemented grove management strategies or have included monarch groves in their general management plans. Conservation efforts in California's Central Valley currently amount to nearly 9,000 ac (3,600 ha). As of September 2024, State agencies had implemented milkweed restoration efforts on over 8,780,404 ac (3,553,303 ha), adding more than an estimated 546 million milkweed stems to the landscape nationwide.

In early 2020, the Nationwide Candidate Conservation Agreement for Monarch Butterfly on Energy and Transportation Lands: An Integrated Candidate Conservation Agreement with Assurances (CCAA) and Candidate Conservation Agreement (CCA) was finalized and is contributing to MAFWA Strategy and WAFWA Plan goals. Under this agreement, energy and transportation entities are providing habitat for the species along energy and transportation rights-of-way corridors across the country. Participants carry out conservation measures to reduce or remove threats to the species and create and maintain habitat annually. In exchange for implementing voluntary conservation efforts and meeting specific requirements and criteria, those businesses and organizations enrolled in this CCAA/CCA receive assurance from the Service that they will not have to implement additional conservation measures should the species be listed. The goal of this CCAA/CCA is

enrollment of up to 26 million acres of land in the agreement, providing more than 300 million additional stems of milkweed (Rights-of-Way as Habitat Working Group 2020, p. 3). As of June 2024, this CCAA/CCA had 57 enrollees with over 981,812 ac (397,325 ha) of enrolled habitat.

Many conservation efforts implemented under Federal, Tribal, State, or other programs, such as the Farm Service Agency's Conservation Reserve Program; the Natural Resource Conservation Service's Environmental Quality Incentives Program, Agricultural Conservation Easement Program and Conservation Stewardship Program; and the Service's Partners for Fish and Wildlife Program, are expected to contribute to the overarching habitat and population goals of the MAFWA Strategy and WAFWA Plan. Smaller conservation efforts, such as pollinator gardens, implemented by local governments, nongovernmental organizations, private businesses, and interested individuals will also play an important role in reaching habitat and population goals established in the MAFWA Strategy and WAFWA Plan.

Many land managers who oversee overwintering sites in California have developed and implemented grove management strategies or have included monarch groves in their general management plans. Many others are in the process of developing grove management plans. As of January 2024, grove management plans are being implemented at no fewer than 24 overwintering sites and are currently being developed for at least a dozen more. Management and restoration of these sites may include activities such as replacing dead trees, modifying canopy structure, planting fall- and winter-blooming shrubs as nectar sources, and addressing monarch predation issues (Jepsen et al. 2017, entire).

The Service developed the Monarch Conservation Database (MCD) to capture information about monarch conservation plans and efforts to inform the listing decision. As of September 2024, the MCD had 145,455 complete monarch conservation effort records that have a status of completed, implemented, or planned since 2014 and 126 monarch conservation plans. These efforts constitute a total of 10,457,316 ac (4,231,926 ha) of land area in the United States (10,246,876 ac (4,146,764 ha) and 178,920 ac (72,406 ha) in the eastern and western populations, respectively) enhanced or created for monarchs, with the most common conservation effort being direct planting of milkweed and other nectar

resources (note that these values include all completed, implemented, and not yet completed efforts; completed and implemented efforts to date total 7,415,731 ac (3,001,040 ha) nationally). These conservation efforts are increasing the amount of milkweed and nectar resources on the landscape. However, additional milkweed and nectar resources are required, as initial estimates of the amount of acreage needed to reach the 1.3-billion-stem goal within the MAFWA Strategy planning area were around 20 million acres.

In addition to conservation measures for monarch butterflies, there are also mechanisms that regulate direct and indirect threats to the species. One such mechanism is the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which provides for Federal regulation of pesticide distribution, sale, and use. The term pesticide includes insecticides, which can directly kill monarchs upon exposure, and herbicides that can indirectly affect monarchs by impacting their milkweed and nectar resources. All pesticides distributed or sold in the United States must be registered (licensed) by the U.S. Environmental Protection Agency (EPA). Before the EPA registers a pesticide under FIFRA, the applicant must show, among other things, that using the pesticide according to specifications "will not generally cause unreasonable adverse effects on the environment."

In 2021, the EPA began developing a comprehensive, long-term approach to meeting its section 7(a)(2) obligations for FIFRA actions (EPA 2022, unpaginated). As part of that work, the EPA in August 2024 finalized its first-ever strategy to identify which agricultural uses of conventional herbicides impact listed species and how to determine the amount and location of mitigation measures for those herbicides, hereon referred to as the Herbicide Strategy (EPA 2024a, entire). The strategy covers listed plants and listed animals whose survival depends on listed plants, including many insects that depend on plants for food. The EPA has begun applying the strategy to the registration of new pesticide registrations (EPA 2024d, unpaginated) and expects to apply the strategy when the agency reevaluates the registration of existing pesticides every 15 years.

Similarly, in July 2024 the EPA released its draft Insecticide Strategy, which proposes a framework to identify which agricultural uses of conventional insecticides impact listed species and how to determine the amount and

location of mitigation measures for those insecticides (EPA 2024b, entire). The EPA has agreed to finalize the Insecticide Strategy by March 31, 2025, and then expects to apply it when the agency registers a new insecticide or reevaluates an existing one. The EPA is also pursuing other initiatives to minimize pesticide impacts on listed species, including through section 7(a)(2) consultations with FWS on individual pesticide active ingredients and through its Vulnerable Species Action Plan, which identifies mitigation measures for listed species particularly vulnerable to pesticides (EPA 2024c, entire).

Under the authority of the Plant Protection Act, the U.S. Department of Agriculture (USDA) regulates the importation and movement of plant pests, which covers plant-feeding insects such as the monarch butterfly. Under this regulation, a permit from USDA-Animal and Plant Health Inspection Service (APHIS) is required for the importation, interstate movement, and environmental release of butterflies, including monarchs. However, multiple States, including Alaska, Arizona, Connecticut, Hawaii, Montana, and Nevada, plus Puerto Rico, the Virgin Islands, and Guam, prohibit importation and/or interstate movement of monarchs for the purpose of environmental release. In addition, APHIS does not allow the movement of monarchs across the Continental Divide for environmental release.

Despite these conservation efforts and regulatory mechanisms, the continued threats facing the monarch butterfly have not been ameliorated.

Cumulative Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. The best available scientific information indicates that there are synergistic and cumulative interactions among the factors influencing monarch butterfly viability. For example, climate change can impact the monarch directly through increased temperatures and can also impact other potential threats to the species, including habitat availability, disease, and predators. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation

efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Current Condition

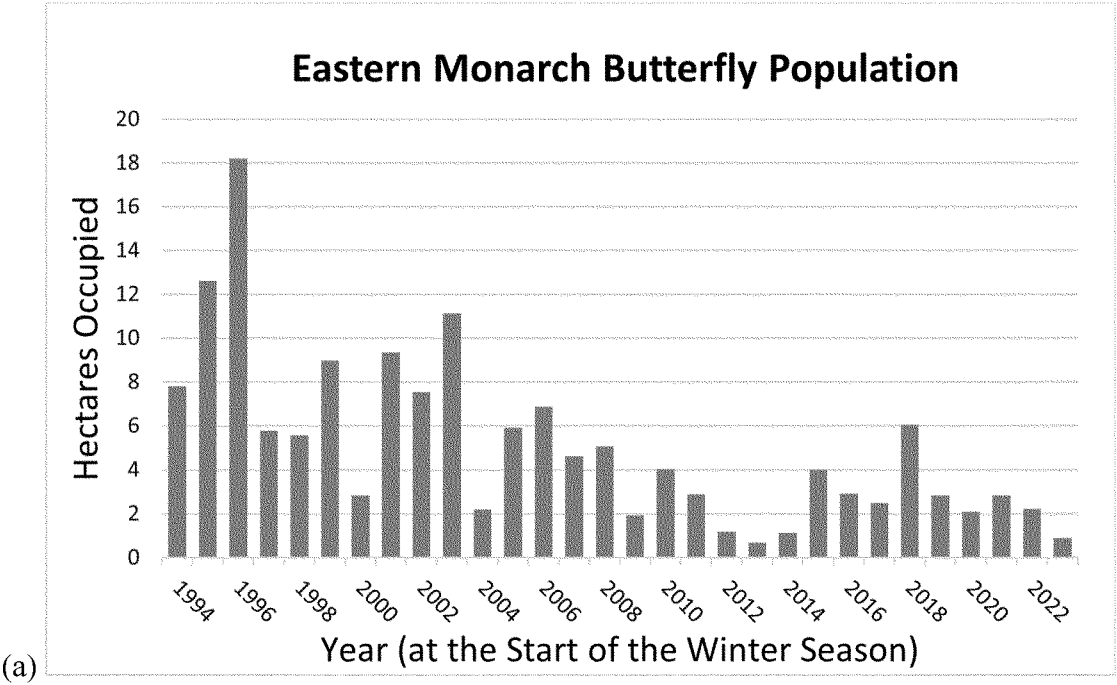
Eastern North American Population

Based on the past annual censuses, the eastern North American population has been generally declining over the last 30 years (figure 1a). Because it is not possible to count individual monarchs at the overwintering sites in Mexico, the size of the eastern North American population is measured based on the

area occupied by clustered monarchs. Although the numbers at the overwintering sites have declined, we did not find a corresponding change in the spatial extent of the population during the breeding season. We developed a population model that incorporated the current size, growth rate, and year-to-year variability of the eastern North American population. The results indicate that the probability of the population abundance reaching the point at which extinction is inevitable (“probability of extinction”) in is less than 10 percent within 10 years (Service 2024a, p. 29). The probability of extinction does not account for risks from catastrophic events (discussed below in Future Condition).

Western North American Population

Based on the past annual censuses, the western North American population has been generally declining over the last 27 years, despite an increasing number of sites being surveyed (figure 1b). We developed a similar model for the western North American population as we did for the eastern population. Under current conditions, the risk of extinction is predicted to increase sharply over time, between 60 to 68 percent within 10 years (Service 2024a, p. 30). The probability of extinction does not account for risks from catastrophic events (discussed below in Future Condition).



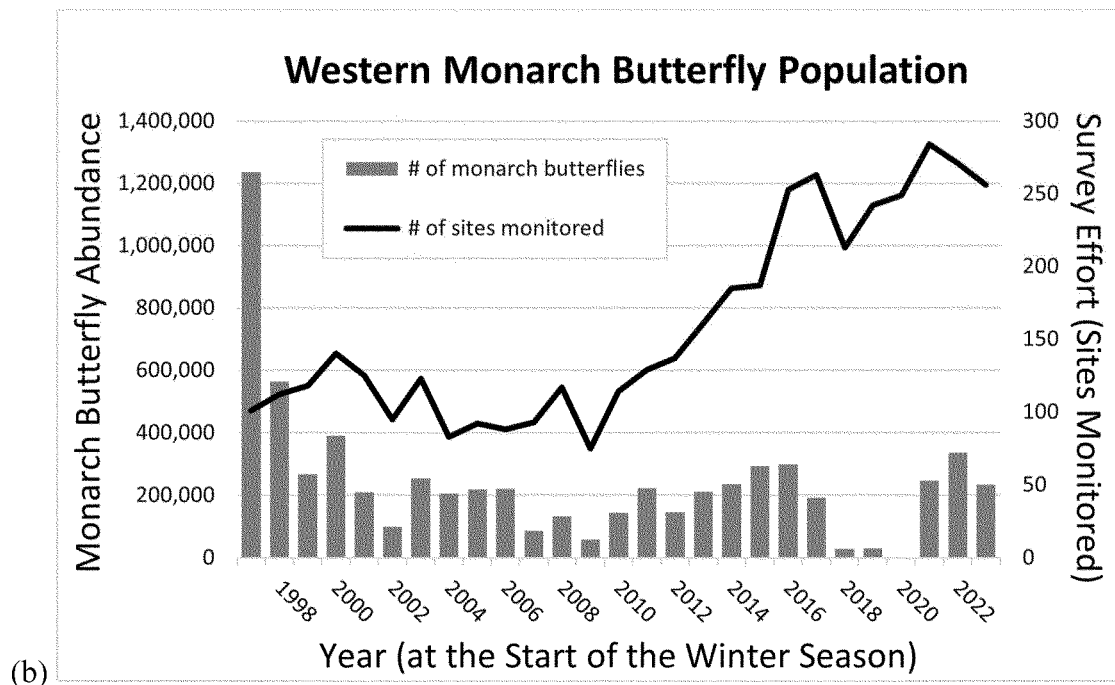


Figure 1—(a.) Area occupied (in hectares) by eastern North American monarch butterflies at overwintering sites in Mexico. Year displayed is the beginning year for the winter (e.g., 2017 represents the number for the winter of 2017–2018). (Data from Rendón-Salinas et al. 2024 (p. 3).)

(b.) Survey counts showing the number of western North American monarch butterflies observed at overwintering sites (bars). The black line shows the number of sites monitored (survey effort) for a given year. (Data from the Xerces Society for Invertebrate Conservation (2024a, entire).)

Dispersed Nonmigratory Populations

Limited information is available on the status and health of monarchs outside of the North American migratory populations or regarding the positive or negative influences acting upon these populations. Based on observations of the species throughout its range, 69 of the 90 countries, islands, and island groups are currently extant. Monarch presence within the remaining 21 countries, islands, and island groups has not been confirmed since 2000, but with no evidence of extirpation, they are all presumed extant. Furthermore, we grouped occurrences into 31 populations. Of the 29 populations outside of North America, 25 are confirmed extant and the remaining 4 are presumed extant (Service 2024a, pp. 40–42). We were not able to further assess the level of resiliency of these populations.

Current Resiliency, Redundancy, and Representation

The species' redundancy is evident through its confirmed or presumed presence in all 90 of the countries, islands, and island groups where it occurred historically or to where it has dispersed. The species' adaptive capacity (representation) is evident through its presence over a large geographical range made up of 31 known populations (2 North American migratory populations and 29 nonmigratory or dispersed populations) where the climatic conditions and habitat vary widely. The species' resiliency varies between populations, with the estimated probability of extinction for the eastern migratory North American population at less than 10 percent in 10 years and 60 to 68 percent for the western migratory North American population in 10 years. For monarchs outside of the North American migratory populations, 69 of the 90 countries, islands, and island groups are considered currently extant, although we were not able to further assess the level of resiliency of these populations.

Future Condition

Future Scenarios and Catastrophic Events

North American Migratory Populations

To assess the future condition of monarch populations, we organized the key factors driving monarch population dynamics into six categories: (1) milkweed availability, (2) breeding

nectar availability, (3) migration nectar availability, (4) overwintering habitat availability, (5) climate change effects, and (6) insecticide exposure. We then forecasted plausible increases and/or decreases, as appropriate, for each of these influences, using the best available information, including scientific literature and expert input. We also included conservation efforts outlined in large-scale monarch conservation plans, such as the MAFWA Strategy and WAFWA Plan. We did not evaluate these plans under the Policy for Evaluating Conservation Efforts (68 FR 15100; March 28, 2003) because these formalized conservation efforts have been implemented. Next, we combined the upper plausible limit and the lower plausible limit for each influence (changes in milkweed, nectar, and overwintering habitat; climate change; and insecticides) to form composite plausible best case and plausible worst case scenarios, respectively. Lastly, we incorporated these scenarios into the population models described in the *Current Condition* section, and forecasted population numbers to 60 years to determine the probability of extinction for both the eastern and western migratory North American populations to 2080 (Service 2024a, tables 6.1 and 6.2, pp. 45–47).

We also evaluated several potential events to determine if they were of sufficient magnitude and severity to cause a population collapse (i.e., a catastrophic event). We determined that extreme storm events and widespread

drought have sufficient potential to pose a catastrophic risk to the eastern population, and widespread drought and co-occurrence of poor environmental conditions and low population abundance have sufficient potential to pose a catastrophic risk to the western population.

Dispersed Nonmigratory Populations

Due to a lack of information on current influences, we were unable to forecast future scenarios for the populations outside of eastern and western North America. However, we identified two potential catastrophic events, both of which are effects of climate change: sea level rise and lethal high temperatures.

Future Conditions

Eastern North American Population

Under both best and worst case scenarios described above, the population continues to decline ($\lambda < 1$). The greatest impact on the population occurs during the first 20 years for both scenarios; we had a slight increase in the growth rate from the current value under the best case scenario and a decrease of 4.5 percent under the worst case scenario. As expected under a declining growth rate, the probability of extinction increases over time (Service 2024a, p. 64). In 30 years, probability of extinction ranges from 24 to 46 percent. In 60 years, the probability of extinction for the eastern North American population ranges from 56 to 74 percent.

We were unable to incorporate direct effects from increasing temperatures and catastrophic risks into the population models, so we qualitatively discuss the implications of these factors on the future condition of the population. We evaluated the changes in the spatial extent and number of days with projected temperatures above lethal and sublethal thermal thresholds during critical time periods in monarch migration (Service 2024a, pp. 120–122). We assessed these changes under two future scenarios, using Representative Concentration Pathways (RCPs). RCPs reflect different levels of greenhouse gas emissions and the resulting climate change scenarios (IPCC 2014, p. 57). We used RCP4.5 and RCP8.5 scenarios projected to 2069 (Service 2024a, p. 122). Under the RCP4.5 scenario, both the spatial extent and the average number of days above 38 °C (100 °F) (the threshold for sublethal effects and moderate reductions in survival) are projected to markedly increase throughout much of the range, including the southern and northeastern portions of the eastern North American monarch

breeding range. Although in the northcentral area of the breeding range, there is a projected decrease in spatial extent and the average number of days above 38 °C (100 °F). Under the RCP8.5 scenario, both the spatial extent and the average number of days above 38 °C (100 °F) have large increases throughout the entirety of the breeding range. The spatial extent and average number of days above 42 °C (107.6 °F) (the lethal threshold) are projected to increase dramatically in the southern U.S. during the same period under both scenarios. Given these results, monarch reproductive success and survival rates of the first generation of monarchs coming from the wintering grounds are likely to decline, although the extent to which these rates will decline is unknown.

Similarly, given the projected population decline described above, the eastern population will be increasingly vulnerable to catastrophic losses due to extreme storm events at the overwintering grounds and widespread droughts during the breeding season and along the migratory route. Although we cannot quantify this increased risk, the longer the eastern population remains at low population abundance, the more likely it is that catastrophic losses will occur and the greater the extinction risk for the eastern population.

Western North American Population

Under both scenarios, the population continues to decline ($\lambda < 1$). Under the best case scenario, monarchs have a slight increase in the growth rate from the current value; however, even with an increase, this was still a declining growth rate. Under the worst case scenario, the growth rate decreased to a lower rate than the current rate. As would be expected with a declining growth rate, the probability of extinction increases over time (Service 2024a, p. 66). In 30 years, probability of extinction ranges from 92 percent to 95 percent. By year 60, the probability of extinction reaches 99 percent for the western North American population.

Under the RCP4.5 scenario, increases are projected for the average numbers of days above 38 °C (100.4 °F) (38 percent) and above 42 °C (107.6 °F) (11 percent). Given this, monarch reproductive success and survival rates are likely to decline, although the extent to which these rates will decline is unknown.

Similarly, given the projections of monarch health described above, the western population is vulnerable to catastrophic losses due to both widespread drought events and the co-occurrence of poor environmental

conditions and low population abundance. The risk of extinction due to these events increases the longer the population remains at the current low abundances.

Dispersed Nonmigratory Populations

We qualitatively assessed the impact due to predicted climate change effects. Fifteen of the 29 populations are classified as being “at risk” due to threats associated with climate change (6 due to sea level rise and 9 due to unsuitably high temperatures). The populations susceptible to sea level rise (Johnston Atoll, Kiribati, Marshall Islands, Nauru, Tokelau, and Tuvalu) are at risk of losing at least some of their monarch habitat; thus, redundancy could decrease with the loss of those areas. However, the best available information does not indicate if populations at risk to high temperatures will lose all or just a portion of their monarch habitat; thus, they may continue to contribute to redundancy. Each of the populations at risk due to sea level rise contains a single country, island, or island group. Therefore, in the dispersed nonmigratory populations the species will continue to have redundancy through continued presence in an estimated 84 of the 90 countries, islands, and island groups where it occurred historically or to where it has dispersed. We anticipate the species will continue to have adaptive capacity (representation) through its presence over a large geographical range where the climatic conditions and habitat vary widely.

Future Resiliency, Redundancy, and Representation

Both the eastern and western migratory North American populations become more vulnerable to catastrophic events (e.g., extreme storms at the overwintering habitat) into the future resulting in lower redundancy for the species. Under plausible climate change scenarios, monarch butterflies will be exposed to unsuitably high temperatures for more days each year and over larger areas of their range in North America. Outside of the two North American migratory populations, 15 of the 29 nonmigratory or dispersed populations are at risk in the future due to threats associated with climate change (6 due to sea level rise and 9 due to unsuitably high temperatures). The populations susceptible to sea level rise are at risk of losing at least some of their monarch habitat; thus, redundancy could decrease with the loss of those areas. Rangewide, the species is likely to maintain considerable redundancy and adaptive capacity (representation)

through continued presence in an estimated 84 of the 90 countries, islands, and island groups where it occurred historically or to where it has dispersed. Despite uncertainties about resiliency at the nonmigratory and dispersed populations, the widespread distribution of monarch populations indicates that the species has low risk of becoming extirpated from multiple locations should a large-scale catastrophic event occur; thus, it is unlikely that a single catastrophic event would affect the entire species across its large range.

In the future, the resiliency of the eastern and western North American migratory populations will continue to decline. The estimated probability of extinction for the eastern migratory North American population is 56–74 percent in 60 years and greater than 99 percent for the western migratory North American population in 60 years.

Determination of Monarch Butterfly Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an “endangered species” as a species in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act’s section 4(a)(1) factors, we determined that the primary threats affecting the monarch and its habitat are the ongoing impacts from loss and degradation of breeding, migratory, and overwintering habitat (from past conversion of grasslands and shrublands to agriculture and widespread use of herbicides; logging/thinning at overwintering sites in Mexico; urban development,

senescence, and incompatible management of overwintering sites in California; and drought) (Factor A); exposure to insecticides (Factor E); and effects of climate change (Factor E).

While the monarch butterfly is historically native to North America with migratory and nonmigratory populations, monarchs have dispersed via human assistance from North America in the past two centuries and their range now includes populations throughout 90 countries, islands, and island groups where milkweed was already present or introduced. Populations exist in Central and South America, Australia, New Zealand, islands of the Pacific and Caribbean, and elsewhere (see Service 2024a, pp. 41–42). The primary threats have been affecting the resiliency of the eastern and western North American migratory populations over the last 20 years, and both populations now have lower abundances and declining population growth rates. However, in its current condition, the probability of extinction of the eastern migratory population is less than 10 percent over the next 10 years. The probability of extinction of the western migratory population over that same time period is higher (60–68 percent).

For monarchs outside of the two North American migratory populations, 69 of the 90 countries, islands, and island groups are considered currently extant. Monarch presence within the remaining 21 countries, islands, and island groups has not been confirmed since 2000, but the best available information does not indicate they are extirpated, and thus they are all presumed extant. Of the 29 populations outside of North America, 25 are confirmed extant, and the remaining 4 are presumed extant (see Service 2024a, pp. 40–42). Although we were not able to further assess the level of resiliency of these 29 nonmigratory or dispersed populations, the species’ redundancy is evident through its confirmed or presumed presence in all 90 of the countries, islands, and island groups where it occurred historically or to where it has dispersed. The species’ adaptive capacity is evident through its presence over a large geographical range made up of 31 known populations (2 North American migratory populations and 29 nonmigratory or dispersed populations) where the climatic conditions and habitat vary widely. Despite uncertainties about resiliency at some of the locations (*i.e.*, the 29 nonmigratory and dispersed populations), the number and distribution of populations at multiple locations makes it unlikely that a single

catastrophic event would affect the entire species across its large range. Based on the best scientific and commercial data available, we conclude that the monarch butterfly is not currently in danger of extinction throughout all of its range.

While the monarch butterfly is not currently in danger of extinction, under the Act we must determine whether the species is likely to become in danger of extinction within the foreseeable future throughout all of its range (*i.e.*, whether the species warrants listing as threatened). In the foreseeable future, we anticipate the status of the eastern and western North American migratory populations will continue to decline due to the primary threats listed above. The probability of extinction of the eastern migratory population in the foreseeable future, which is 60 years, is estimated to be 56–74 percent, and the probability of extinction for the western migratory population is estimated to be 99 percent. Outside of the two North American migratory populations, we found that 15 of the 29 nonmigratory or dispersed populations are at risk in the future due to threats associated with climate change (6 due to sea level rise and 9 due to unsuitably high temperatures). The populations susceptible to sea level rise are at risk of losing at least some of their monarch habitat; thus, redundancy could decrease with the loss of those areas. However, the best scientific and commercial data available do not indicate if populations susceptible to high temperatures are at risk of losing all or just a portion of their monarch habitat; thus, they may continue to contribute to redundancy. Therefore, rangewide, we conclude that the species is likely to maintain considerable redundancy through continued presence in an estimated 84 of the 90 countries, islands, and island groups where it occurred historically or to where it has dispersed.

We find that the species will continue to have adaptive capacity (representation) through its presence over a large geographical range where the climatic conditions and habitat vary widely. Despite uncertainties about resiliency at the nonmigratory and dispersed populations, the widespread distribution of monarch populations indicates that the species has low risk of becoming extirpated from multiple locations should a large-scale catastrophic event occur; thus, it is unlikely that a single catastrophic event would affect the entire species across its large range. Thus, after assessing the best available information, we conclude that the monarch butterfly is not likely

to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species” (hereafter “Final Policy”; 79 FR 37578, July 1, 2014) that provided if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species’ range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species’ range.

Following the court’s holding in *Everson*, we now consider whether there are any significant portions of the species’ range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for the monarch butterfly, we choose to address the significance question first. We assessed whether any portions of the species’ range are biologically significant by considering them in terms of each portion’s contribution to resiliency, redundancy, or representation of the species as a whole.

The monarch butterfly is historically native to North America, and, as discussed above, it now occurs in nonnative or naturalized populations throughout 90 countries, islands, and island groups, including parts of Central and South America, Australia, New Zealand, islands of the Pacific and Caribbean, and elsewhere (see Service 2024a, pp. 41–42). To identify portions

for evaluation, we considered these geographic areas independently and in various combinations to identify those which are biologically meaningful to the species.

We found that monarch habitat in North America represents a significant portion of the range. This geographical portion is significant because it is physically large, representing a large proportion of the species’ range, and has unique habitat features that support monarch migration. The monarch’s North American portion of the range covers approximately 2.8 billion ac (1.1 billion ha), encompasses an estimated 62 percent of the species’ geographic range, and represents a vast majority of monarch butterflies worldwide. The portion is the ancestral source for migratory monarchs in North America and includes nonmigratory monarchs that have descended from migratory monarchs. The best available information indicates that the total number of nonmigratory monarchs in North America appears to be quite small relative to the North American migratory populations that overwinter in Mexico and California. The portion contains the entirety of breeding, migratory, and overwintering habitats used by monarchs in the eastern and western migratory populations. The monarchs within eastern and western North America have continued interchange between the two populations contributing to low genetic differentiation and forming an admixed population (Lyons et al. 2012, p. 3441; Talla et al. 2020, p. 2573; Freedman et al. 2021, pp. 7–8). These habitats in North America are unique because they facilitate massive annual range expansions during the breeding season. Temporary, seasonal resources allow monarchs to escape habitats as they become more heavily infected with diseases like *OE* (Bartel et al. 2011, entire). This seasonal movement also facilitates migratory culling where smaller and unhealthy individuals are removed from the breeding population because they are unable to survive long-distance migration (Bartel et al. 2011, entire; Majewska et al. 2021, p. 788). Years with favorable conditions across the broad and spatially diffuse breeding habitat in this portion have the potential to support rapid migratory monarch population increases (Yang et al. 2022, p. 20), which is important for population resiliency.

We also considered eastern and western North America as individual portions. The portion of North America used by the eastern migratory population is the largest area used by a single population in terms of geographic

size. It represents roughly 43 percent of the species’ global range. The portion of North America used by the western migratory population encompasses roughly 18 percent of the species’ global range. Individually, neither portion makes up a large enough geographic area relative to the remainder of the range. Both migratory populations require sufficient quality and quantity of milkweed and nectar resources, suitable habitat for overwintering, and adequate connectivity and aligned phenology. Both of these portions provide the resources and space needed to facilitate the massive annual migration and range expansions necessary to maintain the viability of the migratory populations, as described above. However, because these portions individually constitute smaller areas, they were not determined to be significant individually when compared to the portion encompassing both North American migratory populations.

Having determined that North America is significant for the purposes of evaluating a significant portion of the monarch’s range, we then proceeded to address the status question by examining the threats in that portion to determine if the species is endangered or threatened in that portion. The statutory difference between an endangered species and a threatened species is the timeframe in which the species becomes in danger of extinction; an endangered species is in danger of extinction while a threatened species is likely to become so (*i.e.*, endangered) within the foreseeable future. As discussed under *Status Throughout All of Its Range*, above, the primary current threats to the monarch butterfly are the ongoing impacts from loss and degradation of breeding, migratory, and overwintering habitat (from past conversion of grasslands to agriculture; widespread use of herbicides; logging/thinning at overwintering sites in Mexico; urban development, senescence, and incompatible management of overwintering sites in California; and drought), exposure to insecticides, and effects of climate change. We examined those threats along with the effects from disease and cumulative effects, and we considered whether conservation efforts and regulatory mechanisms ameliorated any of the effects.

Many of these factors and threats influence the monarch butterfly rangewide; however, because we identified the North America portion as being significant, we considered whether the threats are causing monarchs in the portion to have a different status than the remainder of

the range. As discussed above, this portion contains the eastern and western North American migratory populations. For the two migratory populations, we estimated the probability of the population abundance reaching the point at which extinction is inevitable for each population. In its current condition, the eastern migratory population has a probability of extinction of less than 10 percent over the next 10 years. The western migratory population has a higher risk of extinction due to current threats, with a probability of extinction of 60–68 percent over the next 10 years. The probability of extinction estimates do not account for risks from catastrophic events; however, we do not anticipate these effects to significantly increase extinction risk of North American migratory monarchs in the near term. Based on the eastern migratory population's level of resiliency in the near term and because monarchs are distributed across a broad geographic area contributing to the redundancy and representation of the species in the portion, we concluded that the monarch butterfly in North America is not in danger of extinction within this significant portion of its range and does not meet the definition of an endangered species.

We next considered whether the monarch butterfly is likely to become an endangered species within the foreseeable future in the North America portion (*i.e.*, if it meets the Act's definition of a threatened species). Looking across the range of future conditions for which we can make reasonably reliable predictions, the probability of extinction for the eastern migratory population is estimated to be 24–46 percent in 30 years and 56–74 percent in 60 years. The probability of extinction for the western migratory population is estimated to be 92–95 percent in 30 years and reaches 99 percent in 60 years. These probability of extinction estimates incorporate the primary factors that influence the populations' resiliency, including the ongoing impacts of availability of milkweed and nectar resources (losses as well as gains from conservation efforts), loss and degradation of overwintering habitat, insecticides, and effects of climate change. In addition to being affected by these factors, both the eastern and western migratory populations become more vulnerable to catastrophic events (*e.g.*, extreme storms at the overwintering habitat) into the future. Under plausible climate change scenarios, monarch butterflies will be exposed to unsuitably high

temperatures for more days each year and over larger areas of their range in North America.

The best available scientific and commercial information indicates nonmigratory monarch populations in North America are very small compared to the size of the two migratory populations. In our assessment of the threats, we found that the three nonmigratory populations in Florida, the Caribbean, and countries in Central America are at risk due to unsuitably high temperatures associated with climate change. There is potential for nonmigratory monarch populations in North America to be demographic sinks (see Crone and Schultz 2021, p. 1536), requiring continual influxes of monarchs from migratory populations to sustain them. Therefore, the status of nonmigratory monarchs in the North American portion is also in decline.

After assessing the best scientific and commercial data available, we found that migratory monarch butterflies in North America, which represent the vast majority of monarch butterflies worldwide, have a high likelihood of becoming extirpated in 60 years. Therefore, we conclude that the monarch butterfly is likely to become in danger of extinction within the foreseeable future throughout North America. Therefore, having determined that the North America portion is both (1) significant; and (2) likely to become in danger of extinction within the foreseeable future, we conclude that the monarch butterfly is in danger of extinction within the foreseeable future within a significant portion of its range. This is consistent with the courts' holdings in *Desert Survivors v. U.S. Department of the Interior*, 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Based on the best scientific and commercial data available, we determine that the monarch butterfly meets the Act's definition of a threatened species. Therefore, we propose to add the monarch butterfly as a threatened species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h) in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for

Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (<https://www.fws.gov/program/endangered-species>), or from our Midwest Region

Headquarters (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

To improve future conditions so that the monarch migratory populations stabilize and grow, we need to (1) achieve a significant increase in the availability of milkweed and nectar plants in monarch breeding and migratory areas; (2) protect and enhance overwintering habitat; (3) avoid and minimize impacts to monarchs and their habitat from insecticides and herbicides; and (4) maintain public support for the conservation of monarch butterflies. Because of the monarch butterfly's general habitat use and wide distribution, all sectors of society, including the general public, have an opportunity to participate in a broad range of conservation efforts throughout the species' range.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming; the U.S. Commonwealths of the Northern Mariana Islands and Puerto Rico; and the U.S. Territories of American Samoa, Guam, and the U.S. Virgin Islands would be eligible for Federal funds to implement management actions that promote the

protection or recovery of the monarch butterfly. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/service/financial-assistance>.

Although the monarch butterfly is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled, "Interagency Cooperation," and it mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(1) directs all Federal agencies, in consultation with the Secretary, to utilize their authorities to carry out "programs for the conservation of endangered and threatened species." This provision provides an affirmative and broad mandate to all agencies to take action to conserve threatened and endangered species. This section affords broad discretion to agencies on the measures they undertake as part of their conservation programs within their existing authorities, and robust section 7(a)(1) programs may assist Federal agencies with their obligations under section 7(a)(2). Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with

the Service on any action which *is likely* to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the monarch butterfly that may be subject to conference and consultation procedures under section 7 are management of Federal lands administered by the Army Corps of Engineers, Bureau of Land Management, Department of Defense (DoD), National Park Service, Office of Surface Mining, and U.S. Forest Service as well as actions that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*)) or actions funded by Federal agencies such as the Federal Highway Administration, Federal Aviation Administration, U.S. Department of Agriculture, or the Federal Emergency Management Agency. We also anticipate conferencing or consultation by the EPA as part of their pesticide registration actions under FIFRA. Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office or Midwest Region Headquarters (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

II. Protective Regulations Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. Conservation is defined in the Act to mean the use of all methods and procedures which are

necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. With these two sentences in section 4(d), Congress delegated broad authority to the Secretary to determine what protections would be necessary and advisable to provide for the conservation of threatened species, and even broader authority to put in place any of the section 9 prohibitions, for a given species.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance v. Lautenbacher*, 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this species' proposed protective regulations under section 4(d) of the Act are one of many tools that we would use to promote conservation of the monarch butterfly by encouraging creation and management of habitat in ways that address threats to the species and maintain public support for its conservation. To achieve a significant increase in the availability of milkweed and nectar plants in monarch breeding areas, we need to incentivize return of milkweed to large portions of the landscape where it is now nonexistent or where what remains is highly fragmented. Given that so much milkweed has been lost historically and

that monarchs are impacted by the ongoing effects of this past habitat loss and degradation, we need an approach that encourages landowners to add milkweeds and nectar plants and implement actions to maintain them. Creation, enhancement, and maintenance of higher quality habitat by the public may lead to the temporary destruction of milkweed and nectar plants and incidental take of monarchs. Private landowner and general public support are crucial because the species is wide-ranging and needs broad conservation action, from small- to large-scale efforts, throughout its range. Conservation for the species can occur on land parcels ranging from quite small to very large, including gardens, parks, grasslands, agricultural areas, and more. Because of the monarch butterfly's general habitat use and wide distribution, all sectors of society, including the general public, have an opportunity to participate in a broad range of conservation efforts throughout the species' range. The proposed 4(d) rule allows for the general public to take action to participate in the recovery of monarchs without fear of unintentional violation for the Act. Public action is necessary for the conservation of the species.

The proposed protective regulations would apply only if and when we make final the listing of the monarch butterfly as a threatened species. Nothing in 4(d) rules changes in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the monarch butterfly.

As mentioned previously in Available Conservation Measures, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, even before the listing of any species or the designation of its critical habitat is finalized, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. These requirements are the same for a threatened species regardless of what is included in its 4(d) rule.

Section 7 consultation is required for Federal actions that "may affect" a listed species regardless of whether take caused by the activity is prohibited or excepted by a 4(d) rule (under application of a "blanket rule" (for more information, see 89 FR 23919, April 5, 2024) or a species-specific 4(d) rule). A 4(d) rule does not change the process and criteria for informal or formal consultations and does not alter the analytical process used for biological opinions or concurrence letters. For example, as with an endangered species, if a Federal agency determines that an action is "not likely to adversely affect" a threatened species, this will require the Service's written concurrence (50 CFR 402.13(c)). Similarly, if a Federal agency determines that an action is "likely to adversely affect" a threatened species, the action will require formal consultation with the Service and the formulation of a biological opinion (50 CFR 402.14(a)). Because consultation obligations and processes are unaffected by 4(d) rules, we may consider developing tools to streamline future intra-Service and interagency consultations for actions that result in forms of take that are not prohibited by the 4(d) rule (but that still require consultation). These tools may include consultation guidance; streamlined, online consultation processes via the Service's digital project planning tool (Information for Planning and Consultation; <https://ipac.ecosphere.fws.gov/>); template language for biological opinions; or programmatic consultations. Nonetheless, section 7(a)(1) authority provides a great deal of unrealized potential in achieving recovery goals, and this 4(d) rule incentivizes agencies to fully utilize their authorities to design and implement conservation programs that meaningfully benefit monarch butterflies.

Provisions of the Proposed 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a proposed rule that is designed to address the monarch butterfly's conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that the monarch butterfly is likely to become in danger of extinction within the foreseeable future primarily due to the ongoing impacts of loss and degradation of breeding, migratory, and overwintering habitat (from past conversion of grasslands and shrublands to agriculture and widespread use of herbicides; logging/thinning at overwintering sites in Mexico; urban development, senescence, and

incompatible management of overwintering sites in California; and drought), exposure to insecticides, and effects of climate change. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species. We are not required to make a “necessary and advisable” determination when we apply or do not apply specific section 9 prohibitions to a threatened species (In re: Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation, 818 F. Supp. 2d 214, 228 (D.D.C. 2011) (citing *Sweet Home Chapter of Communities for a Great Oregon v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), *rev’d on other grounds*, 515 U.S. 687 (1995))). Nevertheless, even though we are not required to make such a determination, we have chosen to be as transparent as possible and explain below why we find that, if finalized, the protections, prohibitions, and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the monarch butterfly.

The protective regulations we are proposing for the monarch butterfly incorporate prohibitions from section 9(a)(1) to address the threats to the species. The prohibitions of section 9(a)(1), and the implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. This protective regulation includes all these prohibitions because the eastern and western North America monarch populations are at risk of

extinction within the foreseeable future and putting these prohibitions in place will help to prevent further declines, slow the rate of decline, and decrease negative effects from other ongoing or future threats.

In particular, this proposed 4(d) rule would provide for the conservation of the monarch butterfly by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. We are proposing to prohibit these activities in the contiguous United States, Puerto Rico, and the U.S. Virgin Islands. We are not proposing to prohibit these activities in Hawaii or other U.S. Territories because these areas are outside the historical range of the species and monarchs in these areas will not contribute to recovery of the species in North America. We are also not proposing to prohibit these activities in Alaska because the species does not occur there. Further, import and interstate movement of monarch butterflies is regulated by the U.S. Department of Agriculture, and monarchs may not be transported to Hawaii, Alaska, or any of the U.S. Territories under existing regulations in 7 CFR part 330.

Under the Act, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take would help to preserve the species’ migratory populations, slow their rates of decline, and decrease synergistic, negative effects from other ongoing or future threats. Therefore, we propose to prohibit take of the monarch butterfly, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

Exceptions to the prohibition on take would include all the general exceptions to the prohibition on take of endangered wildlife, as set forth in 50 CFR 17.21 and additional exceptions, as described below.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that

govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

In addition, to further the conservation of the species, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, a State conservation agency, or a federally recognized Tribe, who is designated by their agency or Tribe for such purposes, may, when acting in the course of their official duties, take threatened wildlife without a permit if such action is necessary to: (i) Aid a sick, injured, or orphaned specimen; or (ii) dispose of a dead specimen; or (iii) salvage a dead specimen that may be useful for scientific study; or (iv) remove specimens that constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner. Such taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in an appropriate area.

We recognize the special and unique relationship that we have with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve monarch butterflies that may result in

otherwise prohibited take without additional authorization.

The main threats affecting the two North American migratory populations of monarch butterflies are the ongoing impacts from loss and degradation of breeding, migratory, and overwintering habitat (from past conversion of grasslands and shrublands to agriculture and widespread use of herbicides; logging/thinning at overwintering sites in Mexico; urban development, senescence; and incompatible management of overwintering sites in California; and drought), exposure to insecticides, and effects of climate change. To improve future conditions so that the monarch migratory populations stabilize and grow, we need to (1) achieve a significant increase in the availability of milkweed and nectar plants in monarch breeding and migratory areas; (2) protect and enhance overwintering habitat; (3) avoid and minimize impacts to monarchs and their habitat from insecticides and herbicides; and (4) maintain public support for the conservation of monarch butterflies.

The proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the monarch butterfly, are not expected to rise to the level that would have a negative impact (*i.e.*, would have only de minimis impacts) on the species' conservation. The proposed exceptions to these prohibitions include take resulting from activities conducted for the benefit of monarch butterflies or with only de minimis impacts that may maintain, enhance, remove, or establish milkweed and nectar plants within the breeding and migratory range; implementation of a comprehensive conservation plan developed by or in coordination with a State agency or implementation of a conservation program developed by a Federal agency; maintenance or improvement of monarch overwintering habitat in the United States consistent with a site-specific Service-approved Overwintering Site Land Management Plan; monarch mortality due to vehicle strikes; small-scale (250 or fewer butterflies) collection, possession, captive-rearing, and release of monarchs; scientific research; educational activities; possession of dead monarchs; and sale of captively reared monarchs.

In this proposed rule, the range of the monarch where these exceptions would apply include all areas under the jurisdiction of the U.S. Government where the monarch occurred historically and were not aided by

human dispersal (*i.e.*, the contiguous United States, Puerto Rico, and the U.S. Virgin Islands). These exceptions would not apply to States that are not part of the contiguous United States (*e.g.*, Hawaii) or territories that are outside the historical range of the species (*e.g.*, American Samoa) because, as noted above, these activities would not be prohibited there.

(1) Activities that may maintain, enhance, remove, or establish milkweed and nectar plants within the breeding and migratory range that do not result in conversion of native or naturalized grassland, shrubland, or forested habitats.

These activities include the following:

(a) Habitat restoration and management activities, such as mowing and haying native rangeland, that sustain monarch butterfly habitat, including activities to eliminate plant communities that contain invasive plants or noxious weeds as part of site preparations or habitat enhancement activities.

(b) Livestock grazing and routine ranching activities, including rotational grazing, patch-burn grazing, vegetation and invasive species management, other grazing practices implemented to make pasture and rangelands productive, construction and maintenance of fences, the gathering and management of livestock, and the development and maintenance of watering facilities for livestock.

(c) Routine agricultural activities, including plowing, drilling, disking, mowing, and other mechanical manipulation and management of lands already in use for agricultural production (*e.g.*, conventional row crops, pasture, hay fields, orchards, and vineyards). This also includes other mechanical manipulation and land management activities in direct support of cultivated agriculture, such as replacement, upgrades, maintenance, and operation of existing infrastructure (*e.g.*, buildings, irrigation conveyance structures, fences, and roads), and routine implementation and maintenance of agricultural conservation practices, such as terraces, dikes, grassed waterways, and conservation tillage.

(d) Fire management actions (*e.g.*, prescribed burns, cultural burns, hazardous fuel reduction activities, vegetation management, maintenance of fuel breaks and minimum clearance requirements, and other fuels reduction activities).

(e) Silviculture practices and forest management activities that use State-approved best management practices.

(f) Maintenance, enhancement, removal, and establishment of milkweed and nectar plants on residential and other developed properties.

(g) Vegetation management activities, such as mowing, ground disturbance, and other management activities, that remove milkweed and/or nectar plants when conducted at times of year when monarchs are not likely present.

We intend for this proposed exception to encourage numerous small- and large-scale projects that will increase the quality and quantity of breeding habitat on the landscape in the long term. We expect localized removal of milkweed and nectar plants will be outweighed by an overall addition of these resources across the landscape, making broadscale public support for monarch conservation vitally important. For example, landscape-scale habitat restoration and management activities that provide for the habitat needs of monarch butterflies (*e.g.*, mowing, haying native rangeland, prescribed and cultural burning, and control of invasive plants or noxious weeds) may remove milkweed and could result in take of monarchs in the short term but would also increase the overall quality and quantity of breeding habitat, which is likely to benefit monarch populations in the long term. Similarly, forest, fuels and wildland management activities, and rangeland management may have some minimal level of take of monarch butterflies but are not expected to rise to the level that would have a negative impact (*i.e.*, would have only de minimis impacts) on the species' conservation. These activities can help maintain and manage native, naturalized, and restored grassland, shrubland, and forested habitats, which is a conservation benefit to the species.

Routine agricultural activities on lands already in use for agricultural production, not including conversion of native or naturalized grassland, shrubland, and forested habitats, would result in loss of milkweed and nectar plants that we consider inconsequential to the conservation of the species. Monarchs are impacted by the ongoing effects of past habitat loss and degradation; therefore, routine agricultural activities on lands already in use for agricultural production will not result in significant additional habitat loss and degradation. This is also true for maintenance, enhancement, removal, or establishment of milkweed and nectar plants on residential and other developed properties. Vegetation management activities that remove milkweed and/or nectar plants when conducted at times of year when monarchs are not likely present and that

do not result in conversion of native or naturalized grassland, shrubland, or forested habitats would also result in a level of take considered inconsequential to the conservation of the species. In addition, some activities may provide both conservation benefits to the species while also contributing to an inconsequential level of take (*e.g.*, livestock grazing).

While the goal of substantially increasing the breeding habitat available to monarchs and reducing fragmentation of their habitat will require working with people in many different sectors, a high priority needs to be placed on working with farmers as well as the Natural Resources Conservation Service, Farm Service Agency, and other partners who work with private landowners. We will especially focus on the key monarch breeding and migratory areas to encourage support for voluntary efforts to create suitable habitat and improve connectivity of these habitat patches to increase the productivity of monarchs and increase the carrying capacity of monarch habitat on the landscape in important parts of the species' range.

Under this proposed 4(d) rule, incidental take caused by activities that may maintain, enhance, remove, or establish milkweed and nectar plants within the breeding and migratory range that do not result in conversion of native or naturalized grassland, shrubland, or forested habitats will not be prohibited. These exceptions to the prohibitions are intended to encourage widespread adoption of voluntary milkweed and nectar restoration and maintenance as well as reduce the regulatory requirements for the public on forms of take that are considered inconsequential to the conservation of the species.

(2) Implementation of comprehensive conservation plans and programs.

When making a determination as to whether incidental take from implementation of a conservation plan or program would be excepted pursuant to this 4(d) rule, we would consider the following:

- Whether the plan comprehensively addresses the threats affecting the monarch within the plan area;
- Whether the plan establishes objective, measurable biological goals and objectives for population and habitat necessary to ensure a net conservation benefit, and provides the mechanisms by which those goals and objectives will be achieved;
- Whether the plan administrators demonstrate the capability and funding mechanisms for effectively implementing all elements of the plan,

including enrollment of participating landowners, monitoring of activities, and enforcement of plan requirements, as applicable;

- Whether the plan employs an adaptive management strategy to ensure future program adaptation as necessary and appropriate; and
- Whether the plan includes appropriate monitoring of effectiveness and compliance.

To achieve a significant increase in the availability of monarch breeding areas that is required for improvement in the status of the species, breeding habitat needs to be returned to large portions of the landscape where it is now nonexistent or where what remains is highly fragmented. Given that so much milkweed has been lost historically and that monarchs are impacted by the ongoing effects of this past habitat loss and degradation, we need an approach that encourages landowners to add milkweeds and nectar plants and implement actions to maintain them, and comprehensive plans and projects to conserve the monarch butterfly could be important sources of that conservation across the broader landscape. State-wide plans developed by or in coordination with States and implemented by State agents and enrolled participants (*e.g.*, private landowners, local governments) are opportunities for large-scale conservation. Likewise, programs developed by Federal agencies in fulfillment of their section 7(a)(1) responsibilities are also opportunities for large-scale conservation. Therefore, we intend for this proposed exception to encourage implementation of conservation plans and programs that comprehensively address threats affecting the monarch within the plan area.

(3) Maintenance or improvement of overwintering habitat.

Overwintering habitat is defined as habitat that provides overwintering monarch butterflies with the abiotic and biotic conditions necessary for clustering, aggregating, and feeding (nectaring). An overwintering site is defined as an area where migratory monarch butterflies cluster on trees during the fall and/or winter. Unlike breeding habitat, which is widely dispersed across the continental United States and can be quickly created in a variety of locations, overwintering habitat in Mexico (for the eastern migratory population) and California (for the western migratory population) is usually restricted to specific areas and consists of tree groves that are not easily created in new locations. Migratory monarchs require a very specific

microclimate at overwintering sites. Maintenance and improvement of overwintering habitat will aid conservation and recovery of the species by maintaining and enhancing those specific conditions at existing groves. We do not regulate take in foreign countries; therefore, we do not prohibit incidental take resulting from management, including logging, of monarch overwintering habitat in Mexico. Our proposed 4(d) exceptions apply only to incidental take resulting from maintenance or improvement of monarch overwintering habitat in California or elsewhere in the United States. Under this proposed 4(d) rule, incidental take resulting from maintenance or improvement of monarch overwintering habitat in the United States that is consistent with the goals and objectives of a site-specific Service-approved overwintering site land management plan at the site would not be prohibited. Our current Overwintering Site Land Management Plan template and an example plan are available on <https://www.regulations.gov> under Docket No. FWS-R3-ES-2024-0137.

(4) Vehicle strikes.

It is common for monarchs to be struck by vehicles and killed in the course of normal driving activities. Research suggests there may be roadkill hotspots where monarch vehicle mortality is particularly high, especially during periods of migration (Kantola et al. 2019, pp. 153 and 158). The best available information shows that mortality due to vehicle strikes is not one of the primary drivers of changes in monarch populations, and it was not identified as a primary driver by monarch experts (Service 2024a, p. 39). At this time the impacts from monarch deaths due to vehicle strikes are considered minimal and not affecting the monarch butterfly at a population or species level. Furthermore, research suggests that roadside monarch habitat can still provide a net benefit to the species, despite losses due to collisions, through strategic improvements to roadside vegetation management (Kasten et al. 2016, entire; Phillips et al. 2019, entire). Habitat along roadsides may provide milkweed and nectar resources in otherwise heavily developed and agricultural regions, as well as provide needed habitat connectivity across the landscape (Wu-Smart & Schacht 2019, entire; Ding & Eldridge 2022, entire).

We conclude that the overall impact of vehicle strikes is not expected to negatively affect conservation and recovery efforts for the monarch butterfly. Therefore, we propose that

take due to vehicle strikes not be prohibited under this 4(d) rule.

(5) *Non-lethal collection, possession, captive-rearing, and release of a limited number of monarchs.*

Monarch butterflies are collected non-lethally, held in captivity (and in some cases sold), and released for a variety of purposes, including educational purposes. Collecting (defined in this rulemaking as the non-lethal capture and holding of live monarchs at any life stage), captively rearing (defined in this rulemaking as the holding of caterpillars, pupae, or adults and raising them in captivity long enough for them to move to the next life stage or to reproduce), and releasing monarchs has inspirational and educational value and can foster lifelong connections to nature. Collection of monarchs at any life stage from the wild has the potential to pose a risk to population numbers. After evaluating the threat of collection, we determined there is no evidence that the current rate of collection, in combination with the current rate of release, is affecting monarch populations (Service 2024a, p. 109). However, we assume that the collection of clustering monarchs could have greater impacts to the populations and species' viability, as the migratory populations are at their smallest when monarchs are clustering and overwintering clusters contain concentrated numbers of individuals; thus, wild clustering monarchs may not be collected as part of this exception.

Captive-rearing can also pose risks to wild monarch populations, such as through the spread of diseases and loss of genetic diversity (Altizer et al. 2015, p. 1), and potential negative effects to the fitness of individuals and their migratory capabilities (Altizer et al. 2015, p. 2). The negative effects can greatly impact wild monarch populations when rearing is conducted on a large scale (Altizer et al. 2015, pp. 1–3). However, captive-rearing on a small scale can achieve all the inspirational and educational benefits while reducing the risk of negatively affecting populations, particularly if protocols are followed to minimize disease and genetic impacts. For the purposes of this proposed rule, we describe small-scale captive-rearing as collection, raising, and releasing 250 or fewer monarchs in a given year. We consider the collection, raising, and releasing of more than 250 monarchs per year to be a large-scale endeavor, for which a permit would be required through section 10(a)(1)(A) of the Act.

We conclude that the overall impact of collecting, possessing, captively rearing, and releasing 250 or fewer

individual monarchs at one location or facility (e.g., home, botanical garden, school, or business) is not expected to negatively affect conservation and recovery efforts for the monarch butterfly. Therefore, take due to these activities would not be prohibited under this proposed 4(d) rule. However, collection of clustered monarchs would be prohibited. Clustered monarchs are typically the individuals that will produce the next year's first migratory generation. The migratory populations are at their smallest during the overwintering time period when monarchs cluster (typically September through March), and it is especially important that these individuals survive the winter to breed in the spring. Therefore, our proposed exception does not include take resulting from handling or collection of clustered monarchs; a permit to do so would be required through section 10(a)(1)(A) of the Act.

(6) *Non-lethal scientific research and educational activities involving a limited number of monarchs.*

Future scientific research on monarch butterflies and their use in educational activities in the contiguous United States will aid conservation and recovery by leading to a better understanding and appreciation of the biology and ecology of the species. Activities associated with scientific research and education may include non-lethal collection for purposes of handling, netting, sampling for disease, tagging of monarchs, and conducting life cycle and specimen observations of captive monarchs. The same restrictions related to possession and release of monarchs (i.e., limiting activities to 250 or fewer monarchs per year) would apply to scientific research and educational activities. To encourage continued and further scientific research and educational activities, we are proposing to include exceptions in the 4(d) rule that allow these activities without requiring additional permits; however, we do not include take of clustered monarchs in the exception. As discussed in the previous section, it is especially important that clustered overwintering monarchs survive the winter to breed in the spring. Therefore, we do not include handling or collection of clustered monarchs for scientific research from this exception; a permit to do so would be required through section 10(a)(1)(A) of the Act.

(7) *Possession of dead monarchs.*

Though overwintering monarchs can live longer, the average life expectancy of monarchs during the breeding season is 2 to 5 weeks. It is common for people to find and collect dead adult monarchs or pieces of wing. Collection and

possession of this type is not currently a threat to the species. In some cases, with other species, we might be concerned about collection becoming a threat due to collectors capturing live butterflies and preserving them because the species is listed and likely to become more rare. However, the monarch has historically occurred in such large numbers and across such a large range that the species is already a common specimen in butterfly collections. The potential impacts from collection and possession of dead monarchs are considered minimal and not likely to affect the monarch butterfly at a population or species level. Collection of live wild adult monarchs and intentionally killing them for preservation purposes would be prohibited. We are proposing in this 4(d) rule that possession of dead monarchs collected in a lawful manner would not be prohibited.

(8) *Sale of captively reared monarchs.*

We propose to limit the sale of captively reared monarchs to 250 or fewer individuals per year from a single location or facility. It is common for individuals and organizations such as garden groups, schools, and small businesses to sell captively reared monarchs during the breeding season. These activities provide inspirational and educational value for the public but have the same risks as discussed above. We find that if these activities are conducted on a small scale (limited to 250 or fewer monarchs in a given year), the potential for negative impacts would be minimal.

We conclude that the overall impact of selling 250 or fewer individual monarchs at one location or facility (e.g., home, botanical garden, school, or business) is not expected to negatively affect conservation and recovery efforts for the monarch butterfly. Therefore, take due to these activities would not be prohibited under this proposed 4(d) rule.

Public Comment Requested on Exception for Pesticide Use

We seek public comment on how to address pesticide use under a 4(d) rule for the monarch. We recognize that certain types of pesticide use can have direct or indirect negative effects on monarchs, including aerial broadcast application of insecticides, use of herbicides that remove milkweeds, and use of some biopesticides. However, not all uses and application methods will impact monarchs. For example, insecticide application using hand-held sprayers, soil injection, in furrow sprays, tree trunk drenching, or tree injection, are unlikely to result in

pesticide exposure to monarchs. We seek comment on which pesticide uses and application methods result in exposure and adverse effects to monarchs, whether to except take from those uses in a 4(d) rule, and whether the exceptions for those uses should include measures to mitigate the effects of pesticides on monarchs. We also seek comment on whether we should tailor any measures according to the areas and times of the year when monarchs are present and, if so, what is the most feasible method to convey this information to pesticide users. Further, any measures should focus on minimizing impacts to monarchs by reducing exposure to the species, but we also seek comment on whether it is appropriate to offset unavoidable impacts such as through habitat restoration and, if so, how to accomplish this in a 4(d) rule.

If we include mitigation measures for excepted uses and application methods in a 4(d) rule, we also seek comment on how to align those measures with the EPA's work under FIFRA to minimize the effects of pesticides on listed species and to ensure that FIFRA registration and registration review decisions comply with section 7(a)(2) (see *Conservation Efforts and Regulatory Mechanisms*, above). FIFRA, not the ESA, is the primary Federal law that determines the conditions under which pesticides may be used. Given all the EPA's ongoing work to address pesticide impacts on listed species (e.g., Herbicide Strategy, Insecticide Strategy, Vulnerable Species Action Plan), we seek to minimize confusion and regulatory burdens for pesticide users as a result of any mitigation measures we may include in a 4(d) rule for any excepted pesticide uses. Rather than include specific pesticide mitigation measures in the proposed 4(d) rule, we seek comment on how best to identify those measures in a manner that aligns with the EPA's ongoing work on this issue.

To inform public comments, we provide additional information on certain pesticide uses that impact monarchs. Many insecticides are a threat to monarchs based on their mode of action to target insects and their potential exposure to monarchs. Conventional insecticides have active ingredients used to control insects by killing or otherwise preventing them from engaging in behaviors that are undesirable or destructive. Insecticides are used in areas where monarchs occur and can drift off intended use sites with certain methods of application. They are likely to cause lethal and sublethal effects to nontarget lepidopterans (i.e.,

the order of insects that includes butterflies and moths) that are exposed (Service 2024a, appendix 5). Even though monarchs are not typically the target of insecticides, they can be killed by these chemicals if they are incidentally exposed. Many conventional insecticides have nonspecific modes of action and are expected to result in mortality to most or all insect species when exposure exceeds a certain threshold.

In contrast, biopesticides are typically less toxic than conventional pesticides and generally affect only the specific target insect pest and closely related organisms. Biopesticides include naturally occurring substances that control pests by nontoxic mechanisms (e.g., biochemical pesticides), microorganisms that control pests (e.g., microbial pesticides), and pesticidal substances produced by plants containing added genetic material (e.g., plant-incorporated protectants). While application of most biopesticides is not expected to affect monarchs, certain forms of the microbial pesticide *Bacillus thuringiensis* (*Bt*) are active against lepidopterans. Lepidoptera-active *Bt* strains produce a specific mix of insecticidal proteins that are active against caterpillars due to taxa-specific biological properties and are used to control pests such as the spongy moth. At present, Lepidoptera-active strains include *Bacillus thuringiensis kurstaki* (*Btk*) and *Bacillus thuringiensis azawai* (*Bta*), though additional Lepidoptera-active *Bt* products may be registered in the future. Other currently registered *Bt* products, such as *Bacillus thuringiensis israelensis* (*Bti*), are not active against Lepidoptera and thus are not expected to cause negative effects to monarchs. Products incorporated with *Bt*, such as *Bt*-corn, are also not expected to cause negative effects to monarchs because the toxin expression in *Bt*-corn is limited to pollen, where it occurs at such low concentrations that exposure presents a low risk to monarchs. In addition to direct exposure to insecticide residues from spray application, monarchs may be exposed via diet to systemic insecticides that are absorbed by nectar and milkweed plants from the soil and become incorporated into tissues (e.g., leaves, flowers, pollen, and nectar). While numerous types of insecticides may be incorporated into plants systemically, neonicotinoids are a class of insecticides that is particularly known to distribute throughout plant tissues in this manner. Laboratory studies demonstrate that exposure to neonicotinoids can negatively affect adult, larval, and pupal survival of

monarchs. However, concentrations of neonicotinoids in the environment from systemic incorporation have not been found to reach levels known to elicit the negative effects seen in laboratory studies.

Another application of systemic insecticides is the direct application or coating of seeds with insecticides prior to planting to control or repel disease organisms, insects, and pests that attack crops or desirable plants. Because seeds are broadly treated and often used prophylactically (i.e., not in response to a documented pest outbreak), their use is widespread for certain crops. Insecticide applications by wet or liquid seed-coatings and slurry seed treatment create limited exposure pathways to the monarch. Dust-treated seed applications incur a potential for the dust to drift at the time of planting. Treated seed dust could drift off the field, exposing monarchs by direct contact with the insecticide or from systemic incorporation into nearby milkweed or nectar plants. However, the exposure potential to the monarch from treated seeds is orders of magnitude lower compared to exposure potential from aerial broadcast applications, and concentrations of insecticides detected in pollen and nectar following seed treatments are below known thresholds for negative effects in monarchs (Beedle and Harbin 2011, p. 8; EPA 2016, pp. 14–22; EPA 2020, pp. 87–88).

Other pesticide formulation types, in contrast to liquid forms that can result in direct exposure, are less likely to lead to exposure of monarchs through contact or dietary routes and are therefore not expected to negatively affect monarchs. For example, solid forms of pesticides, such as granules or baits, are applied directly to the soil or turf grass typically by hand or a spreader specifically designed for the size of the carrier particle and provide little opportunity for contact with monarch adults or larvae. In addition, solid formulations are not expected to result in drift.

For other pesticide classes, such as herbicides and fungicides, our review of the scientific information available indicates a limited number of individual monarchs will experience negative effects from direct exposure to these pesticides. We do not expect the low number of individuals affected from direct exposure to other classes of pesticides to impact the monarch butterfly at a population or species level. Certain herbicide uses, however, have resulted in the loss of milkweed and nectar, which is discussed in the *Activities that may maintain, enhance, remove, or establish milkweed and*

nectar plants within the breeding and migratory range that do not result in conversion of native or naturalized grassland, shrubland, or forested habitats section. As a result, we are considering what mitigation measures, if any, from the EPA's Herbicide Strategy (EPA 2024a, entire) and the agency's other ESA work (EPA 2024b, entire; EPA 2024c, entire), should inform any exceptions for herbicide use in a 4(d) rule for the monarch. Further, the EPA is considering how habitat restoration and other forms of compensatory mitigation may address unavoidable pesticide impacts to listed species. We thus seek comment on whether and how we should consider habitat restoration or creation as an offset for unavoidable pesticide impacts to the monarch under a 4(d) rule.

Summary

To promote conservation of monarch butterflies in the contiguous United States, we need to (1) achieve a significant increase in the availability of milkweed and nectar plants in monarch breeding and migratory areas; (2) protect and enhance overwintering habitat; (3) avoid and minimize impacts to monarchs and their habitat from insecticides and herbicides; and (4) maintain public support for the conservation of monarch butterflies. Therefore, we focus our efforts in this proposed 4(d) rule on incentivizing known beneficial actions for the species, as well as reducing the regulatory requirements for the public on forms of take that are considered inconsequential to the conservation of the species in the contiguous United States, Puerto Rico, and the U.S. Virgin Islands. These exceptions would not apply to States or territories that are outside the historical range of the species because the excepted activities would not be prohibited there.

We find that the activities resulting in take that are excepted by this proposed 4(d) rule will have a de minimis impact to the species and will promote conservation and recovery of monarch butterflies in the contiguous United States. The following activities are expected to result in low levels of take of individuals or will aid conservation and recovery of the species: activities that may maintain, enhance, remove, or establish milkweed and nectar plants within the breeding and migratory range; implementation of a comprehensive conservation plan developed by or in coordination with a State agency or implementation of a conservation program developed by a Federal agency; maintenance or improvement of monarch overwintering

habitat in the United States consistent with a site-specific Service-approved Overwintering Site Land Management Plan; monarch mortality due to vehicle strikes; small-scale (250 or fewer butterflies) collection, possession, captive-rearing, and release of monarchs; scientific research; educational activities; possession of dead monarchs; and sale of captive reared monarchs. In order to identify how the effects of these activities on monarch butterflies may differ from our current understanding and what additional activities we should consider excepting in a 4(d) rule, we are requesting additional information on the exceptions in this proposed 4(d) rule. We specifically request public comments on how to address pesticide use under a 4(d) rule for the monarch. To submit information, see the Information Requested section.

III. Critical Habitat

Background

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. Critical habitat is defined in section 3(5)(A) of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species; and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3(3) of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided

pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consults with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical

habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the

species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define "physical or biological features essential to the conservation of the species" as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding

or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Recovery of monarch butterflies will require maintaining and, where necessary, improving habitat across the range to ensure the long-term viability of the species. The physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection are a subset of the habitat across the range necessary for species recovery. We have determined that the areas occupied by the monarch butterfly during the winter are the subset of habitat across the range needed for recovery that are essential to the conservation of the species (Service 2024b, entire). Monarchs exhibit high annual site fidelity, densely cluster at these sites, and are especially vulnerable to their environment (*e.g.*, severe storm events, temperature fluctuations, predation, etc.) during the overwintering phase of their life cycle. Because we do not designate critical habitat outside of the United States, we are only designating overwintering habitat in the United States and not designating any areas used by migratory monarchs for overwintering in Mexico or elsewhere.

We are not proposing to designate critical habitat within monarch butterfly breeding and migratory areas or in areas used by nonmigratory monarchs in the winter. Although breeding and migratory habitats are important and support the species' life cycle, this kind

of habitat in North America is broad and spatially diffuse. The specific geographic areas that contain essential breeding and migratory habitat can change in relatively short timeframes due to many reasons, including weather conditions, natural succession, disturbance, and habitat creation. The breeding habitats used by nonmigratory monarchs in the winter (e.g., southern Florida, Gulf Coast, southern Atlantic Coast, and southern Pacific Coast) have the same characteristics of being expansive in nature, having variability in the suitability of specific locations from year to year, and being used by monarchs opportunistically. Due to the expansive nature of the habitat (existing and potential), the variability in the suitability of specific locations from year to year, and the opportunistic nature of monarch habitat use, we are not proposing to designate critical habitat in breeding and migratory areas.

Migratory monarchs in the western population primarily overwinter in groves along the coast of California and Baja California (Jepsen and Black 2015, p. 149). These groves are populated by a variety of tree species, including blue gum eucalyptus (*Eucalyptus globulus*), Monterey pine (*Pinus radiata*), and Monterey cypress (*Hesperocyparis macrocarpa*) (Griffiths and Villablanca 2015, pp. 41, 46–47), all of which act as roost trees. These groves provide indirect sunlight for the overwintering monarchs, sources of moisture for hydration, defense against freezing temperatures, and protection against strong winds (Tuskes and Brower 1978, p. 149; Leong 1990, pp. 908–910, Leong 1999, p. 213). The close proximity to the coast (average distance of 1.47 mi (2.37 km) also provides a mild winter climate (Leong et al. 2004, p. 180).

To support overwintering western monarchs, we identified a support zone, which is an area of overwintering habitat surrounding an overwintering site that provides essential resources for monarchs, such as nectar plants, hydration sources, and protective landscape features that lessen the impacts from prevailing winds on groves of trees. Support zones contain the nectar resources close to the overwintering site (within 152 m (500 ft) of the shelter zone and core zone).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the monarch butterfly from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2024a,

entire; available on <https://www.regulations.gov> under Docket No. FWS–R3–ES–2024–0137). We have determined that the following physical or biological features are essential to the conservation of the monarch butterfly:

1. Groves of trees (e.g., blue gum eucalyptus, Monterey pine, Monterey cypress, Coast redwood, coast live oak, Douglas fir, Torrey pine, western sycamore, bishop pine) that serve as sites for overwintering monarchs to cluster along the coast of California.
2. Trees, herbaceous or shrubby vegetation, and/or topography surrounding overwintering groves that contribute to the following microclimate conditions:
 - a. Indirect or dappled sunlight,
 - b. Water sources (e.g., stream, pond, moist soil) for hydration,
 - c. Defense against freezing temperatures, and
 - d. Protection from strong winds.
3. Supportive features nearby (i.e., within 152 m (500 ft) of overwintering groves, including the following:
 - a. Flowering plants for nectar,
 - b. Water sources (e.g., stream, pond, moist soil) for hydration, and
 - c. Protective landscape features (e.g., topography and vegetation that lessen the impacts of prevailing winds on groves of trees).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the monarch butterfly may require special management considerations or protection to reduce the following threats: the ongoing impacts of loss and degradation of breeding, migratory, and overwintering habitat and the effects of climate change.

Special management considerations or protection may be required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include, but are not limited to, protecting overwintering habitats and maintaining the tree groves and the surrounding habitat; protecting and maintaining landscape features that contribute to the microclimate conditions of groves; proactively planting trees and shrubs or removing and replacing dead trees, where appropriate, to support long-term habitat suitability of overwintering sites; restoring or enhancing nectar habitat

near overwintering areas using native, insecticide-free plants; reducing fuel loads and minimizing the risk of catastrophic wildfire within overwintering habitat through selective thinning; avoiding use of pesticides near overwintering sites or nectar habitat when monarchs may be present; and minimizing the likelihood that development projects will impact the quality or quantity of the habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat.

Our conservation strategy and rule set for determining critical habitat for the monarch butterfly evaluated quantity and quality of areas, distribution of areas, and landscape-level considerations needed to conserve and maintain a sufficient number of overwintering sites with habitat characteristics to support high population resiliency and redundancy over time across the core overwintering range. We also attempted to capture latitudinal diversity across the core overwintering range. Because aggregations of many individuals can moderate climatic conditions experienced by overwintering monarchs and offer some protection, we gave priority to the largest sites (i.e., those having the most monarchs or largest aggregations). Overwintering sites that have consistently supported the largest overwintering aggregations through time will most likely continue to do so in the future. We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (i.e., currently occupied) and that contain one or more of the physical or biological features that are essential to the conservation of the species.

We selected sites for critical habitat based upon maximum occupancy rates of overwintering butterflies in California observed during the Western Monarch Count from 2013 to 2022 (see Xerces

Society 2024a, unpaginated). The criteria for selection were all overwintering sites that contained 1,000 or more butterflies during at least 3 years in the 10-year period, 5,000 or more butterflies in 1 year of the 10-year period, or 1,000 or more butterflies during at least 2 years if the sites were discovered less than 10 years ago. We consider 1,000 monarchs to be a reasonable threshold for a site to be described as large; however, we require sites to meet the large-site threshold in 2 (if there are data limitations) or 3 years to demonstrate the site is suitable for overwintering (*i.e.*, that the number observed was not an anomaly). Similarly, we require sites to meet the higher threshold of 5,000 monarchs in 1 year because 5,000 is sufficient to demonstrate sites are suitable for overwintering without needing to be repeated. We chose 10 years as the timeframe because a large portion of the overwintering sites were monitored during this period as part of the Western Monarch Count (Xerces Society 2024a, unpaginated) and 10 years is long enough to capture the variability of site use by butterflies. Additionally, the timeframe is short enough that we expect the majority of sites still maintain conditions that support large numbers of monarchs.

For each overwintering site that met the abundance criteria, we identified the size and location of the site based on mapping data collected as part of the annual Western Monarch Count (see Xerces Society 2024b, unpaginated) to identify the core and shelter zones of each site. The core zone is the general area within an overwintering site that contains the trees where monarchs cluster. The shelter zone is the larger

area where trees, other vegetation, and topography provide wind protection and other microclimate conditions that support monarch clustering and/or aggregation in the core zone. We then applied a 152-meter (500-foot) buffer to identify the approximate location of the support zone surrounding each overwintering site. The support zone provides essential resources for monarchs, such as nectar plants, hydration sources, and protective landscape features that lessen the impacts from prevailing winds on groves of trees. The size of the support zone is recommended by species experts based on observations of monarch movements and overwintering resources (Xerces Society and Service 2023, *entire*). Each area proposed for designation as critical habitat includes the core, shelter, and support zones for one or more overwintering sites. Together, the three zones provide all of the physical and biological features essential to the conservation of monarchs at each overwintering site, though the condition of the features vary by site. The areas proposed for designation as critical habitat meet the occupancy criteria because they hosted overwintering monarchs in the recent past and over a reasonable timeframe for observation; therefore, they are considered occupied. No unoccupied areas meet the definition of critical habitat because they are unlikely to be suitable for overwintering.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because, in most cases, such lands lack physical or biological

features necessary for the monarch butterfly. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation.

Proposed Critical Habitat Designation

We are proposing seven units as critical habitat for the monarch butterfly. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the monarch butterfly. The areas we propose as critical habitat are within the following seven units: (1) Ventura County, (2) Santa Barbara County, (3) San Luis Obispo County, (4) Monterey County, (5) Santa Cruz County, (6) Alameda County, and (7) Marin County. Table 2 shows the proposed critical habitat units and the approximate area of each unit.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR MONARCH BUTTERFLY

[All proposed units are occupied by the species. Area estimates reflect all land within critical habitat unit and subunit boundaries.]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Ventura County	Public (Local)	98 (39)
	Private	395 (160)
2. Santa Barbara County:		
Subunit 2a	Public (State, Local)	139 (56)
	Private	826 (334)
Subunit 2b	Public (State)	42 (17)
	Private	389 (158)
3. San Luis Obispo County:		
Subunit 3a	Public (State)	86 (35)
	Private	384 (155)
Subunit 3b	Public (State, Local)	365 (148)
	Private	274 (111)
Subunit 3c	Public (Federal, State, Local)	258 (105)
	Private	145 (59)
4. Monterey County	Public (State, Local)	54 (22)
	Private	150 (61)
5. Santa Cruz County	Public (Federal, State, Local)	114 (46)
	Private	175 (71)

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR MONARCH BUTTERFLY—Continued

[All proposed units are occupied by the species. Area estimates reflect all land within critical habitat unit and subunit boundaries.]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
6. Alameda County	Public (Local)	54 (22)
	Private	207 (84)
7. Marin County	Public (Federal, State, Local)	53 (21)
	Private	189 (77)
Total		4,395 (1,778)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the monarch butterfly, below. The site names and numbers listed below match those used for the Western Monarch Count, an annual survey conducted since the 1980s that is now coordinated by Mia Monroe and the Xerces Society. We use the same site names because that is how these locations are colloquially known to the public, but it is important to note that the geographic boundaries of the critical habitat units do not match the boundaries of the overwintering sites that may be found online.

Unit 1: Ventura County

Unit 1 consists of 493 ac (199 ha) in Ventura County, California, and is composed of lands in city (98 ac (39 ha)) and private ownership (395 ac (160 ha)). It includes four areas: Arrundel Barranca (site #3142), Camino Real Park (site #3143), Harmon Barranca (site #3144), and Harbor Boulevard (site #3151). Part of the areas at Harmon Barranca and Camino Real Park are owned and managed by the City of Ventura. The monarch butterfly occupies the entire unit, and the unit contains all of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required within Unit 1 to address coastal development, unsuitable management practices in overwintering habitat, insecticide applications, herbicide applications resulting in loss of nectar sources, and impacts from climate change (e.g., drought, increased storm severity, extreme temperatures). Management activities, such as incompatible tree trimming or removal, nectar plant removal, and tropical milkweed planting, have the potential to impact the suitability of overwintering habitat used by monarchs in Unit 1. Special management focused on maintaining and/or enhancing the monarch

overwintering groves, vegetation and/or topography that surround the groves, and habitat features nearby that support overwintering monarchs will benefit the physical or biological features essential to the conservation of the species in this unit.

Unit 2: Santa Barbara County

Unit 2 consists of two subunits in Santa Barbara County, California. The monarch butterfly occupies each of the subunits in this unit, and the subunits contain all of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required within Unit 2 to address coastal development, unsuitable management practices in overwintering habitat, insecticide applications, herbicide applications resulting in loss of nectar sources, and impacts from climate change (e.g., drought, increased storm severity, extreme temperatures). Management activities, such as incompatible tree trimming or removal, nectar plant removal, and tropical milkweed planting, have the potential to impact the suitability of overwintering habitat used by monarchs in Unit 2. Special management focused on maintaining and/or enhancing the monarch overwintering groves, vegetation and/or topography that surround the groves, and habitat features nearby that support overwintering monarchs will benefit the physical or biological features essential to the conservation of the species in this unit.

Subunit 2a consists of 964 ac (390 ha) and is composed of lands in city (123 ac (50 ha)), county (1 ac (less than 1 ha)), State (14 ac (6 ha)), and private or other ownership (825 ac (334 ha)). It includes the following areas: Las Varas Ranch (site #2741), Ellwood/Sandpiper Golf Course (site #2747), Ellwood Central and West (site #2750), Ellwood Main (site #2751), Ellwood East (site #2752), Atascadero Creek (site #2765), Honda Valley (site #2772), Via Real and Padaro

(site #2782), Lambert Road (site #2783), Carpinteria Creek (site #2799), Oil and Gas Buffer Zone (site #2800), Padaro Lane 2 (site #3223), and Padaro Lane 3 (site #3224). Ellwood Mesa and the Sperling Preserve, which includes four areas in this subunit (Ellwood/Sandpiper Golf Course, Ellwood Central and West, Ellwood Main, and Ellwood East), is partially owned by the City of Goleta, the Land Trust for Santa Barbara County, and the University of California, and is managed for recreation and conservation. Part of the area at Atascadero Creek is within Goleta Beach County Park, owned by Santa Barbara County. Part of the area at Carpinteria Creek is within Carpinteria State Beach, owned by the State of California and managed by the California Department of Parks and Recreation. Part of the area at the Oil and Gas Buffer Zone is within Tar Pits Park, owned by the City of Goleta.

Subunit 2b consists of 431 ac (174 ha) and is composed of lands in State (42 ac (17 ha)) and private or other ownership (389 ac (158 ha)). It includes the following areas: The Nature Conservancy Preserve (site #2723), Rancho San Augustine (site #2725), Santa Anita Creek (site #2728), Gaviota State Beach (site #2731), Lower Cementario (site #2732), and Canada Alcatraz (north) (site #2733). Gaviota State Park, which includes part of three areas in this subunit (Gaviota State Beach, Lower Cementario, and Canada Alcatraz (north)), is owned by the State of California and managed by the California Department of Parks and Recreation. Part of the area identified as The Nature Conservancy Preserve is within the Jack and Laura Dangermond Preserve, owned by The Nature Conservancy.

Unit 3: San Luis Obispo County

Unit 3 consists of three subunits in San Luis Obispo County, California. The monarch butterfly occupies each of the subunits in this unit, and the subunits contain all of the physical or biological

features essential to the conservation of the species.

Special management considerations or protection may be required within Unit 3 to address coastal development, unsuitable management practices in overwintering habitat, insecticide applications, herbicide applications resulting in loss of nectar sources, and impacts from climate change (e.g., drought, increased storm severity, extreme temperatures). Management activities, such as incompatible tree trimming or removal, nectar plant removal, and tropical milkweed planting, have the potential to impact the suitability of overwintering habitat used by monarchs in Unit 3. Special management focused on maintaining and/or enhancing the monarch overwintering groves, vegetation and/or topography that surround the groves, and habitat features nearby that support overwintering monarchs will benefit the physical or biological features essential to the conservation of the species in this unit.

Subunit 3a consists of 470 ac (190 ha) and is composed of lands in State (86 ac (35 ha)) and private or other ownership (384 ac (155 ha)). It includes the following areas: Pismo Beach (North Beach Campground) (site #3060), Halcyon Hill (site #3067), overwintering site in Oceano (site #3082), Blacklake I (site #3083), Blacklake II (site #3089), Woodlands Village Monarch Habitat (site #3167), and Callendar Road (site #3214). Pismo State Beach (which includes parts of two areas in this subunit: Pismo Beach (North Beach Campground) and the overwintering site in Oceano) and Oceana Dunes State Vehicular Recreation Area (which includes part of Blacklake II and Callendar Road areas) are owned by California Department of Parks and Recreation. The Sand and Surf County Park encompasses a part of the overwintering sites in Oceano and is owned by the County of San Luis Obispo. The Land Conservancy of San Luis Obispo County owns part of three areas in this subunit (Blacklake I and II, and Callendar Road).

Subunit 3b consists of 639 ac (258 ha) and is composed of lands in city (15 ac (6 ha)), county (29 ac (12 ha)), State (321 ac (130 ha)), and private ownership (274 ac (111 ha)). It includes the following areas: Pecho Road (site #3043), Toro Creek (site #3051), Hazard Cove (site #3052), Monarch Lane (site #3053), Morro Bay State Park Campground (site #3055), Morro Bay Golf Course (site #3056), Camp Keep at Montana De Oro State Park (site #3058), Main and Surf Street (site #3076), Del Mar Park (site #3233), San Luis Obispo Creek (site

#3245), and Cayucos Creek Road and State Highway 1 (site #3266). California Department of Parks and Recreation manages areas within this subunit, including areas within Montaña de Oro State Park (Hazard Cove, Monarch Lane, and Camp Keep) and Morro Bay State Park (Morro Bay State Park Campground and Morro Bay Golf Course). The County of San Luis Obispo owns the Toro Creek Preserve (which includes the Toro Creek area), the Monarch Grove Natural Area (which includes the Monarch Lane area), and Hardie Park (which includes the Cayucos Creek Road and State Highway 1 area). The City of Morro Bay owns Del Mar Park, which contains part of the Del Mar Park area. Part of the area at San Luis Obispo Creek is within the Dana Abode land, which is owned by the City of San Luis Obispo.

Subunit 3c consists of 403 ac (163 ha) and is composed of lands in State (126 ac (51 ha)), Federal (15 ac (6 ha)), village (117 ac (47 ha)) and private ownership (145 ac (59 ha)). It includes the following areas: Sebastian's Store (site #3045), Fiscalini Ranch (site #3046), Whitaker Flat (site #3071), Hamlet (site #3073), and overwintering site at Ragged Point 3 (site #3258). Hearst San Simeon State Park, which is owned by the California Department of Parks and Recreation, contains portions of both the Whitaker Flat and Hamlet areas. The Fiscalini Ranch area is partially owned by the village of Cambria Community Services District. A portion of the overwintering sites at Ragged Point 3 is in the Los Padres National Forest, which is owned by the U.S. Forest Service.

Unit 4: Monterey County

Unit 4 consists of 204 ac (83 ha) in Monterey County and is composed of lands in city (2 ac (1 ha)), State (52 ac (21 ha)), and private ownership (150 ac (61 ha)). It includes the following areas: overwintering site near Big Sur (site #2920), Andrew Molera State Park (site #2924), Pacific Grove Monarch Butterfly Sanctuary (site #2935), and overwintering site in Monterey (site #3192). A portion of the Andrew Molera State Park is owned and managed by the California Department of Parks and Recreation. Part of the area at the Pacific Grove Monarch Butterfly Sanctuary is in the baseball park, which is owned by the City of Pacific Grove. The monarch butterfly occupies the entire unit, and the unit contains all of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required within Unit 4 to address coastal development, unsuitable management practices in

overwintering habitat, insecticide applications, herbicide applications resulting in loss of nectar sources, and impacts from climate change (e.g., drought, increased storm severity, extreme temperatures). Management activities, such as incompatible tree trimming or removal, nectar plant removal, and tropical milkweed planting, have the potential to impact the suitability of overwintering habitat used by monarchs in Unit 4. Special management focused on maintaining and/or enhancing the monarch overwintering groves, vegetation and/or topography that surround the groves, and habitat features nearby that support overwintering monarchs will benefit the physical or biological features essential to the conservation of the species in this unit.

Unit 5: Santa Cruz County

Unit 5 consists of 289 ac (117 ha) in Santa Cruz County and is composed of lands in city (3 ac (1 ha)), county (7 ac (3 ha)), State (87 ac (35 ha)), Federal (16 ac (7 ha)), and private ownership (175 ac (71 ha)). It includes the following areas: Moran Lake (site #2983), Natural Bridges State Beach (site #2998), Lighthouse Field (site #3000), and Ocean View and Marine Drive (site #3010). Part of the area of Moran Lake is in Moran Lake Park, which is owned by the County of Santa Cruz. The City of Santa Cruz owns parts of three of these areas in this subunit (Moran Lake, Natural Bridges State Park, and Lighthouse Field). A portion of both the Natural Bridges State Beach and the Lighthouse Field are owned and managed by the California Department of Parks and Recreation. Part of the Ocean View and Marine Drive area is contained in the California Coastal National Monument, which is owned by the United States Bureau of Land Management. The monarch butterfly occupies the entire unit, and the unit contains all of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required within Unit 5 to address coastal development, unsuitable management practices in overwintering habitat, insecticide applications, herbicide applications resulting in loss of nectar sources, and impacts from climate change (e.g., drought, increased storm severity, extreme temperatures). Management activities, such as incompatible tree trimming or removal, nectar plant removal, and tropical milkweed planting, have the potential to impact the suitability of overwintering habitat used by monarchs in Unit 5. Special

management focused on maintaining and/or enhancing the monarch overwintering groves, vegetation and/or topography that surround the groves, and habitat features nearby that support overwintering monarchs will benefit the physical or biological features essential to the conservation of the species in this unit.

Unit 6: Alameda County

Unit 6 consists of 261 ac (105 ha) in Alameda County and is composed of lands in city (54 ac (22 ha)) and private ownership (207 ac (84 ha)). It includes the following areas: Ardenwood Historical Farm (site #2831), Chuck Corica Golf Course (site #2832), and San Leandro Golf Course (site #2833). A portion of the Ardenwood Historical Farm is owned by the City of Fremont. A part of the San Leandro Golf Course is within Marina Park, which is owned by the city of San Leandro. The monarch butterfly occupies the entire unit, and the unit contains all of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required within Unit 6 to address coastal development, unsuitable management practices in overwintering habitat, insecticide applications, herbicide applications resulting in loss of nectar sources, and impacts from climate change (e.g., drought, increased storm severity, extreme temperatures). Management activities, such as incompatible tree trimming or removal, nectar plant removal, and tropical milkweed planting, have the potential to impact the suitability of overwintering habitat used by monarchs in Unit 6. Special management focused on maintaining and/or enhancing the monarch overwintering groves, vegetation and/or topography that surround the groves, and habitat features nearby that support overwintering monarchs will benefit the species physical or biological features essential to the conservation of the in this unit.

Unit 7: Marin County

Unit 7 consists of 242 ac (98 ha) in Marin County and is composed of lands in county (8 ac (3 ha)), State (1 ac (less than 1 ha)), Federal (43 ac (18 ha)), and private ownership (189 ac (77 ha)). It includes the following areas: Purple Gate (site #2899), Chapman Ravine (site #2903), Alder Road (site #2912), Charlotte near Muir Beach (site #3226), and Juniper Road and Kale Road (site #3227). The United States National Park Service owns and manages the Point Reyes National Seashore (which contains a portion of the Purple Gate

and Alder Road areas) and the Golden Gate National Recreation Area (which contains a portion of the Chapman Ravine and Charlotte near Muir Beach areas). A part of the Chapman Ravine area is contained in Stinson Beach, which is owned by the California Department of Fish and Wildlife. Portions of the Chapman Ravine area are also contained in the Upton County Beach and Village Green, both of which are owned by the Marin County Parks Department. The Marin County Parks Department also owns Agate Beach, which contains a portion of the Alder Road area. The monarch butterfly occupies the entire unit, and the unit contains all of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required within Unit 7 to address coastal development, unsuitable management practices in overwintering habitat, insecticide applications, herbicide applications resulting in loss of nectar sources, and impacts from climate change (e.g., drought, increased storm severity, extreme temperatures). Management activities, such as incompatible tree trimming or removal, nectar plant removal, and tropical milkweed planting, have the potential to impact the suitability of overwintering habitat used by monarchs in Unit 7. Special management focused on maintaining and/or enhancing the monarch overwintering groves, vegetation and/or topography that surround the groves, and habitat features nearby that support overwintering monarchs will benefit the physical or biological features essential to the conservation of the species in this unit.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of

critical habitat as a whole for the conservation of a listed species (50 CFR 402.02).

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during formal consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation. Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written

concurrence; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (e.g., land management plans issued by the Bureau of Land Management in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires that our **Federal Register** documents “shall, to the maximum extent practicable also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify [critical] habitat, or may be affected by such designation.” Activities that may be affected by designation of critical habitat for the monarch butterfly include those that may affect the physical or biological features of the monarch butterfly’s critical habitat (see **Physical or Biological Features Essential to the Conservation of the Species**).

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented

to provide for these ecological needs; and

- (4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the DoD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the monarch butterfly to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are DoD lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

Approved INRMPs

Vandenberg Space Force Base, Santa Barbara County, California

Vandenberg Space Force Base (VSFB) occupies approximately 99,579 ac (40,298 ha) and extends along 42 mi (68 km) of the California coast in Santa Barbara County and varies from 5 mi (8 km) to 15 mi (24 km) in width. Monarch breeding and nectaring habitat is widely distributed throughout VSFB, and there are currently 34 known overwintering sites. Overwintering groves on the facility range in size from 0.13 to 556 ac (0.05 to 25 ha), and the dominant tree species include blue gum eucalyptus, Monterey pine, Monterey cypress, and coast live oak. We have identified 439 ac (178 ha) of overwintering habitat on the facility that meets the definition of critical habitat for the monarch butterfly.

The INRMP for VSFB was recently updated in coordination with the

Service (VSFB 2024, entire). The INRMP includes measures for management of threatened and endangered species and their habitats through a specific management plan called the Threatened and Endangered Species Management Plan (Management Plan). The Management Plan addresses all special-status plant and wildlife species (*i.e.*, species that are federally listed species or legally protected by other regulations) that are known or have potential to occur at VSFB, including monarch butterflies, and provides resource managers a framework for implementing an effective, long-term management program for protection and conservation of special-status plants and animals and their habitats. The primary objective of the natural resources program on VSFB is to ensure continued access to land and airspace required to accomplish the facility’s mission by maintaining these resources in a healthy condition. Natural resources management, in particular threatened and endangered species management, has been identified by the facility as a critical mission component because biodiversity conservation contributes to overall ecosystem integrity and sustainability, which in turn supports the facility’s mission by maintaining natural landscapes for realistic military testing, training, and operations.

The Management Plan provides a conservation benefit for the monarch butterfly and its breeding and overwintering habitats that occur on VSFB and outlines a clear, measurable path to implementation of the actions being taken to conserve the species and its habitats (VSFB 2024, addendum to Tab D).

Key threats identified in the INRMP to the monarch butterfly include habitat degradation, loss, or lack of active management to maintain grove conditions; harassment and disturbance; pest management; and woodcutting practices. Management actions identified and implemented through the INRMP for these threats include (1) conserving, managing, enhancing, and restoring monarch butterfly overwintering sites and surrounding habitat; (2) using only native, insecticide-free plants for habitat restoration and enhancement actions; (3) conducting overwintering site habitat assessments and developing and implementing long-term management plans; (4) avoiding the use of pesticides within 152 m (500 ft) of overwintering sites, particularly when monarchs may be present; (5) not planting any type of milkweed at or adjacent to overwintering sites (to assist in maintaining normal migration

behavior); (6) monitoring monarchs and assessing conditions of overwintering sites during the Western Monarch Count, and monitoring monarch populations before and after launches that occur during the overwintering time period; (7) conserving known areas with milkweed stands from disturbance, including pesticides; (8) planting insecticide- and fungicide-free native milkweed and nectar plants in migratory and breeding areas; (9) conducting management actions within monarch breeding and migratory habitat outside of the time when monarchs are likely to be present; and (10) implementing grazing best management practices to avoid negative impacts on breeding monarchs.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the VSFB INRMP and that conservation efforts identified in the INRMP will provide a benefit to the monarch butterfly. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 439 ac (178 ha) of habitat in this proposed critical habitat designation because of this exemption.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if the benefits of exclusion outweigh those of inclusion, so long as exclusion will not result in extinction of the species concerned. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the “2016 Policy”; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor’s opinion entitled “The Secretary’s Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act” (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the

benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.*, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation

efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Order (E.O.) 14094 amends and reaffirms E.O. 12866 and E.O. 13563 and directs Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a “significant regulatory action” and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of \$200 million or more in any given year (section 3(f)(1) of E.O. 12866 as amended by E.O. 14094). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the monarch butterfly is likely to exceed the threshold for a regulatory action significant under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the monarch butterfly (IEc 2024, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In

particular, the screening analysis considers baseline costs (*i.e.*, absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation.

The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our economic analysis of the proposed critical habitat designation for the monarch butterfly; our economic analysis is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the monarch butterfly, first we identified, in the IEM dated June 7, 2024, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management including coastal development, road and bridge maintenance, and railroad maintenance projects (Army Corps of Engineers, Bureau of Land Management, Department of Defense, Federal Highway Administration, Federal Rail Administration, National Park Service, U.S. Forest Service); (2) management practices in overwintering habitat; (3) recreation activities; (4) insecticide applications; (5) herbicide applications; (6) habitat restoration activities; (7)

pipeline and utility crossing maintenance and/or installation (Army Corps of Engineers, Federal Energy Regulatory Commission); and (8) maintenance of interstate pipeline rights of way and electrical transmission lines (Federal Energy Regulatory Commission) (Service 2024c, pp. 8–9).

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the monarch butterfly is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the monarch butterfly's critical habitat (Service 2024c, *entire*). Because the designation of critical habitat for monarch butterfly is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species itself. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the

probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the monarch butterfly totals 4,395 ac (1,778 ha) in seven units, all of which are occupied by the species during their migratory season of fall and winter. In these areas, any actions that may affect the species' habitat would also affect designated critical habitat. We anticipate consultations for projects where the species is temporarily absent (*e.g.*, during the summer months) but critical habitat is present to allow for movement of the species to be largely informal and resulting in mostly administrative costs and minor project adjustments to minimize impacts. For those formal consultations that may occur, they would most likely be of a magnitude that would involve both the species and critical habitat, and any reasonable and prudent alternatives to avoid jeopardy and/or adverse modification would be the same. Based on historical economic activity levels within the seven counties overlapping proposed critical habitat for the monarch butterfly, staff may be required to complete 27 formal consultations and 17 informal consultations per year on average. The cost of addressing critical habitat as part of these consultations may range from \$42,000 to \$290,000 per year, depending on how many consultations are triggered by critical habitat alone. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not exceed \$200 million in any single year; therefore, they would not be significant.

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect would be subject to consultations that may involve private entities as third parties are coastal development that may occur on private lands. However, based on coordination efforts with State and local agencies, the cost to private entities within these sectors is expected to be relatively minor (administrative costs of less than \$3,500 per consultation effort); therefore, they would not be significant (*i.e.*, exceed \$200 million in a single year).

In conclusion, the probable incremental economic impacts of the monarch butterfly critical habitat designation are expected to be limited to additional administrative effort as well

as minor costs of conservation efforts resulting from future section 7 consultations. Because all of the proposed critical habitat units are considered to be occupied by the species, and incremental economic impacts of critical habitat designation, other than administrative costs, are expected to be limited, few actions are anticipated to result in section 7 consultation for critical habitat only and associated project modifications. Thus, the annual administrative burden is unlikely to reach \$200 million, which is the threshold for a significant regulatory action under E.O. 12866.

We are soliciting data and comments from the public on the economic analysis discussed above. During the development of a final designation, we will consider the information presented in the economic analysis and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2), our implementing regulations at 50 CFR 424.19, and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of “critical habitat.” However, we must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we also consider whether a national security or homeland security impact might exist on lands owned or managed by DoD or DHS. In preparing this proposal, we have determined that, other than the land exempted under section 4(a)(3)(B)(i) of the Act based upon the existence of an approved INRMP (see Exemptions, above), the lands within the proposed designation of critical habitat for the monarch butterfly are not owned or managed by DoD or DHS. Therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in

addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are approved and permitted conservation agreements or plans covering the species in the area—such as safe harbor agreements (SHAs), CCAAs, “conservation benefit agreements” or “conservation agreements” (CBAs) (CBAs are a new type of agreement replacing SHAs and CCAAs in use after April 2024 (89 FR 26070; April 12, 2024)), or HCPs—or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

Summary of Exclusions Considered Under 4(b)(2) of the Act

In preparing this proposal, we have determined that no HCPs or other management plans for the monarch butterfly currently exist that cover lands included in the proposed critical habitat designation, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

However, if through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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

Executive Order 14094 amends and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; title II of Pub. L. 104–121, March 29, 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*,

small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, only Federal action agencies would be

directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects “to the extent permitted by law” when undertaking actions identified as significant energy actions (66 FR 28355; May 22, 2001). E.O. 13211 defines a “significant energy action” as an action that (i) meets the definition of a “significant regulatory action” under E.O. 12866, as amended by E.O. 14094; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

- (1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental

mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rulemaking would significantly or uniquely affect small governments because it is not anticipated to produce a Federal mandate of \$100 million or more (adjusted annually for inflation) in

any given year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the proposed critical habitat designation would significantly or uniquely affect small government entities. Therefore, a small government agency plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the monarch butterfly in a takings implications assessment. The Act does not authorize the Services to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the monarch butterfly, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat

directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects on the States, or on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rulemaking does not contain information collection requirements,

and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a document outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g.*, *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations

with Native American Tribal Governments; 59 FR 22951, May 4, 1994), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations (ANCs) on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the monarch butterfly, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Midwest

Region Headquarters (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Midwest Region Headquarters.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, amend paragraph (h) by adding an entry for “Butterfly, monarch” to the List of Endangered and Threatened Wildlife in alphabetical order under INSECTS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * *				
INSECTS				
* * * * *				
Butterfly, monarch	<i>Danaus plexippus</i>	Wherever found	T	Federal Register citation when published as a final rule; 50 CFR 17.47(k); ^{4d} 50 CFR 17.95(i). ^{CH}
* * * * *				

■ 3. Further amend § 17.47, as proposed to be amended at 89 FR 63888 (August 6, 2024) and 89 FR 79857 (October 10, 2024), by adding paragraph (k) to read as follows:

§ 17.47 Species-specific rules—insects.
* * * * *

(k) Monarch butterfly (*Danaus plexippus*)—(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the monarch butterfly in the contiguous United States, Puerto Rico, and the U.S. Virgin Islands. Except as provided

under paragraph (k)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

- (i) Import or export, as set forth at § 17.21(b) for endangered wildlife.
- (ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.
- (iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions*. In regard to this species, you may:

- (i) Conduct activities as authorized by a permit under § 17.32.
- (ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.
- (iii) Take, as set forth at § 17.31(b).
- (iv) Possess and engage in other acts with unlawfully taken wildlife, as set

forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Activities that may maintain, enhance, remove, or establish milkweed and nectar plants within the breeding and migratory range that do not result in conversion of native or naturalized grassland, shrubland, or forested habitats, which for the purposes of this paragraph (k) includes the contiguous United States (except overwintering sites), Puerto Rico, and the U.S. Virgin Islands. These activities include the following:

(1) Habitat restoration and management activities, such as mowing and haying native rangeland, that sustain grassland, shrubland, or forested land with monarch butterfly habitat.

(2) Livestock grazing and routine ranching activities, including rotational grazing, patch-burn grazing, vegetation and invasive species management, other grazing practices implemented to make pasture and rangelands productive, construction and maintenance of fences, the gathering and management of livestock, and the development and maintenance of watering facilities for livestock.

(3) Routine agricultural activities, including plowing, drilling, disking, mowing, and other mechanical manipulation and management of lands already in use for agricultural production (e.g., conventional row crops, pasture, hay fields, orchards, and vineyards). This exception also includes activities in direct support of cultivated agriculture, such as replacement, upgrades, maintenance, and operation of existing infrastructure (e.g., buildings, irrigation conveyance structures, fences, and roads), and routine implementation and maintenance of agricultural conservation practices (e.g., terraces, dikes, grassed waterways, and conservation tillage).

(4) Fire management actions (e.g., prescribed burns, cultural burns, hazardous fuel reduction activities, vegetation management, maintenance of fuel breaks and minimum clearance requirements, and other fuels reduction activities).

(5) Silviculture practices and forest management activities that use State-approved best management practices.

(6) Maintenance, enhancement, removal, and establishment of milkweed and nectar plants on residential and other developed properties.

(7) Vegetation management activities, such as mowing, ground disturbance, and other management activities, that remove milkweed and/or nectar plants

when conducted at times of year when monarchs are not likely present.

(B) Activities intended to conserve the species conducted by participants in a comprehensive conservation plan for the monarch butterfly developed by or in coordination with a State agency or agencies, or their agent(s), or implementation of a conservation program for the monarch butterfly developed by a Federal agency in fulfillment of their responsibilities under section 7(a)(1) of the Act.

(C) Maintenance or improvement of monarch overwintering habitat in the United States consistent with a site-specific Service-approved overwintering site land management plan for the conservation of monarchs at the site. Overwintering habitat is defined as habitat that provides overwintering monarch butterflies with the abiotic and biotic conditions necessary for clustering, aggregating, and feeding (nectaring).

(D) Vehicle strikes.

(vi) Take caused by:

(A) Nonlethal collection, possession, or captive-rearing of 250 or fewer monarchs per year at any one location or facility (such as a home, botanical garden, school, or business). Collection is defined as nonlethal capture and holding of live monarchs at any life stage. Captive-rearing is defined as the holding of caterpillars, pupae (chrysalises), or adults and raising them in captivity long enough for them to move to the next life stage or to reproduce. This exception does not apply to wild clustering monarchs.

(B) Release of 250 or fewer captively reared or held monarch adults per year by any one location or facility (such as a home, botanical garden, school, or business).

(C) Nonlethal scientific research and educational activities involving 250 or fewer monarchs per year at any one location or facility (such as a home, botanical garden, school, business, or research facility). Activities associated with scientific research and education may include collection for purposes of handling, netting, sampling for disease, tagging of monarchs, and life cycle and specimen observations of monarchs. This exception does not apply to wild clustering monarchs.

(vii) Possess dead monarchs.

(viii) Sell or offer for sale 250 or fewer captively reared monarchs per year from any one location or facility (such as a home, botanical garden, school, business).

■ 4. Amend § 17.95 in paragraph (i) by adding an entry for “Monarch Butterfly (*Danaus plexippus*)” after the entry for “Island Marble Butterfly (*Euchloe*

ausonides insulanus)” to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects*.

* * * * *

Monarch Butterfly (*Danaus plexippus*)

(1) Critical habitat units are depicted for Alameda, Marin, Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura Counties, California, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of monarch butterfly consist of the following components:

(i) Groves of trees (e.g., blue gum eucalyptus, Monterey pine, Monterey cypress, Coast redwood, coast live oak, Douglas fir, Torrey pine, western sycamore, bishop pine) that serve as sites for overwintering monarchs to cluster along the coast of California.

(ii) Trees, herbaceous or shrubby vegetation, and/or topography surrounding overwintering groves that contribute to the following microclimate conditions:

(A) Indirect or dappled sunlight;

(B) Water sources (e.g., stream, pond, or moist soil) for hydration;

(C) Defense against freezing temperatures; and

(D) Protection from strong winds.

(iii) Supportive features nearby (i.e., within 152 meters (500 feet) of) overwintering groves, including the following:

(A) Flowering plants for nectar;

(B) Water sources (e.g., stream, pond, or moist soil) for hydration; and

(C) Protective landscape features (e.g., topography or vegetation) that lessen the impacts of prevailing winds on groves of trees.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) Data layers defining map units were created using mapping data collected as part of the annual Western Monarch Count (see Xerces Society 2024b, unpaginated). Critical habitat units were then mapped using “NAD 1983 California (Teale) Albers (Meters).” The site names and numbers on the maps in this entry match those used for the Western Monarch Count annual survey. The maps in this entry, as supplemented by text in this entry, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map

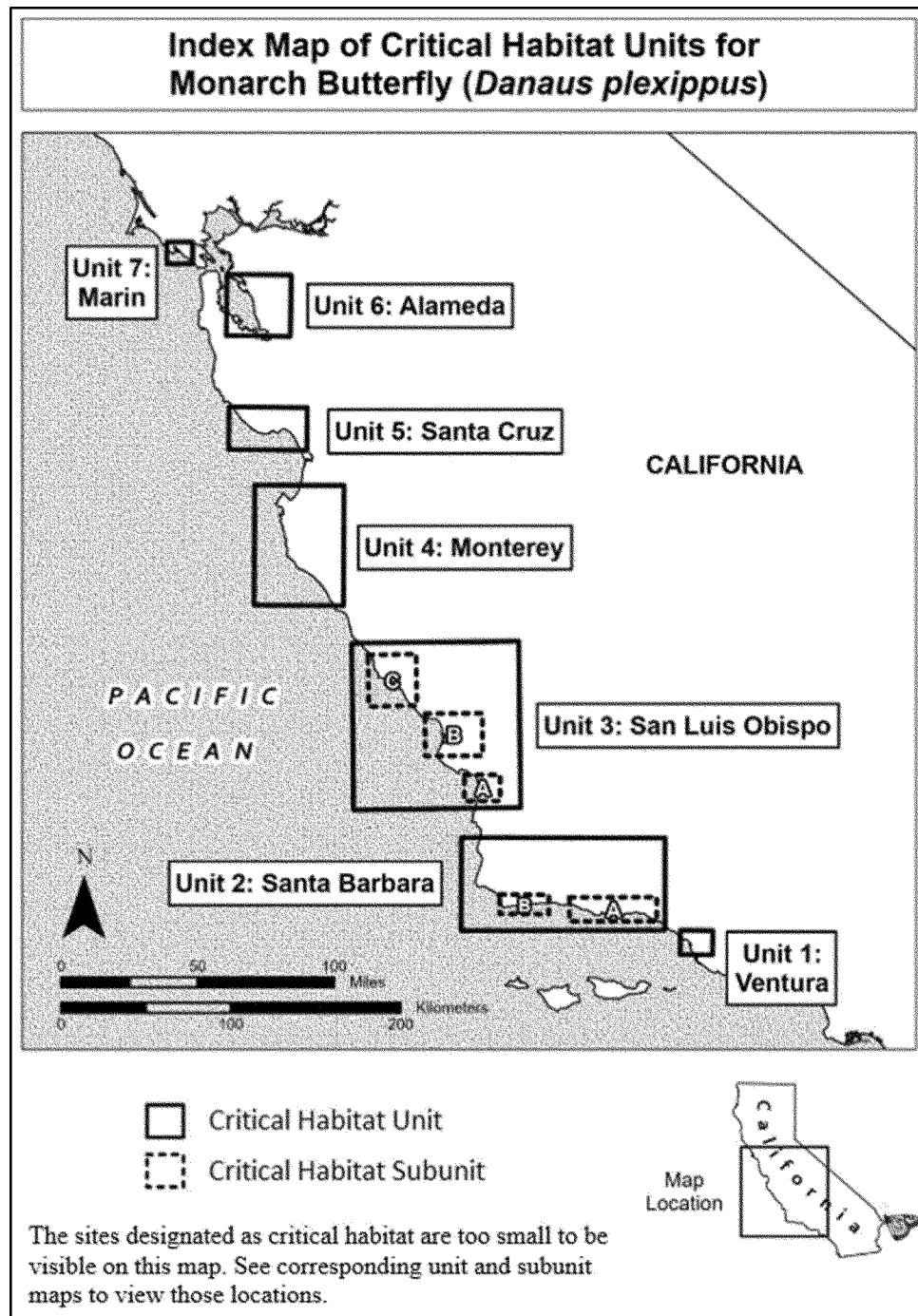
is based are available to the public at <https://www.regulations.gov> at Docket No. FWS-R3-ES-2024-0137, and at the regional office responsible for this designation. You may obtain regional

office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Monarch Butterfly (*Danaus plexippus*) paragraph (5)

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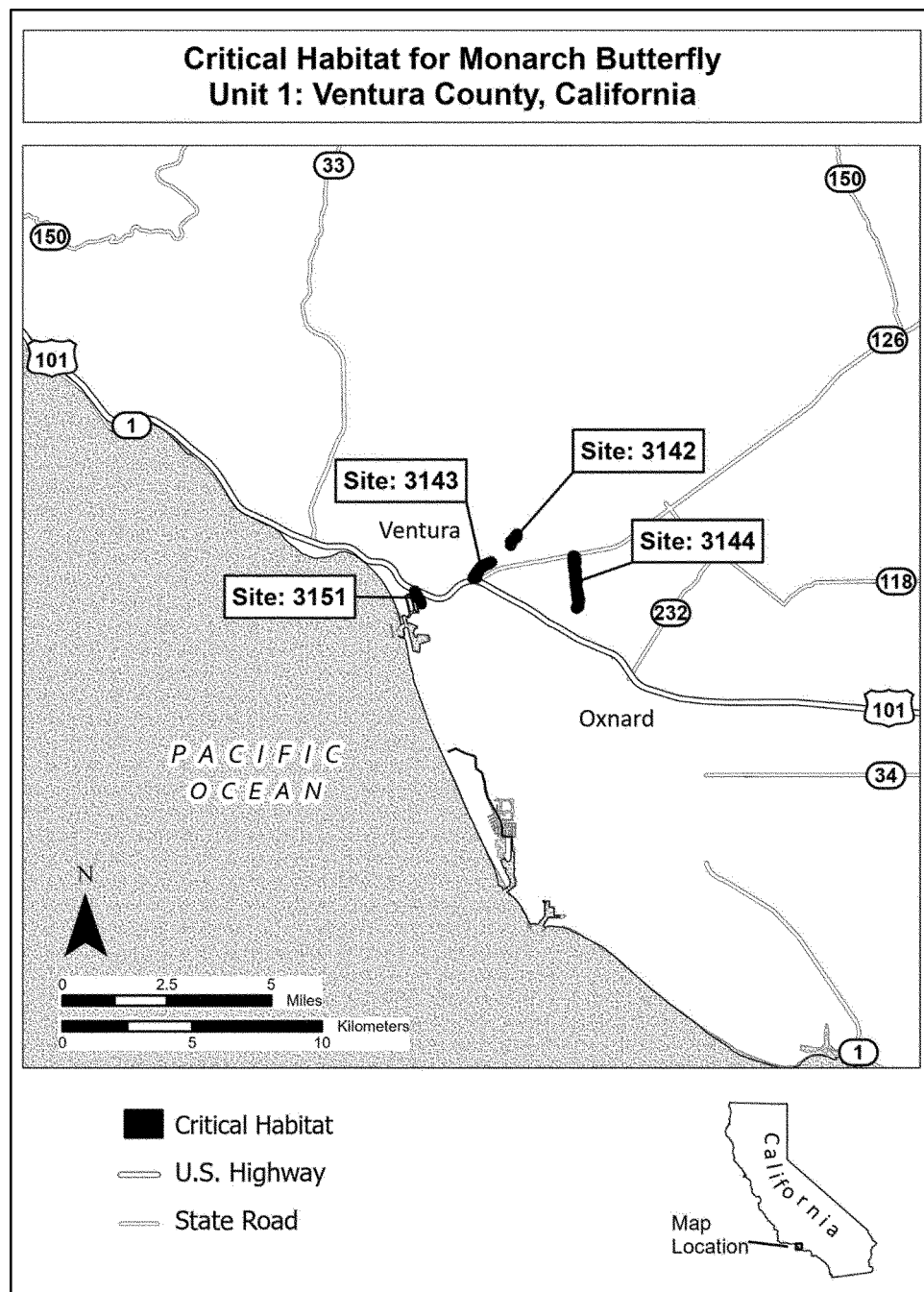
(6) Unit 1: Ventura County.

(i) Unit 1 consists of 493 ac (199 ha) in Ventura County, California. It includes four areas: Arrundel Barranca

(site #3142), Camino Real Park (site #3143), Harmon Barranca (site #3144), and Harbor Boulevard (site #3151).

(ii) Map of Unit 1 follows:

Figure 2 to Monarch Butterfly (*Danaus plexippus*) paragraph (6)(ii)



(7) Unit 2: Santa Barbara County.

(i) Unit 2 consists of the following two subunits in Santa Barbara County, California:

(A) Subunit 2a consists of 964 ac (390 ha). It includes the following areas: Las Varas Ranch (site #2741), Ellwood/Sandpiper Golf Course (site #2747), Ellwood Central and West (site #2750),

Ellwood Main (site #2751), Ellwood East (site #2752), Atascadero Creek (site #2765), Honda Valley (site #2772), Via Real and Padaro (site #2782), Lambert Road (site #2783), Carpinteria Creek (site #2799), Oil and Gas Buffer Zone (site #2800), Padaro Lane 2 (site #3223), and Padaro Lane 3 (site #3224).

(B) Subunit 2b consists of 431 ac (174 ha). It includes the following areas: The Nature Conservancy Preserve (site #2723), Rancho San Augustine (site #2725), Santa Anita Creek (site #2728), Gaviota State Beach (site #2731), Lower Cementario (site #2732), and Canada Alcatraz (north) (site #2733).

(ii) Maps of Unit 2 follow:

Figure 3 to Monarch Butterfly (*Danaus plexippus*) paragraph (7)(ii)

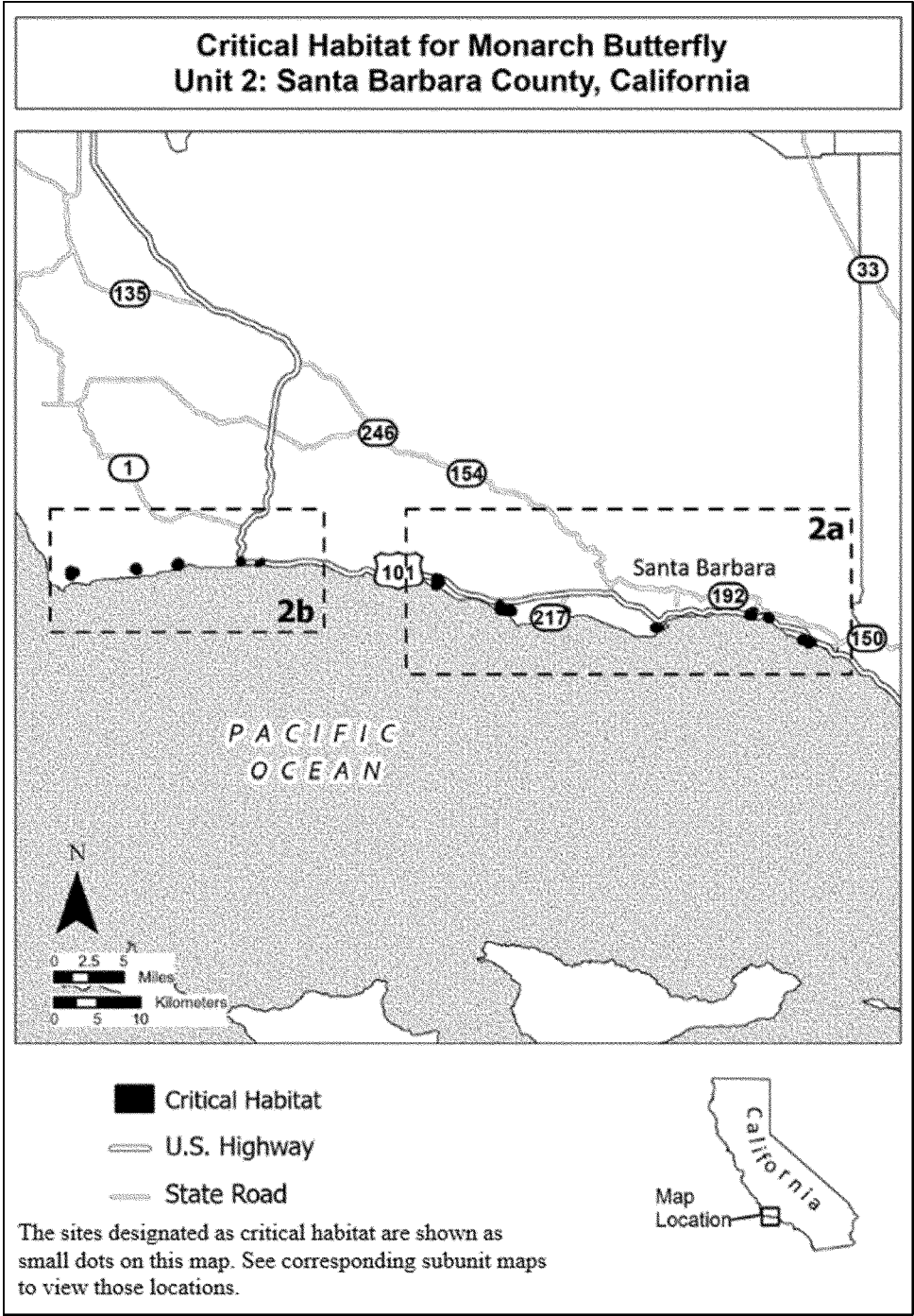


Figure 4 to Monarch Butterfly (*Danaus plexippus*) paragraph (7)(ii)

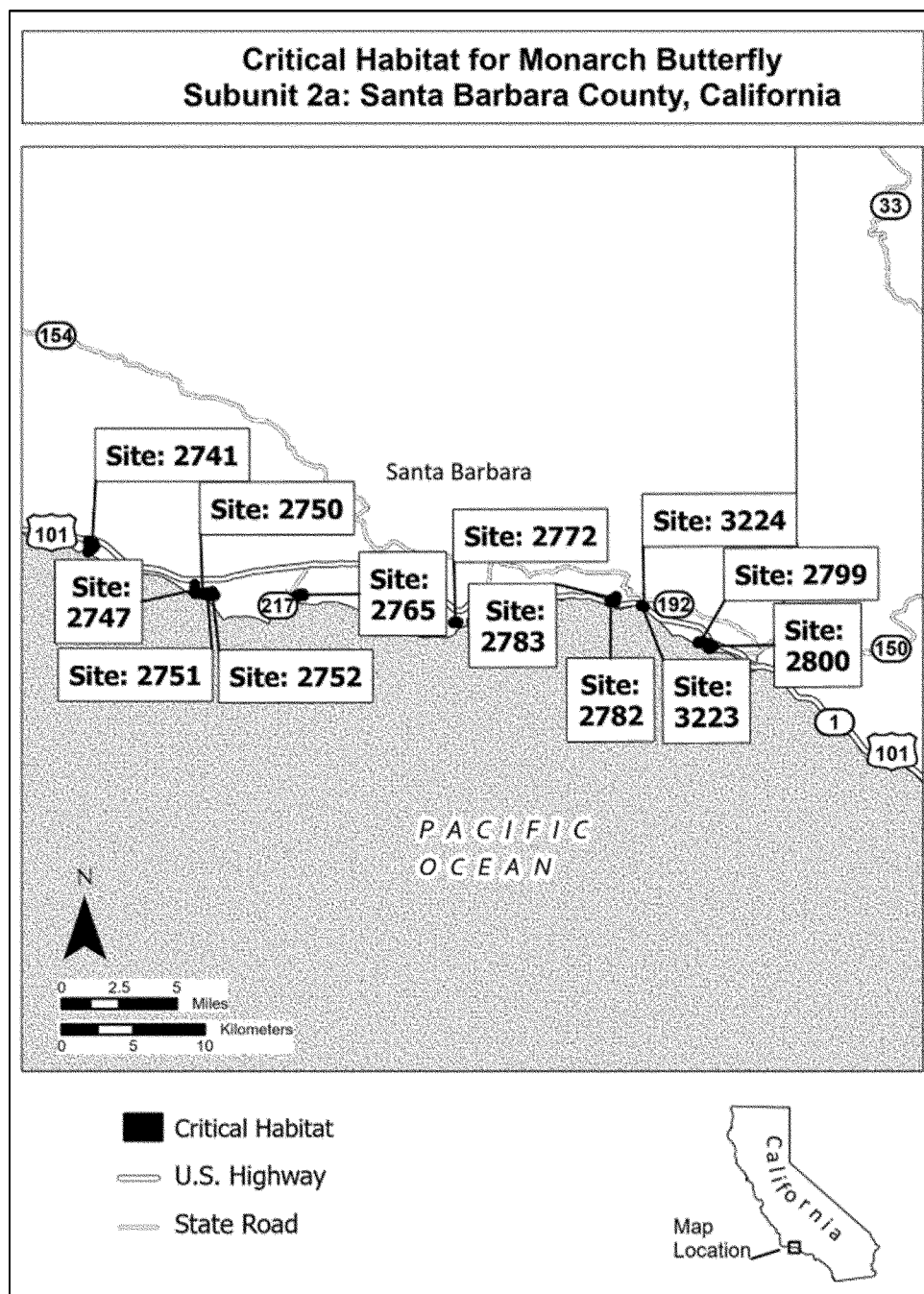
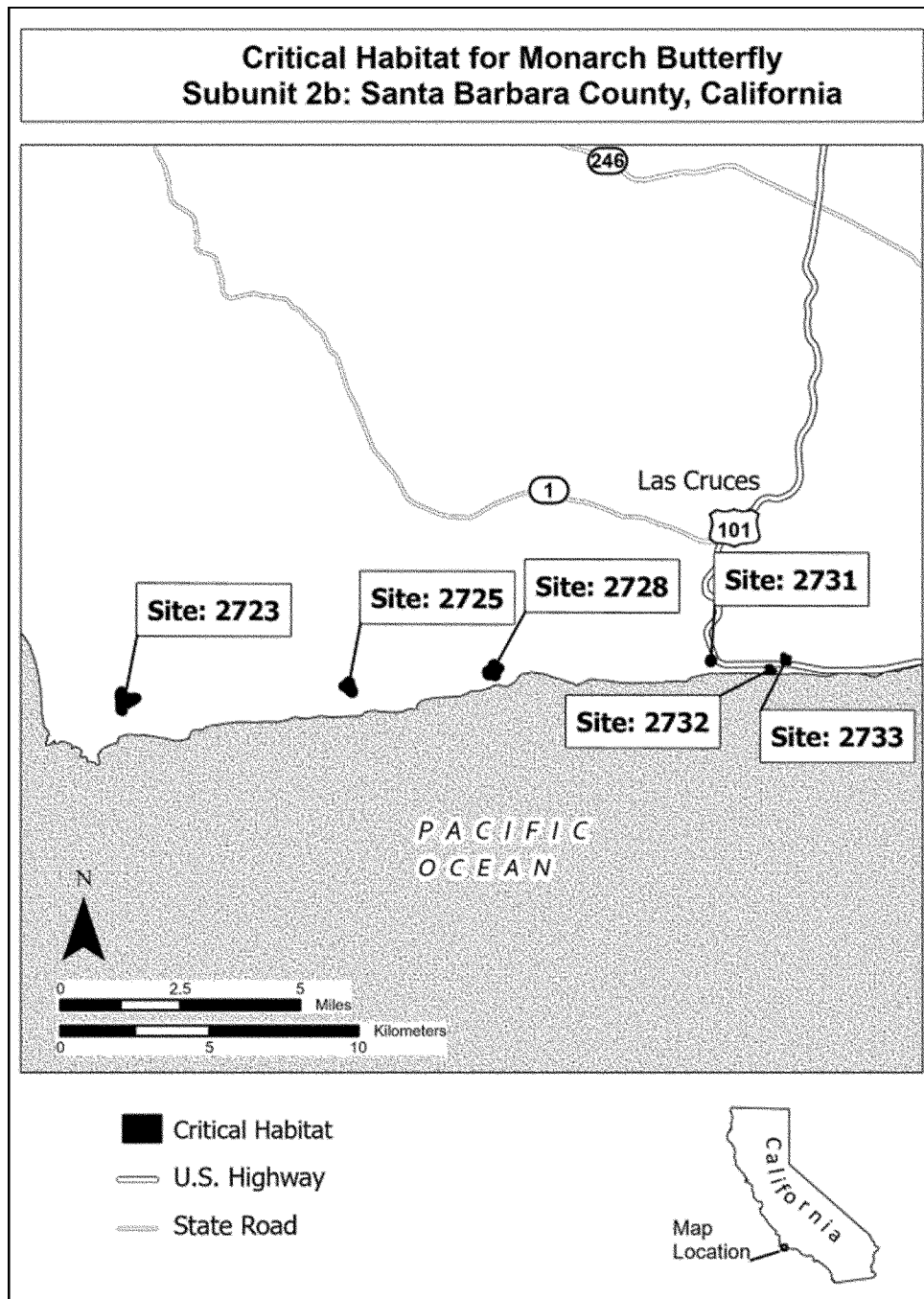


Figure 5 to Monarch Butterfly (*Danaus plexippus*) paragraph (7)(ii)



(8) Unit 3: San Luis Obispo County.

(i) Unit 3 consists of the following three subunits in San Luis Obispo County, California:

(A) Subunit 3a consists of 470 ac (190 ha). It includes the following areas: Pismo Beach (North Beach Campground) (site #3060), Halcyon Hill (site #3067), overwintering site in Oceano (site #3082), Blacklake I (site #3083), Blacklake II (site #3089), Woodlands Village Monarch Habitat

(site #3167), and Callendar Road (site #3214).

(B) Subunit 3b consists of 639 ac (258 ha). It includes the following areas: Pecho Road (site #3043), Toro Creek (site #3051), Hazard Cove (site #3052), Monarch Lane (site #3053), Morro Bay State Park Campground (site #3055), Morro Bay Golf Course (site #3056), Camp Keep at Montana De Oro State Park (site #3058), Main and Surf Street (site #3076), Del Mar Park (site #3233),

San Luis Obispo Creek (site #3245), and Cayucos Creek Road and State Highway 1 (site #3266).

(C) Subunit 3c consists of 403 ac (163 ha). It includes the following areas: Sebastian's Store (site #3045), Fiscalini Ranch (site #3046), Whitaker Flat (site #3071), Hamlet (site #3073), and overwintering site at Ragged Point 3 (site #3258).

(ii) Maps of Unit 3 follow:

Figure 6 to Monarch Butterfly (*Danaus plexippus*) paragraph (8)(ii)

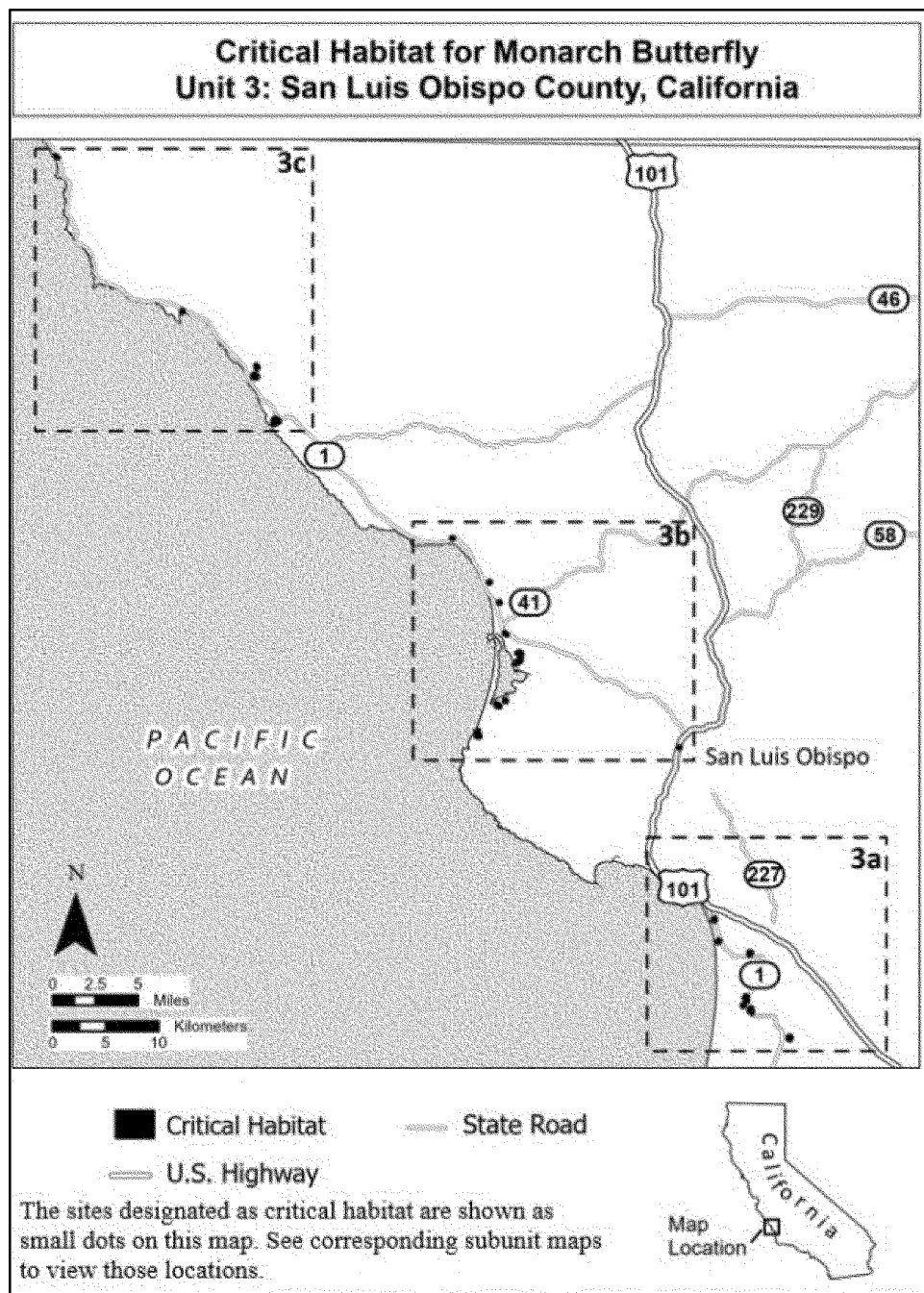


Figure 7 to Monarch Butterfly (*Danaus plexippus*) paragraph (8)(ii)

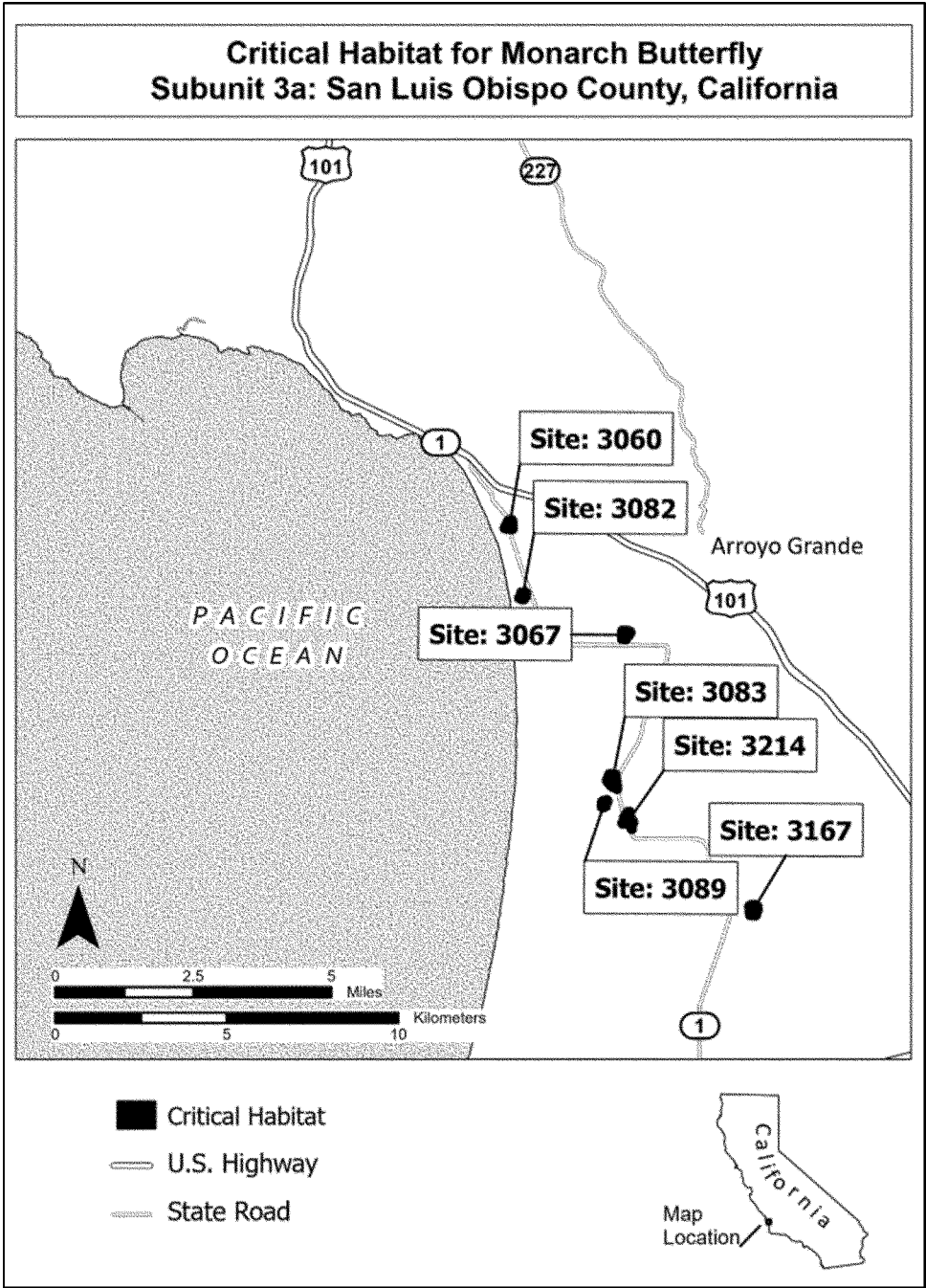


Figure 8 to Monarch Butterfly (*Danaus plexippus*) paragraph (8)(ii)

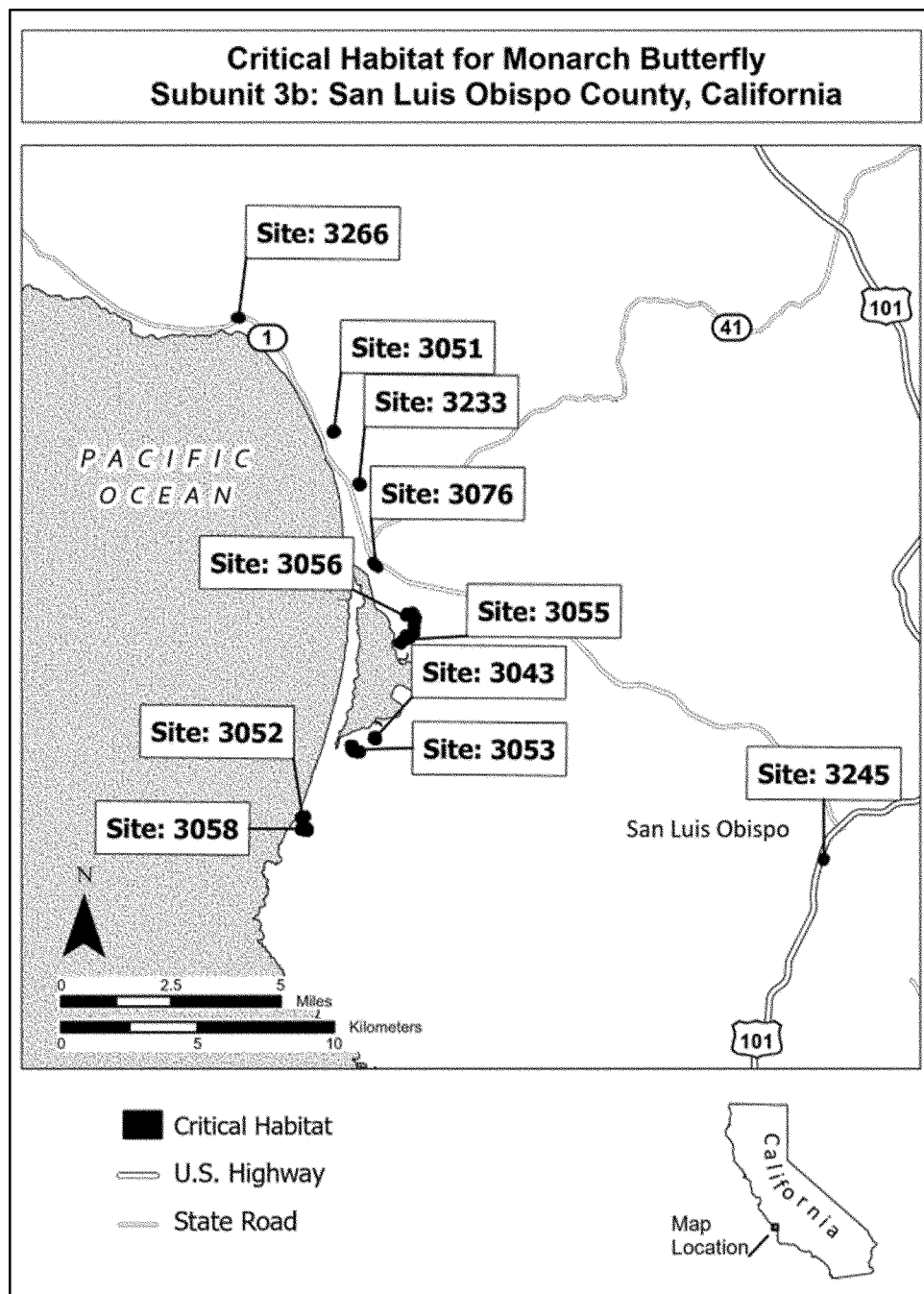
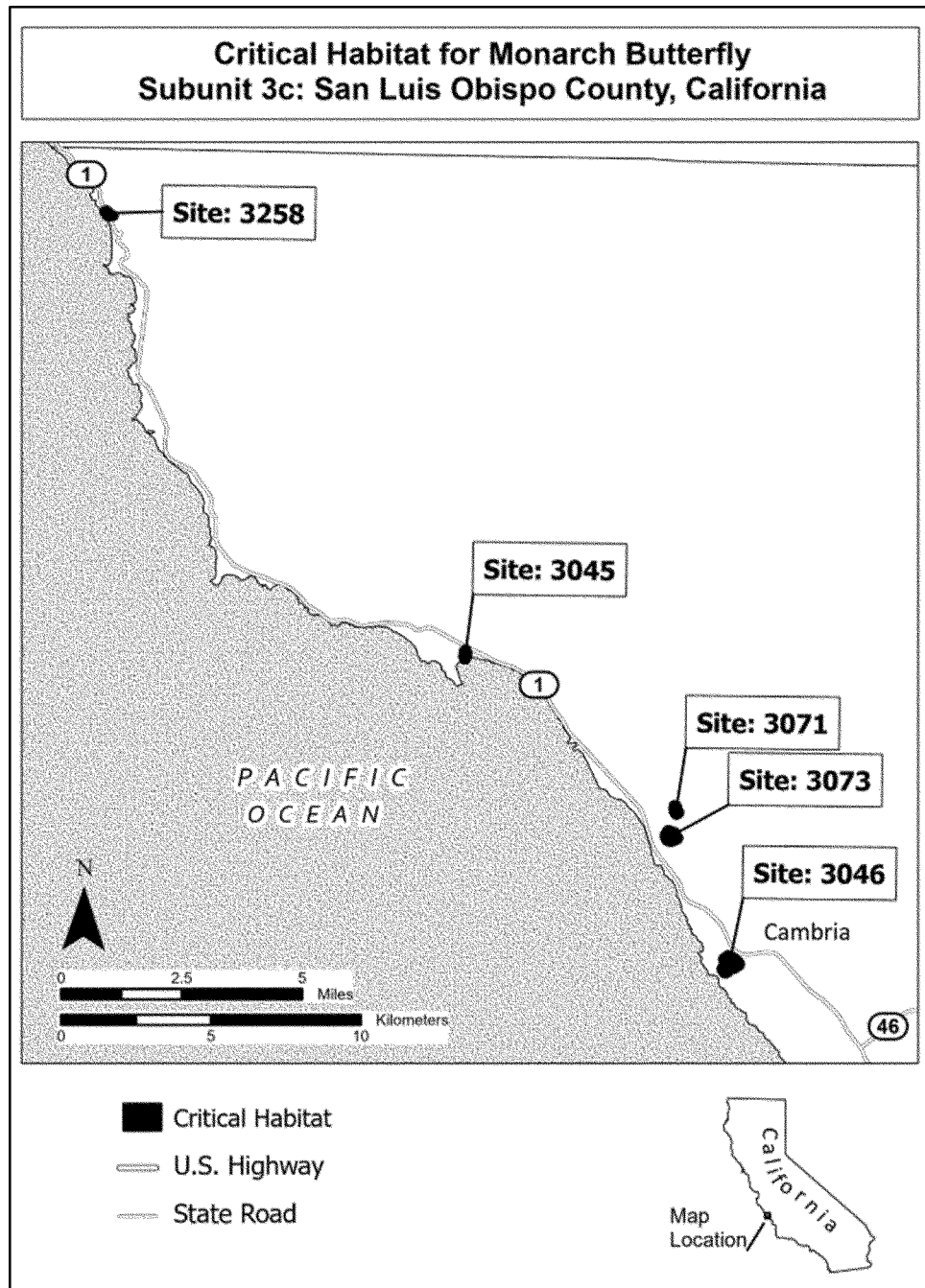


Figure 9 to Monarch Butterfly (*Danaus plexippus*) paragraph (8)(ii)



(9) Unit 4: Monterey County.

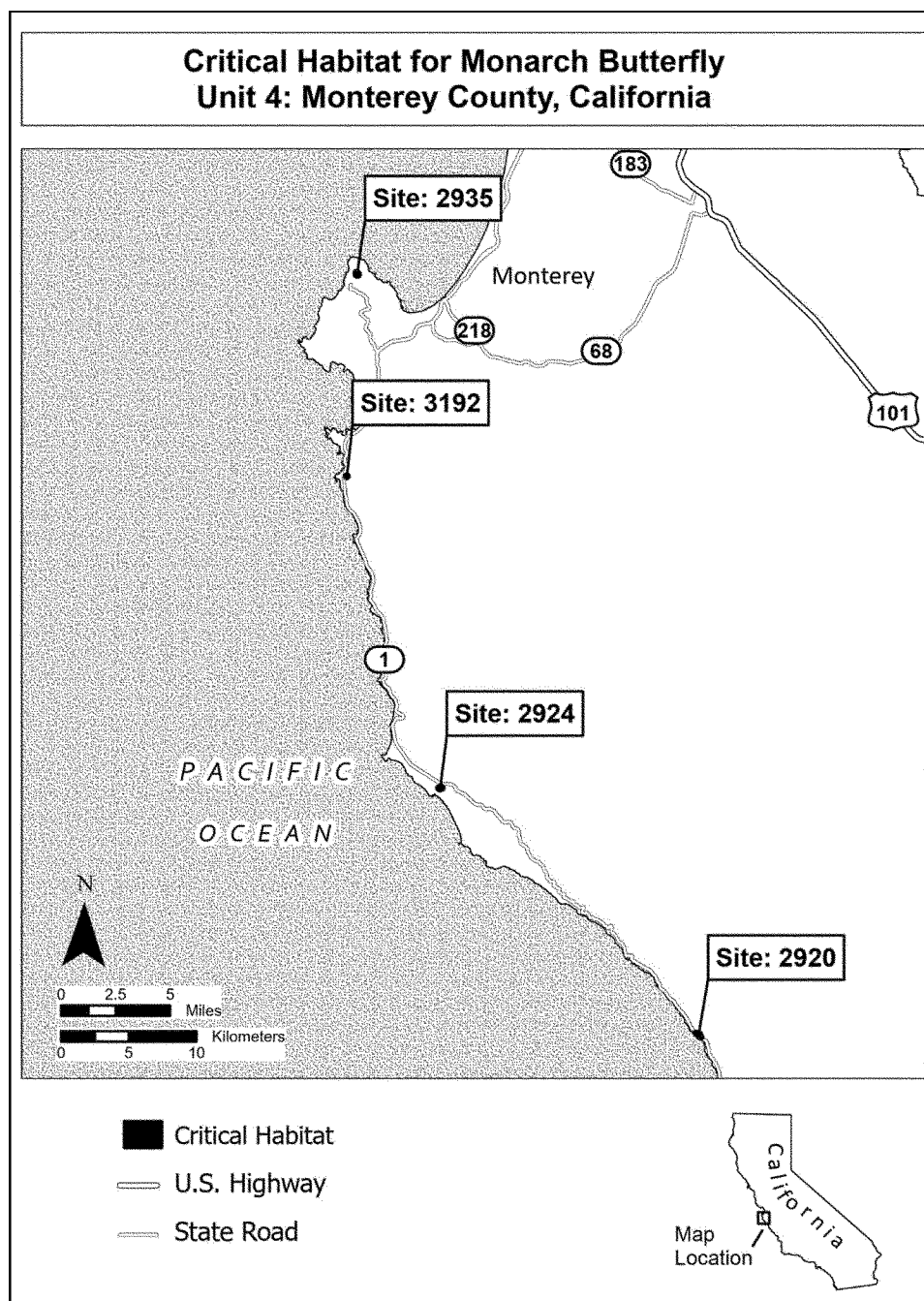
(i) Unit 4 consists of 204 ac (83 ha) in Monterey County, California. It includes the following areas: overwintering site

near Big Sur (site #2920), Andrew Molera State Park (site #2924), Pacific Grove Monarch Butterfly Sanctuary (site

#2935), and overwintering site in Monterey (site #3192).

(ii) Map of Unit 4 follows:

Figure 10 to Monarch Butterfly (*Danaus plexippus*) paragraph (9)(ii)



(10) Unit 5: Santa Cruz County.

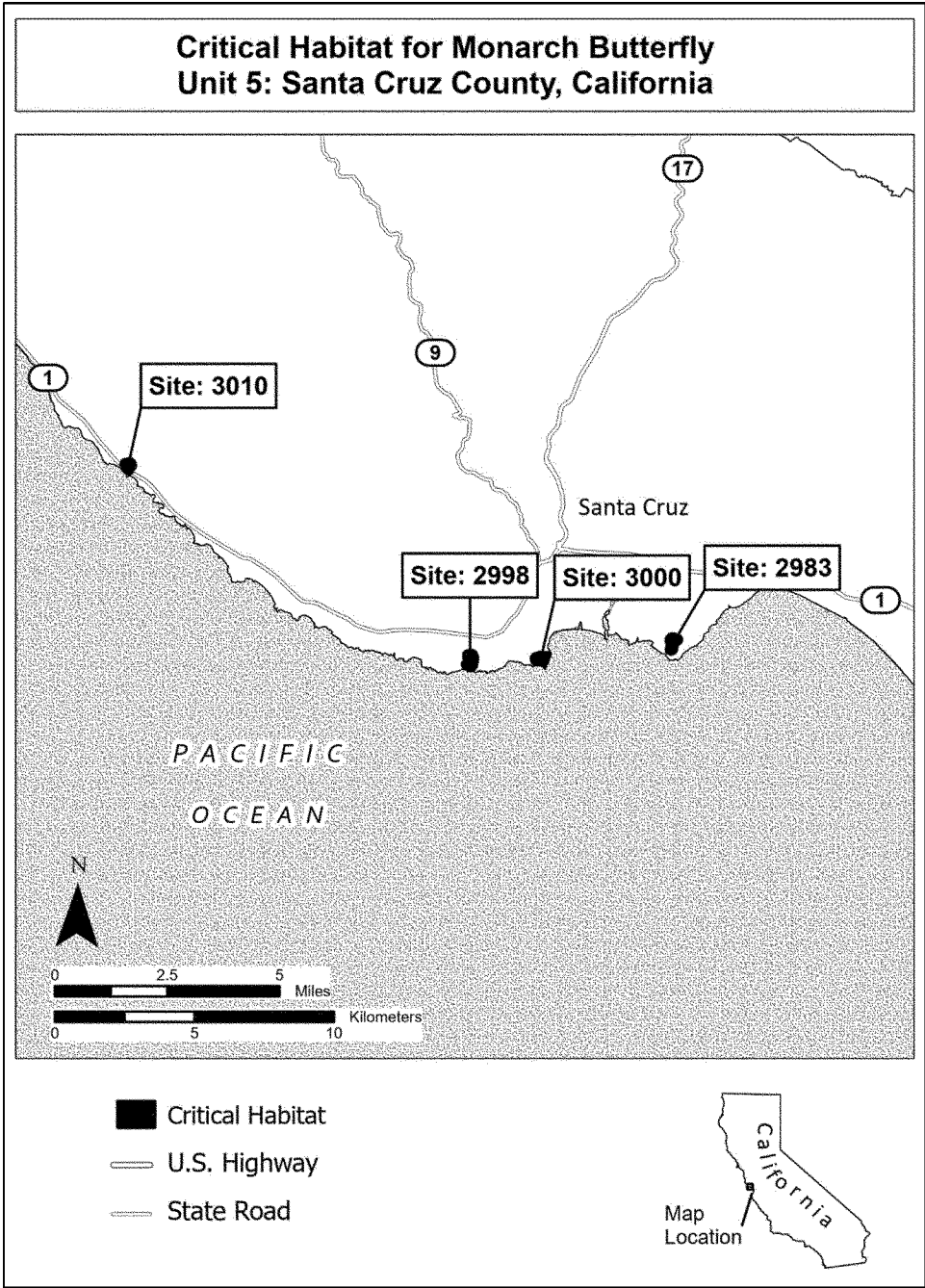
(i) Unit 5 consists of 289 ac (117 ha) in Santa Cruz County, California. It

includes the following areas: Moran Lake (site #2983), Natural Bridges State Park (site #2998), Lighthouse Field (site

#3000), and Ocean View and Marine Drive (site #3010).

(ii) Map of Unit 5 follows:

Figure 11 to Monarch Butterfly (*Danaus plexippus*) paragraph (10)(ii)

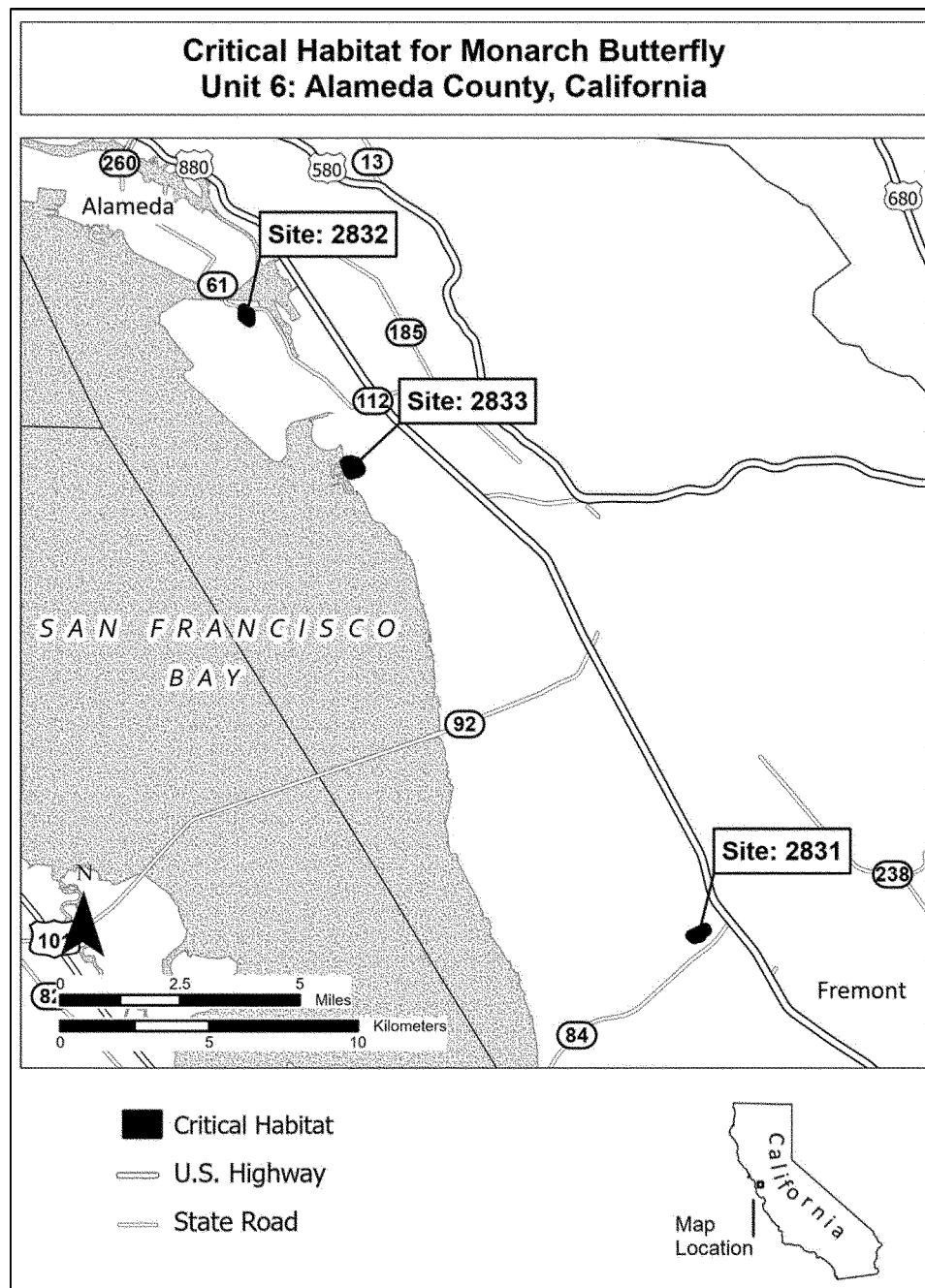


(11) Unit 6: Alameda County.
(i) Unit 6 consists of 261 ac (105 ha) in Alameda County, California. It

includes the following areas:
Ardenwood Historical Farm (site #2831), Chuck Corica Golf Course (site

#2832), and San Leandro Golf Course (site #2833).
(ii) Map of Unit 6 follows:

Figure 12 to Monarch Butterfly (*Danaus plexippus*) paragraph (11)(ii)



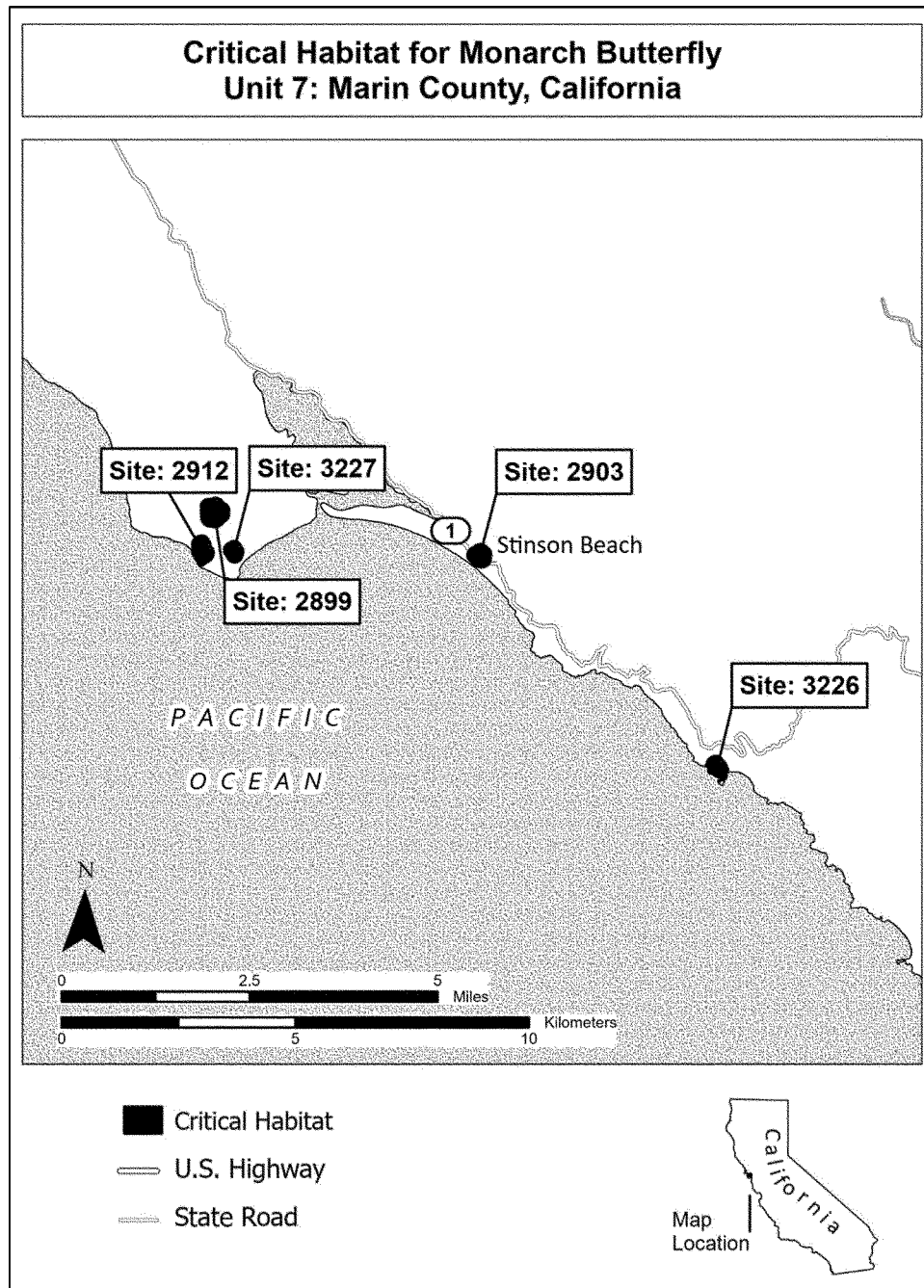
(12) Unit 7: Marin County.

(i) Unit 7 consists of 242 ac (98 ha) in Marin County, California. It includes the

following areas: Purple Gate (site #2899), Chapman Ravine (site #2903), Alder Road (site #2912), Charlotte near

Muir Beach (site #3226), and Juniper Road and Kale Road (site #3227).
(ii) Map of Unit 7 follows:

Figure 13 to Monarch Butterfly (*Danaus plexippus*) paragraph (12)(ii)



* * * * *

Martha Williams,
 Director, U.S. Fish and Wildlife Service.
 [FR Doc. 2024-28855 Filed 12-11-24; 8:45 am]
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